

PRIVY COUNCIL.

OFFICIAL ASSIGNEE, BOMBAY,

v.

REGISTRAR, SMALL CAUSE COURT, AMRITSAR.

P.C.*
1910

March 9.

[On appeal from the Chief Court of the Punjab, at Lahore.]

Insolvency—Punjab Laws Act (IV of 1872) s. 27—Order of Insolvent Estates Court at Amritsar declaring debtors insolvents and appointing a Receiver—Subsequent order of High Court, Bombay, under 11 and 12 Vict. (Indian Insolvent Act) declaring some debtors insolvent and vesting their property in Official Assignee, Bombay.

By the provisions of the Punjab Laws Act (IV of 1872) as to the property in the Punjab of debtors who have, by an order under the Act, been declared insolvents, the Court is entrusted (by section 27) with merely administrative powers with regard to it, and no transfer of the property takes place:

Held, therefore, by the Judicial Committee (reversing the decision of the Chief Court), that where such an order had been made by the Insolvent Estates Court at Amritsar in respect of certain debtors carrying on business at (amongst other places) Amritsar and Bombay, and a Receiver of their property had been appointed by the Court, a subsequent order of the High Court of Bombay in its Insolvency Jurisdiction, made under the Indian Insolvent Act (11 and 12 Vict., C. 21), declaring the same debtors insolvents and vesting their property in the Official Assignee of Bombay, had the effect, notwithstanding that it was of later date than the order of the Punjab Court, of vesting all the property of the debtors, including that in the Punjab, in the Official Assignee of Bombay.

The High Court had rightly held that the Insolvent-debtor sections of the Civil Procedure Code (Act XIV of 1882) were not applicable to the case.

APPEAL from a judgment and decree (5th May 1908) of the Chief Court of the Punjab, which affirmed a decision (17th June 1907) of the Insolvent Estates Court, Amritsar.

The petitioner in the Amritsar Court was the appellant to His Majesty in Council.

The proceedings out of which this appeal arose were commenced by a petition to the Insolvent Estates Court at Amritsar by the appellant, the Official Assignee of Bombay (who in that

* Present: LORD MACNAGHTEN, LORD COLLINS, LORD SHAW and SIR ARTHUR WILSON.

capacity was assignee under the Insolvent Debtors' Act 11 and 12 Vict., C. 21, and a vesting order, dated 31st May 1907, made by the High Court at Bombay in its Insolvency Jurisdiction, of the estate and effects of Ganesh Das and others) for an order that the respondents should deliver to him certain property in the jurisdiction of the Amritsar Court as forming part of such estate and effects.

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It appeared that the insolvents had carried on business together at Amritsar, Benares, and Bombay up to the end of November 1906. On 3rd December 1906 certain of their creditors applied under the Punjab Laws Act (IV of 1872) to the Insolvent Estates Court, Amritsar, for an order, which was granted by the Court, calling on the debtors to show cause, on 12th December, why they should not be declared insolvent: and on that day four of the debtors appeared and were, with their own consent, declared insolvent, and the Registrar of the Small Cause Court, Amritsar, (now the first respondent), was appointed Receiver of their estate and effects.

On 31st May 1907 the abovementioned orders were made by the High Court at Bombay adjudicating the debtors insolvent under 11 and 12 Vict., C. 21, and vesting their estate and effects in the appellant as Official Assignee, Bombay, and intimation of those orders was sent to the Judge of the Small Cause Court, Amritsar.

On 10th June 1907 the first respondent being about to proceed on leave, the second respondent was appointed Receiver in his place, and he proceeded to take steps for the realization of certain property belonging to the debtors. The present appellant thereupon applied to the High Court at Bombay in its Insolvency Jurisdiction for, and on 13th June 1907 obtained, an order that the first respondent should hold and retain the property in question, and show cause why it should not be delivered over to the appellant for the benefit of the general body of creditors of the insolvent debtors. Further proceedings in Bombay will be found reported in I. L. R. 32 Bom. 198.

