

(1920) 01 BOM CK 0034
In the Bombay High Court

Anna Laticia Desilva

APPELLANT

Vs

Govind Balvant Pakashare Reciver Under the Provincial
Insolvency Act

RESPONDENT

Date of Decision : 27-01-1920

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1920) ILR (Bom) 895

Hon'ble Judges : Norman Macleod, C.J.;Heaton, J

Bench : Division Bench

Judgement

Norman Macleod, C.J.—The plaintiff brought this suit against the defendant who had been appointed-a. receiver in an insolvency application No. 13 of 1015 in the Than a District Court to get it declared that the property in suit belonged to her. The suit was decreed in the trial Court, but was dismissed on appeal on the ground that notice u/s 80 of the CPC had not been given. Instead of giving notice, and then filing a fresh suit if her demand "was not complied with, the plaintiff filed a second appeal, and the question now before us is whether a receiver under the Provincial Insolvency Act is a public officer , within the meaning of Section 2, Sub-section (17), of the the Civil Procedure Code. The defendant is not-an Official Receiver u/s 19 of the Act, and so an officer of the Court whose duty it is to take" action on. every adjudication. He is merely a person specially authorised in this particular insolvency to act as receiver. Section 20 of the Provincial Insolvency Act states what are the duties and powers of a receiver:

Subject to the. provisions of this Act, the receiver shall with all convenient speed, realize the property of the debtor and distribute dividends among the creditors entitled thereto, and for that purpose may (a) sell all or any-part of the property of the insolvent; (b) give receipts for any money received by him; and may, by leave of the Court, do all or any of the things defined in the remaining part of the section.

2. It has been argued that because such a receiver is merely appointed receiver by the Court, he is not specially authorised by the Court to take charge or dispose of any property, and that his powers to do so arise, not from the order of the Court, but from Section 20 of the Act. But it appeal's to me that the powers u/s 20 given, to a receiver are in effect given by the-order of the Court which appoints him receiver. It is a necessary consequence of the order. Therefore it, may well he said that the Court especially authorised him to take charge or dispose of the particular insolvent's property. It is only on account- of the provisions-of Section 20 that the general powers need not be entered in the order appointing a receiver. When special powers are asked for then special leave of the Court is-required- General powers arise by the mere appointment, by the Court. It seems to me then as soon as a receiver is appointed under the Provincial Insolvency Act, he becomes a public officer, and he is protected by Section 80 of the CPC against any plaintiff who files a suit against him with, regard to any act done by him as such receiver without living the requisite notice; The decision, therefore opinion of the in or appellate Court was correct and the appeal must be dismissed. No order as, to costs.

Heaton J.

3. I think that must be the order in this-case. As the result of argument the thing has filtered down to his; that if the receiver, is a public officer within the meaning of Section 80 of the Code of Civil] Procedure, then a notice as provided by that section, must be served on him, or the suit must be dismissed. Whether he is a public, officer or not depends upon the definition of that term in Clause (17) of Section 2 of Code Code of Civil Procedure, and he is undoubtedly a public officer if he is a person especially authorised by a Court of Justice to take charge or dispose of any property. Now there is no doubt that a receiver, at any rate that this particular receiver we are concerned with, was appointed by a Court of Justice as receiver, that is to say, he was authorised by a Court of Justice. And as receiver he was authorised by the Court to do. those things which a receiver may do under the provisions of the Provincial Insolvency Act, for otherwise he would not have been appointed a receiver. The argument urged by the appellant comes to this: that although all this may be so, the receiver was not especially authorised by the Court. It is urged that the especial authorisation is not contained in the order of the Court, but follows only from the provisions of the Provincial, Insolvency Act. As a matter of fact we do not know what the order of the Court was. It is not on the record, and we have been spending our time over an ingenious argument as to the meaning of a document which nobody in Court has ever seen. It frequently happens, but of course it "la not very enlightening. I will, however, assume that the Court did not say in its order that it appointed a receiver take charge to dispose, of the property of the insolvent. If it either of those things, it would undoubtedly have especially authorised the receiver to take charge of the property or to dispose of it. I will assume that the Court said nothing more than this. "I appoint so and to be the receiver," leaving everything else, even the name of the insolvent, to, be inferred. Of course the latter would

appear in the title of the proceedings. So it would very properly be inferred that the receiver was to deal with the property of that particular person. The powers conferred by the Provincial Insolvency Act would be inferred also, and so it comes to this; if the Judge adopts the brief method of expressing his order that I have assumed, then the receiver is not especially authorized by the Court. If he makes a longer order, writes another dozen or two "dozen words saying specifically that the receiver was to take charge of the property and to dispose of it; then the receiver is specially authorized. Now for the purposes of the Provincial Insolvency Act it is really superfluous to add these extra dozen or so words. In either event the position and powers of the receiver are the same; there is not a hair's breadth of difference. I cannot suppose that the Legislature, curious as its vagaries are sometimes supposed to be, really intended that if a Judge made a brief order of the kind I have described, a notice u/s 80 would not be necessary; whereas if he made his order a little" longer in words, but in no way different in effect, such notice would be necessary. Undoubtedly it would be necessary in the case of the longer order, as the order would in terms especially authorize the receiver to take charge of the property. I cannot suppose that the necessity for the notice is got rid of because the Judge happens to adopt a somewhat briefer form of expressing himself.

Norman Macleod, C.J.

4. The appeal having been dismissed," I will add this. The plaintiff on the findings of both the lower Courts ought to succeed, on the merits. , We are told that another person has been appointed now as receiver of the insolvent's property, and we if think that he ought to seriously consider the findings of fact against him, and seek for directions from the District Judge, or the Judge who appointed him as receiver in charge of the insolvency, as to whether he should not return the plaintiff's property to the plaintiff and so avoid the filing of another suit. No order as to costs.

Heaton, J.

5. I concur.