

1913
 HIRALAL
 SINGHIA
 v.
 TRIPURA
 RAY.

In this view, the decree of the Subordinate Judge must be affirmed, subject to the variation mentioned. The respondent will have his costs of the hearing, as well before the Division Bench as before the Full Bench.

S. M.

CIVIL RULE.

Before Mookerjee and Beachcroft JJ.

1913
 March 4.

ANAND MAHANTI

v.

GANESH MAHESWAR.*

Receiver—Insolvency—Jatri or "Pilgrim business," profits from—Priest, office of—Provincial Insolvency Act (III of 1907), ss. 2(1) (g), 18, 20(c), 40(1), 44, 47—"Business"—"Trade."

Where, pending an appeal to the High Court by a creditor in insolvency against a conditional order of discharge in favour of the insolvent who was a *panda* or priest attached to the temple of Jagannath at Puri, an application was made for the appointment of a receiver in respect of the business of the insolvent, which consisted in receiving pilgrims, housing them, feeding them, looking after their comfort, and accompanying them to the temple of Jagannath, in return for a fee from the said pilgrims in the nature of a voluntary payment, the object of the creditor being not to stop the business but to carry it on, so that the insolvent priest may be constantly attended by the receiver, who may take possession of all his earnings :

Held, that what the priest did for the pilgrims could not appropriately be described as "business" within the meaning of clause (c) of s. 20 of the Provincial Insolvency Act; and that the exercise of his calling by the insolvent, under the circumstances stated, could not be deemed a "trade" within the meaning of subs. (1) of s. 40 of the Provincial Insolvency Act.

* Civil Rule, No. 173 of 1913, for the appointment of a Receiver in the matter of appeal from Original Order No. 648 of 1912.

Held, also, that ordinarily the business of the insolvent might be carried on by the receiver, not with a view to profit, but only in so far as might be necessary for the beneficial winding up of the same.

Ex parte Emmanuel (1) followed.

The difference between a receiver and a manager explained.

In re Manchester and Milford Railway Co. (2), *Moss Steamship Co v. Whimney* (3), *In re Leas Hotel* (4), *Boehm v. Goodall* (5), and *In re Newdigate Colliery, Ltd.* (6), referred to.

THE facts are as follows. The opposite party, a *jatri panda*, belonged to a family of hereditary priests attached to the temple of Jagannath, at Puri, and he incurred debts amounting to nearly a lakh of rupees, his assets being only about Rs. 20,000. On the 5th April, 1912, he applied to the District Judge of Cuttack to be adjudicated an insolvent, and an adjudication order was made on 20th December, 1910. Subsequently on 1st April, 1912, the insolvent applied for a conditional discharge under section 44 of the Provincial Insolvency Act, which was made on 8th October, 1912, and against this order one of the creditors preferred an appeal to the High Court. In the meantime, the Nazir of the Court below was directed to sell the property of the insolvent and to distribute the sale-proceeds amongst his creditors, the insolvent being also directed to bring the surplus of his after-acquired property and earnings into Court, after keeping an annual sum of Rs. 540 for the support of himself and his family. During the pendency of these proceedings the District Judge of Cuttack had appointed several receivers from time to time who had carried on this "pilgrim business" at a loss, having had to incur fresh debts for that purpose. On the 25th November, 1911, the learned District Judge, with regard to the

1913

ANAND
MAHANTI

v.

GANESH
MAHESWAR.

(1) (1881) 17 Ch. D. 35, 39.

(4) [1902] 1 Ch. 332, 333.

(2) (1880) 14 Ch. D. 645, 653.

(5) [1911] 1 Ch. 155, 158.

(3) [1912] A. C. 254.

(6) [1912] 1 Ch. 468, 472.

1913
 ANAND
 MAHANTI
 v.
 GANESII
 MAHESWAR.

appointment of a new receiver, had directed that the insolvent himself, and not the receiver, should conduct his own "pilgrim business," but make over to the receiver all his earnings over and above what was necessary for his support.

In view of the income and profits expected from the large influx of pilgrims at the *Dole Jatra* festival, the creditor, appellant, applied to the High Court for the appointment of a trustworthy and capable receiver.

Babu Susil Madhav Mallik and *Babu Charu Chandra Biswas*, for the petitioners. This is eminently a fit case for the appointment of a receiver. The insolvent's assets are said to be about Rs. 20,000, but his total liabilities come up to about a lakh of rupees, of which nearly half has been proved by me, and though the adjudication was made as far back as December, 1910, none of the creditors has up to now got a single pice. We say the insolvent carries on a large and profitable business as a *panda* of the temple of Puri, and with due supervision and control it may be made to bring a substantial income to the estate for the benefit of the creditors. It is quite practicable to have a receiver of the "pilgrim business", provided a suitable person is appointed. As a matter of fact several receivers were appointed from time to time in the lower Court in respect of the insolvent's business, but the reason that they were not successful is that they were all unfamiliar with *jatri* business. If desired, the insolvent himself may be permitted to carry on the priestly part of the duties, leaving the collections and cash transactions solely to the receiver, who will have control over the *khata* books of the *panda*, will keep and check the accounts, and altogether exercise a

general supervision, with a view to see that no loss is occasioned to the business by any wilful default or negligence on the part of the insolvent in securing or entertaining the pilgrims. Unless a strict and vigilant check is exercised over his dealings, there is every chance of his misappropriating the earnings, and from the nature of things, if he does so, the chances of detection are almost nil.

