

Limitation Act provides that, in the case of a pauper, the suit is instituted when the application for leave to sue as a pauper is filed. That obviously only applies to a case in which the application is granted.

The Subordinate Judge had no power, after the rejection of the application, to give time for the presentation of a plaint or to treat the old application as a plaint in the suit. It seems clear, from the provisions of sections 409, 410 and 413 of the Code of Civil Procedure and section 4 of the Limitation Act, that the suit must be taken to have been instituted some time after the application to sue as a pauper was rejected. What that exact time is we need not consider, because in any view of the matter the suit was out of time. The decision of the lower Courts is in accordance with the decisions of the Bombay High Court in the case of *Keshab Ramchandra Deshpande v. Krishnarao Venkatesh Inamdar* (1), and of the Allahabad Court in the cases of *Naraini Kuar v. Makhan Lal* (2), and of *Abbasi Begam v. Nanhi Begam* (3).

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 CHURN DEY  
 ROY  
 v.  
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The learned pleader for the appellant relied upon the case of *Skinner v. Orde* (4), but that case is clearly distinguishable, as there was in that case no order rejecting the application. The appeal is dismissed with costs.

B. D. B.

*Appeal dismissed.*

## INSOLVENCY JURISDICTION.

*Before Mr. Justice Jenkins.*

IN THE MATTER OF BEER NURSING DUTT, AN INSOLVENT.

*Taxation of costs—Discretion of Taxing Officer—Costs of Two Counsel—Insolvency Proceedings—Allegations of improper conduct—Purchaser.*

1897  
 June 24.

A rule was obtained in certain Insolvency proceedings against the purchaser of property of the insolvent to show cause why such purchase should not be set aside, and alleging improper conduct on the part of the purchaser, who was represented by two Counsel at the hearing of the rule in taxation of costs of the purchaser, the other parties objected to the costs of two Counsel on behalf of the purchaser being allowed.

(1) I. L. R., 20 Bom., 4508.

(2) I. L. R., 17 All., 526.

(3) I. L. R., 18 All., 206.

(4) I. L. R., 2 All., 241.

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*Held*, that having regard to the allegations made, the Taxing Officer exercised a right discretion in allowing the costs of two Counsel.

THIS was an application by way of objection to the taxation of a bill of costs on the ground that the costs of a second Counsel should not have been allowed to one of the parties, although the said party, who was the purchaser, was charged with collusion and fraud. The insolvent, Beer Nursing Dutt, filed his petition in insolvency on 15th November 1895. The mortgagee of certain premises belonging to the insolvent obtained on 23rd January 1896 an order for the sale by the Official Assignee of the said premises which were duly sold and purchased by one Jogendro Nath Bose for and on behalf of his wife Koosom Koomary Dassee for the sum of Rs. 6,100, which was paid, and the conveyance of the premises, to which the mortgagee was a party, duly executed and registered. The insolvent refused to give up possession of the premises under the vesting order made on 15th November 1895, and on 1st August 1896 the purchaser obtained a rule, and on 8th August an order that the insolvent do deliver up to the Official Assignee possession of the said house and premises. On the insolvent refusing to comply with the said order, a further rule was obtained by the purchaser on 5th September 1897 against the insolvent to show cause why he should not be committed to jail for contempt of Court in disobeying the order of 8th August 1896, and on 7th September 1896 an order was made, the insolvent not appearing, for a writ of attachment against the person of the insolvent for disobedience to the order of 8th August 1896. In the meantime, on 4th September 1896, a rule was obtained by certain creditors of the insolvent against the purchaser and the Official Assignee to show cause why the sale of the premises of the insolvent, in pursuance of the order of 23rd January 1896, should not be set aside and the premises resold, and the purchaser pay the costs of such sale and of this application; and pending the hearing of this rule the Official Assignee was prohibited from proceeding further with the sale or delivering over possession of the premises to the purchaser. On 19th January 1897, this rule was discharged with costs against the purchaser and the Official Assignee. At the hearing of the rule the creditors and the Official Assignee were represented by only one Counsel, but the purchaser was represented by

two Counsel. On the taxation of the costs of the purchaser, the Taxing Officer, Mr. Belchambers, made the following order :—

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“ In this case a house which had been mortgaged by the insolvent was sold by the Official Assignee under an order for sale obtained by the mortgagee. On payment of the purchase money, the purchaser applied for possession. An order directing the insolvent to give possession was not complied with. The insolvent’s attorney on being written to replied that he had been informed by his client that “ the premises in question have been in the occupation of Debendro Nath Dutt, the son of the insolvent, for some time past.” This was at variance with the statements contained in the 16th, 17th and 18th paragraphs of the insolvent’s affidavit, from which it appears that the insolvent was in possession and was withholding possession until an application could be made to set aside the sale. Such an application was made, supported by the affidavits of persons who professed to have acted collusively and dishonestly for the purpose of depreciating the value of the property. The allegations against the purchaser were disproved, and the application was refused with costs.

“ Objection is now taken to two briefs and two Counsel being allowed as between party and party on the following grounds :—

• “ (1) That this is a matter in insolvency in which no special directions were given by the Court.

“ (2) That this is not a matter of importance.

“ (3) That the applicants engaged only one Counsel and so also did the Official Assignee.

“ (1) As to the first ground the absence of special directions shows that it was not intended to affect the discretion of the Taxing Officer.

“ (2) To the purchaser whom it was sought to deprive of the benefit of the purchase on allegations of improper conduct, the application was of undoubted importance.

“ (3) The Official Assignee appeared only to watch the proceedings. It was, therefore, not necessary that he should be represented by more than one Counsel. It is not denied that the applicants had only one Counsel, but that in itself is not a sufficient reason for refusing to allow two Counsel to the purchaser, who was most affected by the application.

“ Having regard to the nature and circumstances of the case, I consider that the purchaser was justified in having two Counsel, and that their fees, as moderated by me, and two briefs, ought to be allowed as between party and party.”

The creditors of the insolvent, being dissatisfied with this order, filed exceptions on the ground that the costs of two Counsel ought

1897 not to have been allowed to the purchaser. The exceptions came on for hearing on 24th June 1897.

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Mr. *Zorab* for the purchaser.

Mr. *D. Swinhoe* on behalf of the creditors.—This is a matter in an Insolvency proceeding. In Insolvency proceedings the costs of only one Counsel are permitted as between party and party. If a party wishes to be represented by two Counsel, he should be compelled to pay his own costs for the second Counsel. There is no difference between this and any other Insolvency proceeding. The Official Assignee and the creditors have throughout these proceedings been represented by only one Counsel. This Court has power to reverse the order of the Taxing Officer, as he has exercised his discretion wrongly in the matter.

JENKINS, J.—This application is by way of objection to the taxation of a bill of costs on the ground that the costs of a second Counsel should not have been allowed. The case in which two Counsel were employed was in certain Insolvency proceedings and, as I learn from the statement of Counsel, the client by whom these Counsel were employed was charged with collusion amounting to fraud.

In the exercise of his discretion the Taxing Master considered that the case was one in which it was proper to allow the costs of a second Counsel. I have been unable to see in the argument addressed to me anything to lead me to suppose that this discretion was wrongly exercised.

I therefore hold that the objection was ill-founded, and the exceptions will be disallowed with costs.

Attorneys for Koosom Koomary Dasse : Messrs. *Dignam & Co*

Attorney for the creditors : Babu *G. G. Dhur*.

C. E. G.