

clause 7 of section 195 of the Criminal Procedure Code. That being so, it is open to us to consider whether the sanction which has been refused here should or should not be granted.

Whether, apart from the provisions of the Code of Criminal Procedure, an appeal lies under clause 15 of the Letters Patent from the order refusing sanction, is a question on which I express no opinion.

Solicitors for the appellant : Messrs. *Pandia & Co.*

Solicitor for the respondents : Mr. *M. B. Chothia.*

*Appeal dismissed.*

G. G. N.

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## INSOLVENCY JURISDICTION.

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*Before Mr. Justice Marten.*

*In Re MANECKCHAND VIRCHAND PATNI\*.*

*Presidency Towns Insolvency Act (III of 1909), section 18—Adjudication order—Prior insolvency proceedings in District Court—Jurisdiction of the Commissioner in Insolvency—Provincial Insolvency Act V of 1920—Practice—Procedure.*

Section 18 of the Presidency Towns Insolvency Act, 1909, does not confer power on the Commissioner in Insolvency to stay insolvency proceedings pending against the insolvent in any other Court. The other insolvency is neither a "suit" nor "other proceeding" pending against the insolvent within the meaning of the section. The "other proceedings" should be *ejusdem generis* with or analogous to a suit.

The District Court in its insolvency jurisdiction is subject to the 'superintendence' of the High Court on its Appellate Side and not to the Commissioner in Insolvency.

APPLICATION by an insolvent for stay of insolvency proceedings in a District Court.

\* Insolvency Petition No. 334 of 1922.

1922.

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1922.

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1922.

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MANECK-  
CHAND,  
*In re.*

The applicant was adjudged insolvent on his own petition by the Insolvency Court, Bombay, on 19th April 1922.

Prior to the said adjudication in Bombay, some of the creditors of the insolvent had filed against the applicant an insolvency petition No. 1 of 1922, dated 4th January 1922, in the District Court at Nasik. That Court proceeding under the Provincial Insolvency Act, 1920, did not make any adjudication order but appointed certain persons as *interim* receivers of the property of the insolvent. In pursuance of the order of the District Judge the *interim* receivers took possession of the insolvent's properties, documents and books of account.

There were, however, certain execution proceedings pending against the insolvent in the Court of the Subordinate Judge of Yeola in the Nasik District, and in those proceedings two houses belonging to the insolvent were sold, and the sale-proceeds to the extent of Rs. 15,005 were in the custody of the Yeola Court. The sale, according to the insolvent, had taken place after the appointment of the *interim* receivers and after notice given to the Yeola Court of the insolvency petition filed against the insolvent in the District Court.

The District Court at Nasik on hearing from the Official Assignee of Bombay of the adjudication order made by the Insolvency Court, Bombay, passed an order in the insolvency proceedings pending before it that the *interim* receivers should vacate their office and hand over possession of all the properties of the insolvent to the Official Assignee excepting the sum of Rs. 15,005 lying with the Yeola Court. The *interim* receivers carried out the directions of the District Court and the insolvent thereafter applied in Bombay for stay of

1922.

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MANECK-  
CHAND,  
*In re.*

insolvency proceedings in Nasik. In his petition to the Insolvency Court, Bombay, the insolvent stated:—

9. The petitioner further submits that as this Honourable Court has adjudicated him insolvent and passed a vesting order the Official Assignee is entitled to get this sum of Rs. 15,005 from the Second Class Sub-Judge, Yeola, for the purpose of distributing the assets of the insolvent amongst the general body of creditors.

10. The petitioner further submits that for expediting matters immediate and urgent orders from this Honourable Court are necessary. And that this Honourable Court should issue urgent orders to the District Judge of Nasik and to the Second Class Sub-Judge of Yeola through the District Judge to hand over the said sum of Rs. 15,005 realised as the sale proceeds in Regular Darkhast No. 446 of 1921 of the file of the Second Class Sub-Judge's Court.

11. The petitioner further submits that it is necessary for proper justice to all the persons concerned and for the benefit of the general body of creditors of the insolvent that further proceedings of the said Insolvency Petition No. 1 of 1922 pending against the petitioner in the District Court of Nasik should be stayed and the said petition be transferred to this Honourable Court and then both the Insolvency Petition No. 334 of 1922 of this Court and No. 1 of 1922 of the Nasik District Court should be consolidated.

The following reliefs were accordingly prayed for in the petition.