Under section 18 of the Provincial Insolvency Act, the Court may, at the time of adjudication, *or at any time afterwards*, appoint a receiver for the property of the insolvent, and the "pilgrim business" is property within the meaning of this section. "Court" is defined in section 2 (1) (g) as the Court exercising jurisdiction under the Act, and would therefore include the High Court as a Court of appeal by virtue of section 47: see *Abdul Razah v. Basiruddin Ahmed* (1). This is also a case where your Lordships will exercise your inherent jurisdiction under section 151 of the Civil Procedure Code for the protection of the interests of the creditors.

Babu Suresh Chandra Chakrabarty, for the opposite party. No case has been made out for the appointment of a receiver. Several receivers were appointed before, but none of them benefited the estate. Furthermore, since the order of discharge now under appeal was made, the Nazir of the Court below has been directed to sell the property of the insolvent, leaving only that to him which is necessary for his livelihood, and to distribute the sale-proceeds amongst the creditors. In the order of discharge, again, the insolvent has been directed to bring the surplus of his after-acquired property and earnings to Court. I submit the creditors are not prejudiced. The estate is still practically in the hands of the Court.

(1) (1910) 14 C. W. N. 586.

1913
 ANAND
 MAHANTI
 v.
 GANESH
 MAHESWAR.

Besides, under section 20 (c) of the Provincial Insolvency Act the receiver may only carry on the business of the insolvent so far as may be necessary for the beneficial winding up of the same. The petitioner does not ask for winding up.

Babu Susil Madhav Mallik, in reply. The provisions of section 20 are not exhaustive. Clause (c) does not indicate that the receiver may not carry on the business, except for winding up. The powers of the receiver are wider than those mentioned in section 20. Your Lordships may, if necessary, make a joint order under sections 18 and 40 by associating the insolvent with the receiver in the superintendence and management of his business.

MOOKERJEE AND BEACHCROFT JJ. We are invited by the petitioner in this Rule to make an order of a novel character. The opposite party belongs to a family of hereditary priests attached to the temple of Jagannath. He applied to be adjudicated an insolvent under the Provincial Insolvency Act, 1907. An adjudication order was made, and subsequently, under section 44, a conditional order of discharge was passed. Against that order an appeal has been preferred to this Court by the creditor. The latter now applies for the appointment of a receiver to take charge of what is described as "pilgrim business", during the pendency of the appeal. The question arises, whether what is described as "pilgrim business" is a business of which the Court will appoint a receiver. It has been stated to us that the insolvent, as a hereditary priest, receives pilgrims, houses them, feeds them, looks after their comfort and accompanies them to the temple of Jagannath; for these services he receives from the pilgrims a fee, which is in the nature of a voluntary payment. It has been asserted on behalf

of the creditor that the insolvent earns a considerable sum of money in this way, and that a receiver should be appointed, if not to look after the conduct of this business, at any rate to take possession of the money as soon as it is earned. On behalf of the insolvent, it has been contended, on the other hand, that under section 20, clause (c) of the Provincial Insolvency Act, the receiver may, by leave of the Court, carry on business of the insolvent so far as may be necessary for the beneficial winding up of the same, but that the receiver should not carry on the business in expectation of profit. This contention is well founded, and is supported by the decision in *Ex parte Emmanuel* (1), where it was pointed out that ordinarily the business of the insolvent may be carried on by the receiver, not with a view to profit, but only in so far as may be necessary for the beneficial winding up of the same. The principle is well settled that the Courts are generally averse to assuming the management of a business, except as incidental to the object of the proceedings and for the purpose of closing it up and dividing the assets. In this connection, reference may be made to *In re Manchester and Milford Railway Co.* (2), where Jessel M.R. explains the distinction between a receiver and a manager: see also *Moss Steamship Co. v. Whinney* (3), *In re Leas Hotel Co.* (4), *Boehm v. Goodall* (5), *In re Newdigate Colliery* (6).

In the case before us, the object of the creditor is, it is admitted, not to stop the business, but to carry it on. There is a further difficulty in the way of the appellant; what the priest does for the pilgrims cannot appropriately be described as "business" within the meaning of clause (c) of section 20. The

1913

ANAND
MAHANTI
v.
GANESH
MAHESWAR.

(1) (1881) 17 Ch. D. 35, 39.

(4) [1902] 1 Ch. 332, 333.

(2) (1880) 14 Ch. D. 645, 653.

(5) [1911] 1 Ch. 155, 158.

(3) [1912] A. C. 254.

(6) [1912] 1 Ch. 468, 472.

1913
ANAND
MAHANTI
v.
GANESH
MAHESWAR.

object of the appellant is that the insolvent should act as a priest, and that he may be constantly attended by the receiver, so that the latter may take possession of all his earnings; this clearly is not contemplated by section 20. Our attention, however, has been drawn to sub-section (1) of section 40 of the Provincial Insolvency Act, which provides that the Court may appoint the insolvent himself to superintend the management of his property or of any part thereof, or to carry on his trade, if any, for the benefit of the creditor. This is plainly of no assistance to the appellant, for the exercise of his calling by the insolvent, under the circumstances stated, cannot be deemed a "trade" within the meaning of sub-section (1) of section 40; besides, the creditor seeks that an outsider, and not the insolvent himself, should be appointed to carry on this business. We are of opinion that this order the creditor is not entitled to obtain.

The result is that the Rule is discharged, but there will be no order for costs.

G. S.

Rule discharged.