

(1941) 09 BOM CK 0010

In the Bombay High Court

Case No : Criminal Application for Revision No. 182 of 1941

Lalchand Hirachand Gujar

APPELLANT

Vs

Tuljaram Raoji Gujar

RESPONDENT

Date of Decision : 11-09-1941

Acts Referred:

Provincial Insolvency Act, 1920 — Section 69, 75(1)

Citation : (1941) 43 BOMLR 964

Hon'ble Judges : Sen, J; John Beaumont, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

John Beaumont, C.J.—This is an application in revision against an order of the District and Sessions Judge of Satara holding that the appeal to him was incompetent. So the question raised is as to jurisdiction. The applicant was a creditor in the insolvency of the opponents, and he desired to prosecute the opponents u/s 69 of the Provincial Insolvency Act for fraudulent suppression of assets. He applied to the Court for leave to prosecute u/s 70 and the Insolvency Court refused leave. Against that refusal an appeal was brought in the District Court, and the question is whether an appeal lies u/s 75 of the Provincial Insolvency Act, Sub-section (1) of that section provides that

The debtor, any creditor, the receiver or any other person aggrieved by a decision come to or an order made in the exercise of insolvency jurisdiction by a Court subordinate to a District Court may appeal to the District Court, and the order of the District Court upon such appeal shall be final.

2. Section 46 of the previous Provincial Insolvency Act of 1907 provided that--

Any person aggrieved by an order made in the exercise of insolvency jurisdiction by a Court subordinate to a District Court may appeal to the District Court.

3. Under the old section it had been held by the High Courts of Allahabad and

Madras that a creditor who was refused leave to prosecute was not a person aggrieved by the order within the meaning of that section, and I agree with those decisions. It seems to me that the creditor is not affected one way or the other by the refusal of the Court to prosecute the debtor. The creditor can pursue his rights in insolvency. If he thinks that assets have been wrongly suppressed, he can apply to the Insolvency Court in order that those assets may be dealt with in the insolvency, but he is not really interested in a prosecution.

4. However, Mr. Dharap for the applicant has contended that in the amended Section 75, Sub-section (1) the words "aggrieved by a decision come to in the exercise of insolvency jurisdiction" qualify only "any other person", and that the debtor, a creditor and the receiver have an unqualified right to appeal. But it is impossible to read the section in that way, because the only reference to the subject-matter of appeal lies in the description of the decision which follows the word "aggrieved". If one reads the words "aggrieved by a decision" and so forth as qualifying only "any other person", then the debtor, a creditor, and the receiver, under the terms of the section, are granted a right to appeal to the District Court without any indication of what they may appeal against. It seems to me that one must read the words "aggrieved by a decision" and so forth as qualifying all the persons who are entitled to appeal. That construction is supported by the second proviso to Sub-Section (1) which gives a right of second appeal to the High Court to any such person aggrieved by a decision of the District Court. It is impossible to suppose that the right of second appeal from the District Court was given only to persons other than the debtor, a creditor or the receiver. Moreover Sub-sections (2) and (3) confer a right of first appeal from the District Court only to "such person aggrieved". Sub-section (1) is not very artistically worded, and, it is difficult to see the reason for altering the phraseology of the old section; but I have no doubt that it does confer the right of appeal only on persons aggrieved by the order of the subordinate Court. That being so, the learned District Judge was right in holding that the creditor was not entitled to appeal.

5. The application is, therefore, dismissed.