On 15th June 1907 the appellant preferred the petition above mentioned, and another one, to the Insolvent Estates

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Court, Amritsar, praying in the latter that the intended realization of property should not take place, and in the former that all the property of the debtors should be handed over to him. These petitions were disposed of by the Judge of the Insolvent Estates Court, Amritsar, on 17th June 1907, and were rejected on the ground that, "from the date of the appointment (12th December 1906) all the insolvents' property in the Punjab vested in the Receiver under section 354 of the Civil Procedure Code, and that there were, therefore, no rights in the property subsisting in the insolvents on 31st May 1907, when the Bombay High Court passed the vesting order."

On an application by the Official Assignee, Bombay, to the Chief Court for revision of that decision, Sir W. Clark, Chief Judge, and Mr. W. Chevis, Judge, came to the same conclusion as the Amritsar Court, but for different reasons. The material portion of their judgment was as follows:—

"The Judge has held that the Receiver was appointed under section 351, Civil Procedure Code, and that, under section 354, Civil Procedure Code, all the insolvents' property vested in the Receiver on the day he was appointed.

"We are unable to accept this view.

"The Judge of the Small Cause Court has jurisdiction in insolvency matters, both under Act IV of 1872 and as District Judge under the Civil Procedure Code, but the two jurisdictions cannot be mixed up.

"The present proceedings were conducted under Act IV of 1872, and could not have been taken under the Civil Procedure Code, as the conditions necessary for institution of insolvency proceedings under the Code did not exist. All the proceedings in this case, therefore, must be held to be under Act IV of 1872, and sections 351 and 354 of the Civil Procedure Code cannot be applied.

"Though we are unable to maintain the Judge's decision on the grounds on which he based his decision, we think it is right on other grounds.

"In our opinion it is an essential element of a declaration of insolvency that the insolvent's property should cease to be the property of the insolvent and become the property of the Court, or of some one appointed by the Court, for the benefit of the creditors. We find that is what happens under the Insolvent Debtors in India Act (1848), 11 and 12 Vict., C. 21, section 7. The same happens under the English Law of Bankruptcy, 1883: see Baldwin's Law of Bankruptcy, 9th edition, page 204. 'The Court is to adjudge the debtor bankrupt; and thereupon the property of the bankrupt will become divisible among his creditors and vest in a trustee.' The Civil Procedure Code, sections 351 and 354, lays down the same law, and so does the New Provincial Insolvency Act (III of 1907) sections 16 and 23.

"It is true that Act IV of 1872 does not in so many words say that the property of the insolvent vests in the Court, but on a careful consideration we

think that that is what is provided by the Act. Section 24 lays down what constitutes an insolvent, and then section 27 lays down—'The property of the insolvent shall be sold or administered, under the direction of the Court, either through the agency of its own officers or of assignees to be appointed by the Court in the manner most conducive to the interests of the creditors, and the proceeds shall be divided rateably amongst them.'

"We think that the substantial meaning of this section is that the property was to be treated as if it had vested in the Court for the benefit of the creditors, and provided for its being sold, or otherwise administered, by the Court.

"Objection has been taken to the order of the 12th December 1906, making the declaration of insolvency, and undoubtedly the order is defective, in that it did not pass an order exempting the person and property of the debtor from further legal process, s. 24 (5), which order attaches to itself the consequence of being deemed an insolvent. The order, however, was passed with the consent of the debtors; and complied with the provisions of section 24 as regards furnishing of security, and requiring the debtors to make a statement of their assets and liabilities, and it wound up by appointing the Registrar of the local Small Cause Court, Receiver.

"We have no hesitation in holding that this order, though irregular and incomplete, did in fact make the debtors insolvents from the date it was passed, and that the consequences of being insolvent attached to that order, one of which was that the property of the debtors vested in the Court.

"We have referred to the rules made under section 31 of the Act, but they do not help us in interpreting the wording of the Act on the point before us. Punjab Record No. 46 of 1874 has also been referred to, but it only lays down with reference to the necessity of the Official Assignee being impleaded in a suit against the insolvent that the law casts no representative character upon him, and the Act and rules throw the duty on the Court of taking charge of the Estate. The decision does not help in any way towards the elucidation of the point before us.

