

## ORIGINAL CIVIL.

Before Mr. Justice Taraporewala.

Re. NAGINLAL MAGANLAL JAICHAND AND OTHERS.<sup>o</sup>

1925.

June 22.

*Presidency-towns Insolvency Act (III of 1909), sections 90, 18—Insolvency Court—Jurisdiction—Insolvency proceedings under Provincial Insolvency Act (V of 1920)—Courts subordinate to High Court—Power to order (a) transfer or withdrawal, (b) stay.*

The powers given to the Insolvency Court under section 90 of the Presidency-towns Insolvency Act are only such as are exercised by the High Court in its ordinary original civil jurisdiction, and the power of transfer or withdrawal of proceedings from Courts subordinate to the High Court under section 24 of the Civil Procedure Code is not one of such powers.

*Held, therefore, that the Insolvency Court could not under section 90, withdraw or transfer to itself, proceedings in insolvency instituted under the Provincial Insolvency Act in the Court of the Subordinate Judge at Ahmedabad.*

*Narayan Vithal Samant v. Jankibai*<sup>(1)</sup>, relied on.

*Held, further, that section 18 of the Presidency-towns Insolvency Act did not empower the Insolvency Court to stay the insolvency proceedings pending in the Ahmedabad Court, the wording of that section being consistent only with the construction that "insolvency proceedings" are not included therein.*

*In re Maneckchand*<sup>(2)</sup>, referred to.

THE facts are set out in the judgment.

*Jinnah*, for the petitioning creditor.

*Sir Chimanlal Setalvad*, for the Official Liquidator.

TARAPOREWALA, J. :—The executor of the petitioning creditor in this insolvency proceeding has taken out this notice of motion against the First Class Subordinate Judge, Ahmedabad, and three other persons being the Receivers of the estates of the insolvents appointed by the First Class Subordinate Judge, Ahmedabad, in insolvency proceedings pending in the said Court, and Mr. Shivdasani, the Liquidator of the Whittle Spinning

<sup>o</sup> In Insolvency No. 322 of 1925.

<sup>(1)</sup> (1915) 39 Bom. 604.

<sup>(2)</sup> (1922) 47 Bom. 275.

and Manufacturing Company, Limited, for an order (a) either to transfer or stay the proceedings in the Court of the First Class Subordinate Judge at Ahmedabad and order the Receivers appointed by the First Class Subordinate Judge at Ahmedabad to hand over all the assets, effects, papers, vouchers, information collected, &c., to the Official Assignee of Bombay subject to the payment of such allowance, if any, as to this Court may seem right to be made to the said Receivers out of the estate of the said insolvents come into their hands, or (b) to direct the First Class Subordinate Judge's Court at Ahmedabad requesting the said Court to act merely in aid of this Honourable Court and auxiliary thereto in administering the estates of the said insolvents and in the meantime for an order against the said Receivers to the effect above mentioned, and for such other directions as to this Court may seem right.

This application was opposed by Mr. Shivdasani who appeared by counsel.

The facts relevant to the present notice of motion are as follows :—

A petition was presented in the Court of the First Class Subordinate Judge, Ahmedabad, for adjudicating all the three persons, who have been adjudicated insolvents in the proceedings before this Court, insolvents under the Provincial Insolvency Act. On the said application the First Class Subordinate Judge of Ahmedabad made orders on February 18 and 19, 1925, appointing respondents Nos. 2, 3 and 4 as provisional Receivers respectively of the estates of the three insolvents. Before the final order of adjudication, however, was made by the Court at Ahmedabad a petition was presented in this Court by the petitioning creditor for adjudicating the said three persons insolvents, and an order of adjudication was made

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on the said petition by this Court on March 9, 1925. Thereafter on March 21, 1925, the Ahmedabad Court made a final order adjudicating the said three persons insolvents. An application was made to this Court for stay of the proceedings in this Court under section 22 of the Presidency-towns Insolvency Act on the ground that the insolvency proceedings were pending in the Ahmedabad Court and that it would be more convenient for that Court to proceed with the insolvency proceedings. The said application was heard by Mirza J., in the vacation and dismissed by him. I am told that the petitioning creditor in the Ahmedabad Court, Mr. Shivdasani, has appealed against the said Order of Mr. Justice Mirza and the said appeal is pending. I was further told by counsel for Mr. Shivdasani that the petitioning creditor in this Court had applied to the First Class Subordinate Judge at Ahmedabad to stay the insolvency proceedings before him under section 36 of the Provincial Insolvency Act on the ground that this Court had refused to stay the proceedings pending before it in insolvency against the said insolvents, and that the proceedings would be more conveniently carried on in this Court, and that the Ahmedabad Court dismissed the application and refused to stay the proceedings pending before it. The executor of the petitioning creditor in this Court has now applied by the present notice of motion for transfer or stay of the insolvency proceedings in the Ahmedabad Court.

