APPELLATE CIVIL.

Before Mr. Justice Rangnekar.

HIRALAL RAMSUKH, RECEIVER IN INSOLVENCY APPLICATION NO. 94 OF 1933 OF THE FIRST CLASS COURT, POONA (ORIGINAL OPPONENT), APPLICANT *v.* MONGIBAI WIDOW OF CHIMNAJI, BY HER MUKHTYAR BHIWRAJ DHANRAJ MARWADI (ORIGINAL PETITIONER), OPPONENT.*

1938 *March* 28

Provincial Insolvency Act (V of 1920), ss. 5, 75—Revisional application—Security for costs—Inherent jurisdiction of High Court to make order for—Procedure—Civil Procedure Code (Act V of 1908) ss. 115, 151, O. XXV, r. 1, and O. XLI, r. 10.

An application in revision was made to the High Court under s. 75 of the Provincial Insolvency Act, 1920, against an order made by the Assistant Judge of Poona. Pending the revisional application, the applicant (original opponent) applied for security for costs against the original petitioner on the allegation that the petitioner was not residing in British India and had not any immovable property in British India. A preliminary objection was taken that the application was incompetent as there was no provision in the Civil Procedure Code, 1908, under which security for costs could be asked or granted against the petitioner in a revisional application.

Held, overruling the preliminary objection, that although there was no provision in the Civil Procedure Code, 1908, which specially empowered the High Court in revisional application to exercise the same powers as the Court of original civil jurisdiction under O. XXV, r. 1, or as an appellate Court under O. XLI, r. 10, it was competent for the High Court to make an order of the nature provided in O. XXV, r. 1 in the exercise of its inherent jurisdiction under s. 151 of the Civil Procedure Code, 1908.

CIVIL APPLICATION praying that opponent may be ordered to give security for costs of the applicant in Civil Revision Application No. 360 of 1937.

Application for security for costs.

The facts material for the purposes of this report are stated in the judgment of Rangnekar J.

S. Y. Abhyankar, for the applicant.

P. B. Gajendragadkar, for the opponent.

*Civil Application No. 1056 of 1937.

1938

HIRALAL RAMSUKH v. MONGIBAI CHIMNAJI

RANGNEKAR J. This is a civil application calling upon the opponent to show cause why she should not furnish security for the costs incurred by the applicant in the lower Courts as well as the costs likely to be incurred in the High Court. Mr. Gajendragadkar on behalf of the opponent has taken a preliminary objection. To understand the nature of the objection, certain facts have to be stated.

A firm of the name of Nawalmal Kasturchand and its two partners were adjudicated insolvents under the Provincial Insolvency Act on September 8, 1934. The applicant was appointed receiver of the estate of the insolvents. He applied to the Court for leave to sell a house belonging to one of the partners. This application was opposed by the opponent on the ground that the house was the partner's private property. In those proceedings the Court made an order by consent that the house be sold by the receiver and the question as to whom the house belonged should be reserved. Thereafter the opponent filed a petition in insolvency for an adjudication order against the same partner as the alleged owner of another firm. It was contended by the receiver that as the said partner had already been adjudicated an insolvent, the second application was incompetent. The Insolvency Judge rejected the contention. In appeal from that order, the Assistant Judge of Poona held that the application was not competent and dismissed it. From that order of dismissal the opponent applied to this Court in revision under s. 75 of the Provincial Insolvency Act. The revisional application has been admitted and is pending.

The receiver now by this application applies for security for costs against the opponent on the allegation that the opponent is not residing in British India and has not any immoveable property in British India. The application is made under the provisions of O. XXV, r. 1, Civil Procedure Code, 1908.

Mr. Gajendragadkar contends that the application is incompetent as there is no provision in the Civil Procedure Code under which security for costs can be asked or granted against the petitioner in a revisional application.

The question thus raised is certainly an interesting one, and it must be admitted that there is no specific provision either in the Provincial Insolvency Act or the Civil Procedure Code on which the finger can be placed to support an application of the kind now made. It is not disputed that there is no specific rule which provides for an order of security for costs in regard to revisional applications made under s. 115 of the Civil Procedure Code. Order XXV, r. 1, Civil Procedure Code, undoubtedly provides for such an order being made in proper cases in any suit. Order XLI, r. 10. Civil Procedure Code, makes a provision to the same effect in regard to appeals. But there is no provision whereby an order of this nature can be made in regard to revisional applications under the revisional jurisdiction under s. 115 of the Civil Procedure Code.

It is, however, argued on behalf of the applicant by Mr. Abhyankar that an order of this nature can be made by this Court under s. 5 read with s. 75 of the Provincial Insolvency Act. The revisional application, to which I have referred, is made under s. 75, which provides that the High Court, for the purpose of satisfying itself that an order made in any appeal decided by the District Court was according to law, may call for the case and pass such order with respect thereto as it thinks fit. This revisional jurisdiction clearly goes beyond the somewhat narrow limits of s. 115 of the Civil Procedure Code. Section 5, sub-s. (*1*) of the Provincial Insolvency Act provides as follows :

"(1) Subject to the provisions of this Act, the Court, in regard to proceedings under the Act, shall have the same powers and shall follow the same procedure as it has and follows in the exercise of original civil jurisdiction."