"The rulings quoted to show that prior attachment confers no title [*Peacock v. Madan Gopal* (1), and *Kristnasawmy Mudaliar v. Official Assignee of Madras* (2)], have no relevancy in our view of the case that the property of the insolvents was vested in the Court, and there was no property of the insolvents left on which the order of the Bombay High Court could operate.

"The insolvents' place of business was Amritsar. The great bulk of their creditors live there or in other parts of the Punjab; they were by consent declared insolvents in the Amritsar Court on 12th December 1906, and then they, or a few of their creditors, endeavour, by an order of 31st May 1907 of the Bombay High Court, to have the insolvency conducted in the Bombay High Court. The case seems somewhat similar to that of *In re Aranyayal Sabhapathy Moodliar* (3).

"We think that the Judge rightly dismissed the application of the Official Assignee, Bombay, and we dismiss the revision with costs."

(1) (1902) I. L. R. 29 Calc. 423.

(2) (1903) I. L. R. 26 Mad. 673.

(3) (1897) I. L. R. 21 Bom. 297.

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On this appeal, which was heard *ex parte*,
W. O. Danckwerts, K.C., and *Kemworthy Brown*, for the ap-
 pellant, contended that the order of 12th December 1906 and
 the subsequent proceedings did not operate to divest the
 debtors of their property in the Punjab, nor to vest the pro-
 perty either in the Receiver thereby appointed, or in the Court ;
 that all the property of the debtors, including the property in
 the Punjab, became vested in the appellant as Official Assignee
 under the order of the High Court at Bombay in its Insolvency
 Jurisdiction on 31st May 1907, the jurisdiction of the latter
 Court overriding that of the Insolvent Estates Court, Amritsar.
 Reference was made to the Indian Insolvent Act (11 and 12
 Vict., C. 21), sections 2, 7, 8, 9, 13, 21, 26 ; The Punjab Laws
 Act (IV of 1872), sections 22, 24-27, 30, 31 ; Punjab Record
 for 1874, case No. 46, page 176 ; Rules under the Punjab Laws
 Act, Nos. 2, 4-7, 9-11, 14, 15, 17, 26 and 38 ; and the Insol-
 vency Act (III of 1907), section 1, sub-section 3, and sections
 16 and 23. The Civil Procedure Code (XIV of 1882), it was
 submitted, was not applicable, sections 351 and 354 being
 referred to. As to the effect of attachment as only preventing
 alienation and not giving title, reference was made to *Moti Lal*
v. Karrabuddin (1). In any event, if only as a matter of con-
 venience, the appellant's application should have been granted,
 and the debtors' property in the Punjab made over to him to
 be dealt with.

The judgment of their Lordships was delivered by
March 9.

SIR ARTHUR WILSON. This is an appeal against a judg-
 ment of the Chief Court of the Punjab, which affirmed that of
 the Insolvent Estates Court, Amritsar. The controversy
 involved in the appeal relates to an alleged conflict of jurisdic-
 tion between two Courts, both having Insolvency Jurisdiction,
 but jurisdiction created by different legislative authority and
 different in its local extent.

Under the Imperial Act of Parliament, 11 and 12 Vict., C.

21, relating to insolvency proceedings before what are now the High Courts in the Presidency towns in India, jurisdiction is conferred upon those Courts extending, for the present purpose, over the whole of India, and for many purposes over much wider limits.

Under the Punjab Laws (Act IV of 1872), in a series of sections beginning with section 22, the Governor-General in Council has created a system of insolvency of its own, but of course such an Act can be effective only within the ambit prescribed by the Act. These are the two systems of Insolvent administration which have to be considered in disposing of the present appeal, and have, if possible, to be reconciled.

There is, indeed, a third system in India, embodied in Chapter XX of the Civil Procedure Code. This last-mentioned system need not be further alluded to, for their Lordships are of opinion that the learned Judges of the Chief Court were right in considering that it had no application to the circumstances of the present case.