There is thus in a way an impasse. The Receivers appointed by the Ahmedabad Court are collecting the assets of the insolvents under the orders of the Ahmedabad Court and the Official Assignee of Bombay is at the same time entitled to collect the assets, the same having vested in him under the order of adjudication passed by this Court, and there is no doubt that it would be in

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the interest of all the parties concerned that the insolvency proceedings should be carried on in one or other of these two Courts.

The question before me is whether under the circumstances, I have got the jurisdiction to order either a transfer or a stay of the insolvency proceedings pending in the Ahmedabad Court.

Mr. Jinnah for the petitioning creditor contended that under section 90 of the Presidency-towns Insolvency Act this Court has the like powers and has to follow the like procedure, as it has and follows in the exercise of its ordinary original civil jurisdiction, and that under section 24 of the Civil Procedure Code the Court has power to withdraw any suit, appeal or other proceeding, pending in any Court subordinate to it, and try or dispose of the same. As pointed out by me, in the course of the argument, it has been held by a Full Bench of this Court in *Narayan Vithal Samant v. Jankibai*<sup>(1)</sup>, that the powers under section 24 of withdrawal can be exercised by the Judge sitting on the Appellate Side of this Court only and not by a Judge sitting on the Original Side of the High Court. The powers of the Insolvency Court given thereto under section 90 of the Presidency-towns Insolvency Act, being only such powers as are exercised by this Court in the exercise of its ordinary original civil jurisdiction, the power of transfer or withdrawal is necessarily not one which is delegated to this Court under section 90 and is therefore not one which this Court can exercise.

Mr. Jinnah relied upon the decision in *Srinivasa Aiyangar v. The Official Assignee of Madras*<sup>(2)</sup>. There the learned Judges assumed that the Judge sitting on the Original Side could exercise the powers under section 24 of the Civil Procedure Code. Therefore the decision is of no value in this matter.

<sup>(1)</sup> (1915) 39 Bom. 604.

<sup>(2)</sup> (1913) 38 Mad. 472.

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I hold that I have no power as a Judge in insolvency to order a withdrawal of the proceedings in insolvency from the Court of the Subordinate Judge at Ahmedabad to this Court.

Mr. Jinnah then contended that in any event under section 18 of the Presidency-towns Insolvency Act this Court had power to stay the insolvency proceedings in the Ahmedabad Court. The section, in my opinion, is not very happily worded. The corresponding section in the English Bankruptcy Act of 1914 is section 9. It runs as follows :—

“ 9. (1) The Court may, at any time after the presentation of a bankruptcy petition, stay any action, execution, or other legal process against the property or person of the debtor, and any Court in which proceedings are pending against a debtor may, on proof that a bankruptcy petition has been presented by or against the debtor, either stay the proceedings or allow them to continue on such terms as it may think just.”

The wording of section 9 of the English Bankruptcy Act would clearly not include insolvency proceedings which may be initiated by the debtor himself or by his creditors.

The object of section 9 of the English Bankruptcy Act and of section 18 of the Presidency-towns Insolvency Act is really to protect the property and person of the insolvent from any action, execution or other legal process, against him, and to ensure the proper administration and distribution of his estate among the creditors.

Looking at section 18 itself I am of opinion that the wording thereof is more consistent with the interpretation that insolvency proceedings are not included under that section. The sub-clause (*I*) gives the power to this Court to stay any suit or other proceeding pending against the insolvent in any Court. Now, insolvency proceedings could only be pending before the Judge exercising insolvency jurisdiction in the High Court. Therefore, any suit or other proceeding, so far

as the Judge or Judges of this Court are concerned, must necessarily mean suit or other proceeding other than an insolvency proceeding. As to insolvency proceedings this Court is empowered to stay them under section 22 in its own Court.