(a) That the further proceedings of the Insolvency Petition No. 1 of 1922 in the District Court of Nasik be stayed by sending a notice to that Court as provided by section 18 of the Presidency Towns Insolvency Act III of 1909.

(b) That the said Insolvency Petition No. 1 of 1922 pending in the District Court of Nasik be ordered to be transferred to this Honourable Court as provided by section 5 (2) of the Provincial Insolvency Act V of 1920 and section 24 of the Code of Civil Procedure, 1908 and section 90 (1) of the Presidency Insolvency Act III of 1909.

(c) That the present insolvency petition in Bombay No. 334 of 1922 and the Nasik District Court Petition No. 1 of 1922 be then consolidated as provided by

1922.

MANECK-  
CHAND,  
*In re.*

sections 91 and 97 of the Presidency Insolvency Act III of 1909.

(d) And that any such further orders may be passed as this Honourable Court might deem fit and just to pass for expediting the said matter.

The opposing creditor, who was the judgment creditor at whose instance the execution proceedings were adopted, stated *inter alia* in his affidavit that the application for execution of the decree was made by him before the insolvency petition was presented to the District Court at Nasik; that the auction took place on 16th January 1922; and that the petition for insolvency No. 1 of 1922 was presented to the Nasik Court on 24th January 1922 when the execution proceedings had already been completed.

*Brahmandkar*, for the insolvent.

*Bhandarkar*, for the opposing creditor.

MARTEN, J.:—This is an application by one Maneckchand Virchand, an insolvent, first, that the further proceedings in the Insolvency Petition No. 1 of 1922 in the District Court of Nasik be stayed by sending a notice to that Court as provided by section 18 of the Presidency Towns Insolvency Act III of 1909; secondly, that the Insolvency Petition No. 1 of 1922 pending in the District Court, Nasik, be ordered to be transferred to this Court; thirdly, that the present High Court insolvency petition and the Nasik insolvency petition be then consolidated; and, lastly, for such other order as the Court may think fit to make.

The other order that I think fit to make is that this application be dismissed as being entirely misconceived. It is apparently based on section 18 of the Presidency Towns Insolvency Act which runs:—

"(1) The Court may, at any time after the making of an order of adjudication, stay any suit or other proceeding pending against the insolvent before

any Judge or Judges of the Court or in any other Court subject to the superintendence of the Court."

1922

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MANECK-  
CHAND,  
*In re.*

That section of course applies to the familiar case where the Insolvency Court has power to stay some ordinary civil suit which may be pending at the date of the insolvency against the insolvent. In my opinion it does not relate to some other insolvency pending in some other Court of another province or in any of the District Courts of our own Presidency. Certainly that other insolvency is not a "suit" pending against the insolvent. Nor in my opinion is it an "other proceeding" pending against the insolvent. Such other proceeding should, I think, be *ejusdem generis* with or analogous to a suit. But however that may be, I am of opinion that the District Court is not subject to the superintendence of the Commissioner in Insolvency, and that consequently on that ground alone section 18 is not complied with.

I may also observe that section 22 of the Presidency Towns Insolvency Act expressly provides for the case where other insolvency proceedings are pending in any other British Court. Then, if the Court thinks that the property of the debtor can be more conveniently distributed by such other Court, the Court may annul the adjudication or may stay all proceedings thereon. Examples of how that jurisdiction is exercised will be found in the cases of *Re Aranwayal Sabhapathy*<sup>(1)</sup> and *In the matter of William Watson*<sup>(2)</sup>. In other words each Court can stay its own proceedings, but cannot interfere with another Court, unless it has superintendence over it.

Then when one turns to the Provincial Insolvency Act V of 1920, which is the latest Act regulating insolvency matters in our province, it is quite clear that appeals under that Act lie from the District Court to

<sup>(1)</sup> (1897) 21 Bom. 297.

<sup>(2)</sup> (1904) 31 Cal. 761.

1922.

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 MANECK-  
OHAND,  
In re.

the High Court. In my opinion the High Court there means the High Court on its Appellate Side, and does not mean the Commissioner in Insolvency. So it is the High Court on its Appellate Side, which has superintendence over the District Court.