The facts of the present case are simple. The debtors were a firm of traders who carried on business at Amritsar and other places in the Punjab, and also at Bombay and elsewhere. On the 3rd December 1906, the Amritsar Insolvency Court, on the application of a creditor, ordered a notice to issue calling upon the debtors to show cause why they should not be declared insolvent and attaching their property in the Punjab. On the 12th December, in the presence of four out of the five members of the debtor firm, another order was made declaring them insolvent, and requiring them to furnish security and to put in lists of property, creditors and debtors.

On the 31st May 1907, certain other creditors applied to the High Court at Bombay, in its Insolvency jurisdiction, against all the members of the debtor firm, praying that they might be adjudicated insolvent under 11 and 12 Vict., C. 21. An order was made accordingly, and at the same time a vesting order, vesting the property of the debtors in the Official Assignee of Bombay.

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The Official Assignee, who is the appellant here, applied to the Insolvent Court at Amritsar to abstain from realizing the property of the debtors, and asked that that property should be made over to him. The Amritsar Court refused the application, holding that the property of the debtors in the Punjab had vested in a Receiver appointed by the Court, and that, therefore, there was no property of the debtors in the Punjab upon which the subsequent vesting order made by the Bombay Court could take effect.

Against this refusal there was an appeal to the Chief Court, and that Court held that the Amritsar Court was wrong in saying that the property in the Punjab was vested in the Receiver, but held further that the order appealed against was right, on the ground that the property in question was by law vested in the Court, and, therefore, could not pass under the subsequent vesting order of the Bombay Court.

The facts which have been stated are those which appear to their Lordships material for the present appeal, which is brought against the order of the Chief Court.

It is clear that under the insolvency system established by the Imperial Act, the High Court of Bombay, if unimpeded by any other Court, can effectually administer the estate of an Insolvent in such a case as the present.

The question raised upon this appeal is, whether proceedings under the Punjab Laws Act control the powers of the Bombay Court.

It would be matter for regret if the powers of one Court to administer an estate completely were restrained by those of another Court which can only do so locally and partially. But it appears to their Lordships that no such inconvenience necessarily arises.

Under the Imperial Act, 11 and 12 Vict., C. 21, when an adjudication is made by the Court which is now the High Court of Bombay, the estate of the debtor vests in the Official Assignee, and he is to administer it. What has been held by the Chief Court is that in the present case that law did not apply to property in the Punjab which had belonged to the

debtors concerned, because that property had, before the date of the vesting order of the Bombay Court, been transferred under the Punjab Laws Act, already referred to, to the Punjab Court. The question therefore is, whether the Chief Court was right in holding that the property in the Punjab had vested in that Court, so as to exclude the operation of the Bombay vesting order.

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Their Lordships are unable to agree with the learned Judges of the Chief Court.

The section of the Punjab Laws Act on which the power of the Punjab Court depends for the present purposes is as follows :—

Section 27 says :

“The property of the Insolvent shall be sold or administered under the direction of the Court, either through the agency of its own officers or of assignees to be appointed by the Court, in the manner most conducive to the interest of the creditors, and the proceeds shall be divided rateably amongst them.”

It appears to their Lordships to be clear that under the Punjab Laws Act, what is entrusted to the Punjab Court is merely administration, and that under that Act no transfer of property takes place.

Their Lordships regret that they have to deal with this question in an appeal heard *ex parte*. The difficulty thus arising is diminished, however, by the fact that the question is purely one of law.

Their Lordships will, therefore, humbly advise His Majesty that this appeal should be allowed, and the judgments of the Chief Court of the Punjab and of the Insolvent Estates Court, Amritsar, set aside with costs in both Courts, and in lieu thereof it should be declared that the property of the insolvents in the Punjab is vested in the Official Assignee, Bombay.

The costs of this appeal are to be taxed as between solicitor and client and paid out of the insolvents' estate.

Appeal allowed.

Solicitors for the appellant : *Monnier-Williams, Robinson & Milroy.*