Coming to sub-clause (2) of section 18, which provides for the service of the order made under sub-clause (1), it directs that the order may be served on the plaintiff or other party prosecuting such suit or proceeding. Now, in the insolvency proceedings, there is neither the plaintiff nor any party prosecuting the proceeding immediately after the adjudication order is made. It is the Court that administers the estate of the insolvent, and the Official Assignee who takes all the necessary steps for collecting the estate of the insolvent and distributing the property among the creditors. There is no party which can be said to prosecute the proceedings. There is no doubt that when the petition is presented by the creditor, so far as the hearing of the petition and making of the order is concerned, he is a party thereto prosecuting the said petition. But immediately an order of adjudication is made, he is no longer a party prosecuting the proceedings under such order although he is entitled to appear under certain circumstances before the Court and ask for directions just as any other creditor is entitled to do.

Had the insolvency proceedings been included under section 18, one would have found some provision in sub-clause (2) for service of the order made under sub-clause (1), on a Receiver of the insolvent's estate appointed by any other Court exercising jurisdiction in insolvency. In my opinion, the wording of sub-clause (2) is consistent only with the construction that insolvency proceedings are not included under section 18.

The provision as to service of the order staying any action or proceeding under the English Bankruptcy

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Act is contained in section 9, sub-clause (2) and is identical with the provision under section 18, sub-clause (2) of the Presidency-towns Insolvency Act.

This point is also made clear by looking at the other sections of the Presidency-towns Insolvency Act, the Provincial Insolvency Act, and the English Bankruptcy Act. Section 22 of the Presidency-towns Insolvency Act specifically provides for stay of insolvency proceedings in one Court when they are pending in more than one Court. That section enables the Court to stay its own proceedings and not to order some other Court to stay proceedings, and the powers are exercisable on the Court being satisfied that the insolvency proceedings are pending in any other British Court and that the property of the debtor could be more conveniently distributed by such Court among his creditors. No doubt, an application was made under that section to this Court to stay the proceedings pending in this Court and this Court refused to do so. It merely means that in the exercise of the discretion given under section 22, this Court thinks that the other Court in which the insolvency proceedings are pending would not be able more conveniently to distribute the property of the debtor.

Then coming to the Provincial Insolvency Act, it appears that the District Courts and the Courts subordinate thereto, which exercise insolvency jurisdiction under section 3 of the Provincial Insolvency Act, have not been given a power to stay any suit or other proceeding pending against the insolvent in any other Court, but it is provided by section 29 that any Court in which the suit or other proceeding is pending should, on proof of proceedings under the Provincial Insolvency Act, either stay the proceedings or allow them to continue on such terms as the Court may think fit. However, section 22 of the Presidency-towns Insolvency

Act is reproduced in section 36 of the Provincial Insolvency Act, and the District Courts are given the same powers to stay their proceedings on proof of pendency of insolvency proceedings in another Court against the same debtor and that property of the debtor could be more conveniently distributed by such other Court. The reproduction of section 22 of the Presidency-towns Insolvency Act in the Provincial Insolvency Act shows that the insolvency proceedings are considered on a different footing from a suit or other proceeding pending against the insolvent and therefore they are treated separately by separate sections.

It is to be noted that under the English Bankruptcy Act insolvency jurisdiction is given both to the High Court and to the County Courts. By section 105, sub-clause (2), of the English Bankruptcy Act it is specifically provided that a Court having jurisdiction under the Act shall not be subject to be restrained in the execution of its powers under the Act by the order of any other Court, nor shall any appeal lie from its decision except in manner directed by the Act.

Section 100, sub-clause (2) provides for transfer of proceedings in bankruptcy from one Court to another as follows :—

“ Any proceedings in bankruptcy may at any time, and at any stage thereof, and either with or without application from any of the parties thereto, be transferred by any prescribed authority and in the prescribed manner from one Court to another Court, or may, by the like authority, be retained in the Court in which the proceedings were commenced, although it may not be the Court in which the proceedings ought to have been commenced.”

By section 172 it is provided that the Lord Chancellor may with the concurrence of the other Lords make general rules for carrying into effect the objects of the Act provided that the general rules so made shall not extend the jurisdiction of the Court.

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The Bankruptcy Rules of 1915 made under the powers so given provide by Rules 18 to 25 for the transfer of insolvency proceedings from one Court to another.