1938

HIRALAL RAMSUKH v. MONGIBAI CHIMNAJI

Rangnekar J.

Sub-section (2) is in the terms following:

"(2) Subject as aforesaid, High Courts and District Courts, in regard to proceedings under this Act in Courts subordinate to them, shall have the same powers and shall follow the same procedure as they respectively have and follow in regard to civil suits."

Mr. Abhyankar, therefore, argues that under sub-s. (1) of s. 5 the High Court has the same powers and has to follow the same procedure as the High Court has and follows in the exercise of original civil jurisdiction.

It seems to me difficult to accept this view of the matter. If the argument is sound, then it is clear that there was not the slightest necessity for enacting sub-s. (2), and that sub-section would be clearly redundant. A well known principle of construction is to avoid imputing to the Legislature the offence of redundancy, and the Court must, therefore, construe s. 5 and the two clauses therein on the terms contained therein. Reading sub-s. (1) carefully, and in particular having regard to the words "in the exercise of original civil jurisdiction," it seems to me that that sub-section provides that the Insolvency Court in regard to all proceedings in that Court has the same powers and has to follow the same procedure as an ordinary civil Court in the exercise of its original civil jurisdiction. It is beyond question that as District Courts in this Presidency are constituted, the same Court is capable of having two jurisdictions, (1) original jurisdiction in ordinary civil suits, and (2) insolvency jurisdiction under the Provincial Insolvency Act; and the word "Court" in sub-s. (1) means, and must mean, the Court exercising the insolvency jurisdiction, and the word "it" in that sub-section means the same Court in the exercise of its original civil jurisdiction. Having provided for the powers and the procedure to be followed by the Insolvency Court by sub-s. (1), the Legislature then turned its attention to the position in the High Courts and the District Courts; and sub-s. (2) says

that the High Courts and the District Courts, in proceedings under the Provincial Insolvency Act, shall have the same powers and shall follow the same procedure as they respectively have and follow in regard to civil suits. The difference in describing what procedure is to be followed and what powers are to be enjoyed is not without significance. As I have pointed out, under sub-s. (*1*) it is "in the exercise of original civil jurisdiction," and under sub-s. (*2*) it is "in regard to civil suits". It seems to me the word "Court" in sub-s. (*1*) must mean something different from a High Court or a District Court, and sub-s. (*2*) merely confers upon the High Courts and the District Courts the same powers, and they have to follow the same procedure, as they respectively have and follow in regard to civil suits under the Civil Procedure Code. If this construction is right, it must follow that the present application is incompetent, for the proceeding in question being under s. 75 of the Provincial Insolvency Act, namely, a revisional application, the High Court has the same powers and must follow the same procedure as it has and follows in regard to revisional applications in civil suits under the Civil Procedure Code. But as already observed, there is no provision in the Civil Procedure Code which specifically empowers the High Court in revisional applications to exercise the same powers as the Court of original civil jurisdiction has under O. XXV, r. 1, or as an Appeal Court has under O. XLI, r. 10.

The result certainly is startling. Whereas the defendant in an ordinary civil suit, or the respondent in an appeal, and under the provisions of O. XLII, the respondent even in a second appeal, can obtain sufficient protection against either the plaintiff in a suit or the appellant in an appeal respectively, if he is not a resident in British India and is not possessed of immoveable property in British India, no such protection is available to a petitioner in a revisional application, whether under the Civil Procedure Code or

1938

HIRALAL RAMSUKH v. MONGIBAI CHIMNAJI

Rangnekar J.

under the Provincial Insolvency Act; and this seems to me to be somewhat anomalous. It is well known that the Code of Civil Procedure is not exhaustive. The Legislature could not be expected to provide for every order which may be necessary in the interests of justice or to prevent abuse of the process of the Court, or for the proper administration of real and substantial justice by the Courts, and it is for this purpose that s. 151 is enacted. It is true, as Mr. Gajendragadkar says, that the powers under s. 151 have to be exercised sparingly. I myself have said so in more than one case. Where there is a specific provision of law, or a specific procedure provided by law, which has not been followed by a party, or of which advantage has not been taken by a party, the Court will certainly hesitate before exercising its inherent jurisdiction. But on the facts of this case, which are not in dispute, I cannot see why the Court cannot proceed under s. 151. I must, therefore, hold that it is competent to this Court to make an order of the nature provided in O. XXV, r. 1.

The result is, that the preliminary objection must be overruled.

On the merits there is no defence. That being so, the rule must be made absolute. The papers in the civil application must be returned to the lower Court, with a direction that it should call upon the opponent to furnish proper security. As to what that security should be, is a question entirely for the lower Court. Two weeks' time should be given to the opponent to comply with the Court's order when made.

Costs will be costs in the revisional application.

Rule made absolute.

J. G. R.