
(1909) 05 AHC CK 0045
In the Allahabad High Court

Debi Prashad

APPELLANT

Vs

Stanley Ray

RESPONDENT

Date of Decision : 04-05-1909

Acts Referred:

Provincial Insolvency Act, 1907 — Section 3(1)

Citation : 2 Ind. Cas. 223(1)

Hon'ble Judges : Richards, J;Alston, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The facts out of which this application in revision arises are somewhat peculiar. On the 16th of April 1908, a petition under Act No. III of 1907, was prepared for presentation. The petition is addressed to the District Judge, Cawnpore, but there does not appear to be any order by the District Judge transferring the insolvency petition to any Court, and the first order on it is one by the Judge of the Court of Small Causes at Cawnpore, on the 21st of April 1908, ordering the petition to be registered. On the 2nd of May 1908, the same Judge, that is, the Small Cause Court Judge, directed notices to issue, and on the 20th of June, the petitioner was adjudicated insolvent. On the 28th of July 1908, an appeal was presented against the order of adjudication, and on the 17th August 1908, the appeal was dismissed. The grounds of appeal all dealt with the merits of the case. There was no ground of appeal complaining of any irregularity in the Court of first instance or any want of jurisdiction. The present Insolvency Act came into operation on the 1st of January, 1908. The Act repeals the sections of Act No. XIV of 1882, which dealt with insolvency matters. On the 18th of January 1908, a notification appeared in the local Government Gazette conferring insolvency jurisdiction upon Mr. David, the Small Cause Court Judge. The notification, however, appears on the face of it to have been made under the provisions of Section 360 of Act No. XIV of 1882. As already mentioned that section had already been repealed, and the notification thereunder cannot be held to have had any force whatever. Furthermore the notification of the 18th of

January 1908. did not state that the sanction of the Governor General in Council had been obtained. This previous sanction is now necessary under the provisions of Section 3, Clause (I) of Act No. III of 1907. On the 23rd of April 1908, jurisdiction was duly conferred upon Mr. David u/s 3, Clause (1), of the present insolvency Act. It thus appears that on the day when the order for notices to issue was made and also on the day of adjudication, Mr. David had full jurisdiction to hear and determine insolvency matters. The ground for the present application in revision is that inasmuch as Mr. David had no jurisdiction on the 16th of April, or on the 21st of April, on which dates respectively their petition was presented and registered, the proceedings were null and void. The present application has clearly no merits. There were hearings on the merits in two Courts without any exception being taken to the jurisdiction of the Courts. In the case of *Ledgard v. Bull* 9 A. 191 (P.C.) : 13 I.A. 134 their Lordships of the Privy Council reversed the decision of this Court and dismissed the plaintiff's suit on the ground that the suit had been instituted in a Court which had no jurisdiction to hear the case. Their Lordships, however, lay great stress on the fact that the objection to the hearing of the suit by the District Judge was taken after he had transferred the case to his own file and before he had adjudicated thereon. The objection was taken in the written statement as appears from the report. At page 203 their Lordships say : But there are numerous authorities which establish that when, in a case which the Judge is competent to try, the parties without objection join issue and go to trial upon the merits, the defendant cannot subsequently dispute his jurisdiction on the ground that there were irregularities in the initial procedure, which if objected to at the time, would have led to the dismissal of the suit. The present case does not come strictly within those authorities because the defendant's plea was raised before issue was joined on the merits." In the case before us the petition, as we have already mentioned, was addressed to a Court having jurisdiction to hear and determine the matter, that is to say, the District Judge, At any moment after the jurisdiction had been conferred upon Mr. David the case could have been transferred to his Court. We think we may apply the principle expressed in the passage of the judgment cited above to the peculiar facts of the present case. Laying great stress on the very late stage of the case at which objection was taken to the power of the Small Cause Court Judge, we dismiss the application with costs including fees on the higher scale.