The English Bankruptcy Act thus makes it quite clear that section 9 thereof, on which section 18 of the Presidency-towns Insolvency Act is based, does not empower the Court exercising the insolvency jurisdiction to stay proceedings in insolvency pending in any other Court.

On all these considerations, I have come to the conclusion that section 18 does not empower me in the exercise of insolvency jurisdiction to stay insolvency proceedings in the Ahmedabad Court.

Although in the course of the argument, counsel stated to me that they had not found any decision on the construction of section 18, I have found that there is one given by Mr. Justice Marten (*In re Maneekchand*<sup>(a)</sup>). Mr. Justice Marten came to the same conclusion and held that section 18 did not empower this Court to stay proceedings in insolvency in any other Court. Mr. Justice Marten held that the words "other proceeding" in section 18 should be *ejusdem generis* or analogous to a suit. He, however, put his judgment on another ground, namely, that the District Court was not subject to the superintendence of the Commissioner in insolvency and that consequently on that ground alone section 18 was not complied with. With great respect to the learned Judge, I do not agree with him on this point. If the said construction was correct, the words in section 18, sub-clause (1) "or in any other Court, subject to the superintendence of the Court" would be absolutely nugatory and of no effect because the power to stay proceedings pending against an insolvent before any Judge or

<sup>(a)</sup> (1922) 47 Bom. 275.

Judges of the High Court is provided for in the first part of the section. The meaning put upon the word "Court" in the section by Mr. Justice Marten, however, is, in my opinion, not correct, in view of the definition of the word "Court" as used in the Presidency-towns Insolvency Act. Section 2 (*h*) defines the "Court" as the Court exercising jurisdiction under the Act, and section 3 provides that the Courts having jurisdiction in insolvency under the Act shall be:—

(*a*) the High Court of Judicature at Fort William, Madras, and Bombay; and

(*b*) The Chief Court of Lower Burma.

Therefore the Court exercising jurisdiction under the Insolvency Act is the High Court of Bombay and not an individual Judge thereof. Section 4 makes it quite clear. It provides that all matters in respect of which jurisdiction is given by this Act shall be ordinarily transacted and disposed of by or under the direction of one of the Judges of the Court, and the Chief Justice or Chief Judge shall, from time to time, assign a Judge for that purpose. I am therefore exercising this jurisdiction by reason of the Chief Justice having assigned me as the Judge for transacting and disposing of matters in insolvency. But I am exercising the jurisdiction which is given to the High Court under section 3. Section 18, sub-clause (*f*) further makes it clear that the "Court" referred to therein is the High Court as the power is given by the first part of the section to stay any suit or any proceeding pending against insolvent before any Judge or Judges of the Court. The Judge or Judges of the Court are necessarily of the High Court and cannot refer to a single Judge, who by reason of being assigned for that purpose exercises jurisdiction in insolvency. The District Court of Ahmedabad as much as any other District Court or Subordinate Judge's Court in the Bombay Presidency is subject to the

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superintendence of the High Court. Therefore in the exercise of the jurisdiction of the High Court in insolvency, I have power under section 18 to stay any suit or other proceeding pending against the insolvent in a District Court or Subordinate Judge's Court in the Bombay Presidency which is subject to the superintendence of the Bombay High Court.

The notice of motion fails so far as prayer (a) is concerned.

Coming to prayer (b) of the notice of motion the petitioning creditor has asked for that relief under section 126. In my opinion as the order of this Court refusing to stay insolvency proceedings is under appeal, it would be futile to give any directions as prayed for by the executor of the petitioning creditor until the appeal is decided. If the Appeal Court reverses the order of this Court, all insolvency proceedings in this Court will be stayed or annulled and there would be no occasion to ask for the aid of the Ahmedabad Subordinate Judge's Court under section 126. If the order of this Court is confirmed by the Appeal Court the question will then arise, if no proper steps are taken for the transfer of the insolvency proceedings in the Ahmedabad Subordinate Judge's Court to this Court, as to how far the Ahmedabad Court should be asked to aid this Court in the insolvency proceedings under section 126. The executor of the petitioning creditor may then renew his application on proper grounds. At present I do not see any use in giving any directions under prayer (b) of the notice of motion.

I, therefore, make no order on this notice of motion.

Solicitors for the petitioning creditor: Messrs. *Patel & Ezekiel*.

Solicitors for the Official Liquidator: Messrs. *Thakordas & Daru*.