As far as the ordinary procedure and powers of the Judges on the Original Side are concerned, the Full Bench case of *Narayan Vithal Samant v. Jankibai*<sup>(1)</sup> decides that it is not competent for a single Judge of the High Court, exercising the ordinary original civil jurisdiction of the Court, to stay the hearing of a suit pending for trial in a Subordinate Judge's Court in mofussil, unless authorised so to do by rule. Mr. Justice Macleod in that case was of opinion that there was jurisdiction *in personam* to restrain the parties from proceeding with such a suit, and the appellate Court in *Mulehand Raichand v. Gill & Co.*<sup>(2)</sup> was of the same opinion. But, however that may be, that point does not arise in the present case. I am not here exercising any jurisdiction *in personam* whatever.

I thus refer to the Original Side jurisdiction, because this morning counsel for the applicant urged that, under section 5 of the Provincial Insolvency Act 1920, I had the same powers as if I was sitting on the Original Side. But the Full Bench case shows that, even then, I should have no power to stay the Nasik proceedings, and much less to transfer them to the High Court. At the time of that argument, nobody appeared to oppose, but for various reasons I stood the matter over till after the midday adjournment. Then Mr. Bhandarkar appeared for the opposing creditor, and has argued that I have no jurisdiction to hear the present application at all. I cannot decide the point of jurisdiction

(1) (1915) 39 Bom. 604.

(2) (1919) 44 Bom. 283.

without hearing the parties, but having done so, my conclusion is that I have no jurisdiction to grant the present application.

I should mention one other matter. The parties appear to be greatly moved over certain proceedings that have taken place in a Nasik civil suit where certain property has been realised, and certain sums I understand have been set aside by the Subordinate Judge pending the Nasik insolvency proceedings. It is further said that the *interim* receivers appointed in the Nasik insolvency proceedings by the Nasik District Judge are entitled to these sums so set aside and that they ought not to be lost to the general body of creditors. As to that the present High Court petition states as follows :—

“ The petitioner further learns that the District Judge of Nasik after he received the letter of the Official Assignee has recently passed an order in the said Insolvency Petition No. 1 of 1922 that the said interim Receivers do vacate their office and hand over possession of all properties of the petitioners to the Official Assignee excepting the sum of Rs. 15,005 lying with the Second Class Subordinate Judge of Yeola. And that the petitioner further learns that the District Judge of Nasik is going to dismiss and dispose of the said Insolvency Petition No. 1 of 1922 pending in his Court against the insolvents on 24th June 1922. That the petitioner therefore submits that immediate action is urgently required to be taken by this Hon'ble Court.”

How far that paragraph is accurate I do not know. But the learned District Judge of Nasik has similar powers of staying insolvency proceedings in his own Court, to those which I have under section 22 of the Presidency Towns Insolvency Act. And it would appear to be a question here, following, I take it, the decisions in *Re Aranvayal Sabhapathy*<sup>(1)</sup> and *In the matter of William Watson*<sup>(2)</sup>, as to which Court this particular insolvency can be more conveniently prosecuted in. The assets certainly seem to be very large—nearly three lacs—but I have no materials at

(1) (1897) 21 Bom. 297.

(2) (1904) 31 Cal. 761.

1922.

MANECK-  
CHAND,  
*In re.*

1922.

MANECK-  
CHAND,  
*In re.*

the present moment before me pointing to a conclusion either the one way or the other. Nor is there even any application before me by Mr. Bhandarkar's client, asking that I should exercise my powers under section 22. But if the learned Nasik District Judge, after considering all the facts, is of opinion that this matter may be more conveniently disposed of in the High Court, then I dare say he will exercise his powers of staying proceedings. In saying this, I am in no way attempting to fetter his discretion, and for two very good reasons. First, that it would be very improper for me to do so, and secondly, I have not got the facts before me on which I could exercise my own discretion. But I do say that, as at present advised, I think it will be very inconvenient to have two sets of insolvency proceedings going on together.

As regards the sum of Rs. 15,005 and the position of the *interim* Receivers, personally I do not see any difficulty. The Official Assignee will, I take it, intervene and get whatever he can subject to such orders as may be passed in the Nasik Court. If there are prior persons there in the way of *interim* Receivers, then presumably their claims will have to be satisfied first. This is not the first time this sort of point has arisen, as will be seen on looking at the authorities. I think a little common sense will remove this difficulty which the legal gentlemen concerned in the case appear at the present moment to feel.

My order will be that the present application be dismissed. There will be no order as to the costs of Mr. Bhandarkar's client.

*Application dismissed.*

G. G. N.