
(1924) 04 MAD CK 0095
In the Madras High Court

Annamalai Chetty

APPELLANT

Vs

Official Assignee of Madras

RESPONDENT

Date of Decision : 14-04-1924

Acts Referred:

Presidency Towns Insolvency Act, 1909 — Section 8

Citation : AIR 1925 Mad 243

Judgement

1. This is an application by the Official Assignee of Rangoon for leave to appeal to His Majesty in Council against the order in C.M.P. No. 3032 of 1922 passed by Schwabe, C.J., and myself. The order was passed u/s 8 of the Presidency Towns Insolvency Act of 1909 annulling a prior order of Wallis, C.J. and Seshagiri Iyer, J.

2. The 1st and 2nd respondents now contend that there is no appeal to His Majesty in Council against the order u/s 8 of Act III of 1909. Up to 1909 the Insolvency Jurisdiction in Presidency Towns was granted by 11 and 12 Viet., C. 21. In 1848 there were no High Courts in India and the Supreme Court had no Insolvency Jurisdiction and the Act of 1848 constituted an Insolvency Court. Even after the issue of Letters Patent in 1862 it was generally supposed that the Insolvency Court was, strictly, a Court separate from the High Court. Having regard to Clause 18 of the Letters Patent, it is doubtful how far such a view was correct. Clause 18 of the Letters Patent shows that the Insolvency Jurisdiction was part of the Civil Jurisdiction of the High Court and there was an Original and Appellate Jurisdiction in Insolvency matters also.

3. All these doubts were certainly resolved after the Act of 1909. Section 3 makes the High Court the only Court competent to exercise Insolvency Jurisdiction." That being so, in an Insolvency matter (Original or Appellate) an application for leave to appeal lies under Clause 39 of the Letters Patent even if no such application lies u/s 109 of Civil Procedure Code. The Advocate-General contends that the CPC itself applies. He points out that Section 120(2) of the CPC was repealed by Act III of 1909 with the result that all the portions of the Code applying to the Original Side of the High Court (see Section 117) also apply to

Insolvency matters, this result being consistent with Section 90(1) of the Insolvency Act of 1909. Still it maybe doubted whether the provisions of CPC so made applicable to the Original Side of the High Court (Section 117) including the Insolvency Jurisdiction, Section 90(1) include the chapter relating to appeals to His Majesty in Council or should be confined to these relating to the procedure to be followed in the High Court. If the Civil Procedure Code, Section 109, does not apply, Clause 39 of the Letters Patent certainly applies. The decision in Rangoon Botatoung Company Ltd. v. The Collector, Rangoon (1912) 40 Cal. 21 has nothing to do with this matter. The Judicial Committee held that no appeal lay in Land Acquisition Proceedings for they were in the nature of arbitration proceedings (vide The Secretary of State v. Chellikani Rama Rao AIR 1916 P.C. 21 and the award passed thereon is not of the nature of a judgment, decree or order within the meaning of Clause 39 of the Letters Patent (see The Special ! Officer, Salsette Building Sites v. Dasabhai Bezanji Motiwala 17 C.W.N. 421.

4. It may be added the the words " on appeal" in Clause 39 obviously mean the same thing as " appellate jurisdiction " and it was held by Schwabe, C.J. and myself that the petition (C.M.P. 3032 of 1922) properly lay on the Appellate Side and not on the Original Side as its object was to review the appellate order of Wallis, C.J. and Seshagiri Iyer, J. The order OQ review was in substitution of the original order passed in appeal and takes its place. But this point has no importance. Our order must be either on the Appellate Side or on [the Original Side. It cannot be that it is neither. In either case, the application is competent and the Clause 39 applies. We hold that an application for leave to appeal is competent if other conditions are satisfied. The Official Assignee of Rangoon is a patty to the proceedings and has a right to appeal whether " aggrieved or not.

5. It is not denied that the value of the properties involved is several lakhs. It is not therefore necessary for us to certify that case is a fit one for appeal within the latter part of the proviso to Clause 39 - the first part of the proviso being satisfied.

6. The application is granted and the usual certificate will issue.

C.M.P. No. 1017 of 1924.

7. This is connected with C.M.P. No. 1.012 of 1924. The petitioner was made a party to the enquiry in C.M.P. 3032 of 1922. He supported the Official Aassignee of Rangoon. The final order went against him and the petitioner feels aggrieved like the Official Assignee of Baugoon. The leave applied for is granted und the usual certificate will issue.

C.M.P. Nos. 1012 and 1017 OF 1924.

8. The 1st respondent in both the petitions will pay himself the taxed costs of the petitioners out of the estate.