

(1912) 09 MAD CK 0027
In the Madras High Court

Chidambaram Chetty

APPELLANT

Vs

Nagappa Chetty and Others

RESPONDENT

Date of Decision : 03-09-1912

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Provincial Insolvency Act, 1920 — Section 46

Citation : (1913) 24 MLJ 73

Judgement

1. A preliminary objection is taken to this appeal. The appeal is preferred u/s 46, Clause 2, of Act III of 1907. The order appealed against was passed by an official Receiver appointed under the Provincial Insolvency Act. Section 22 of the Act provides for an appeal to the District Court against the order of the Receiver. u/s 52 of the Act, the High Court has the power to direct that the Official Receiver shall have power to hear insolvency petitions, to examine the debtor and to make order of adjudication. It is not denied, and we presume it is the fact, that the High Court has directed that the Official Receiver in this case should have that power. It is contended that the power given under this section would not entitle the Official Receiver to dismiss an insolvency petition. Clause (a) of Section 52(1) invests the Official Receiver with the same powers (to hear insolvency petitions, to examine the debtor, and to make order of adjudication, etc.), "in any matters in respect of which jurisdiction is given to the Court by the Act." The section relating to the procedure to be followed at the hearing of an insolvency petition by the Court gives no power to the Court to dismiss the petition, (See Section 15) in certain cases. Section 16 then provides that where a petition is not dismissed u/s 15, the Court shall make an order of adjudication, unless the debtor is able to propose any

composition or scheme which shall be accepted by the creditors and approved by the Court. There can be no doubt that the Official Receiver should follow the same procedure, and his power to adjudicate is only in cases where the petition is not dismissed. There can be no reasonable doubt, we think, that he has the power to dismiss the petition. However this may be, Section 22 gives a right of appeal to the District Court against all orders of the Official Receiver. It is contended that the right of appeal is only given against the orders comprised in Sections 18, 19 and 20. We are unable to accept this contention. The language of Section 22 gives a right of appeal to the District Court against all orders of the Official Receiver. It is contended that the right of appeal is only given against the orders comprised in Sections 18, 19 and 20. We are unable to accept this contention. The language of Section 22 is quite wide, and we think that Clause 2 of Section 52 also shows that the appellate power given to the Court extends to all orders of the Receiver. As the proper course to be adopted by the appellant before us was to appeal to the District Court, and as no provision is made in the Act for appeals to this Court directly against the order of the Receiver this appeal must be dismissed.

2. We are then asked to treat this appeal as a petition u/s 115. Some power of revision is given to the High Court by Section 46 of the Insolvency Act in favour of a person aggrieved by an order of the District Court. Assuming that, notwithstanding Section 46 we have also power u/s 115 of the CPC in this case, and, assuming the Official Receiver's order can be regarded as an order by a Court subordinate to this Court, we still must decline to interfere, as there was other adequate remedy open to the appellant.

3. We dismiss the appeal with costs.