

(1928) 07 MAD CK 0007
In the Madras High Court

Messrs. Goculdass Jumnadoss and Co. and Another	APPELLANT
Vs	
M.N. Sadasiva Iyer and Others	RESPONDENT

Date of Decision : 30-07-1928

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24, 24(1)(b)
Provincial Insolvency Act, 1920 — Section 5(2)

Citation : 114 Ind. Cas. 352 : (1928) 28 LW 360

Hon'ble Judges : Curgenven, J

Bench : Single Bench

Judgement

Curgenven, J.—This is an application to withdraw I.P. No. 100 of 1927, from the file of the Subordinate Judge of Madura and transfer it for

trial and disposal to the Original Side of the High Court. The preliminary objection is raised that such an application will not lie. The provision of

law under which the application is made is Section 24 of the CPC and I propose first to consider its maintainability under that section referring

subsequently to some clauses of the Letters Patent which have alternatively been relied upon.

2. u/s 5(2) of the Provincial Insolvency Act the High Court has the same power in regard to proceedings under the Act as it has in regard to civil

suits, and u/s 24(1)(b), Civil Procedure Code, it may at any stage withdraw any suit, appeal or other proceeding pending in any Court subordinate

to it, and (i) try or dispose of the same; or (ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose

of the same"".

3. It will be convenient to follow the course taken by the argument and consider in the first place whether the transfer may be ordered under part

(ii) above. This requires that the Original Side of the High Court sitting in Insolvency should be a Court subordinate to the High Court in its

Appellate Jurisdiction and competent to try the case. As pointed out by Tyabji, J. in *Hindustani Assurance and Mutual Benefit Society, Ltd. v.*

Mulraj 27 Ind. Cas. 455 : 21 M.L.J. 645, Section 3 of the CPC which defines which Courts are subordinate to the High Court, does not include

the High Court, in the exercise of its Original Civil Jurisdiction, nor with reference to the definition of "district" in Section 2(4) can it be said that the

Original Side of the High Court is a "District Court" and for that reason subordinate to the High Court u/s 3.

4. There are also difficulties in the way of holding that the Original Side of the High Court would be competent to try and dispose of the Insolvency

Petition if it were transferred to it. It is evident that in order to do so the High Court would have to exercise the powers which but for the transfer

would have been exercisable by a District Court, that is to say, the insolvency law which it would have to apply would be the Provincial

Insolvency Act, But u/s 3 of that Act the only Courts having jurisdiction are District Courts and such Courts subordinate to a District Court as the

Local Government may invest with powers. My attention has been drawn to the case in *W.A. Srinivasa Aiyangar Vs. The Official Assignee of*

Madras and *Another*, in which the question arose whether a transfer in the reverse direction, from the High Court to the District Court of Tanjore,

could be ordered, and it was held that it could not for the reason that the two jurisdictions were distinct. This case, while deciding that a District

Court cannot administer the Presidency Towns Insolvency Act, does not, of course, settle the question whether the High Court in the exercise of

its original insolvency jurisdiction can apply the Provincial Insolvency Act, but I think it is clear that so far as the CPC and the two Insolvency Acts

are concerned no such power exists. Accordingly, whether it is proposed that the transfer should be made under part (ii) of Section 24 (1)(b) or

under part (i) which enables the High Court to withdraw any proceeding and try or dispose of the same, it appears to me that the same objection

exists that competence is lacking, because a necessary condition of the application of part (i) must surely be that the proceeding must be of such a

nature that the High Court has jurisdiction to try or dispose of it. I do not think that the provision itself is intended to confer a jurisdiction which

would not otherwise exist.

5. Nor, I think, is this objection removed by any provision to be found in the Letters Patent. Clause 13 enables the High Court to remove, and to

try and determine as a Court of Extraordinary Original Jurisdiction any suit within the jurisdiction of any Court subject to its superintendence and

this clause read with Section 5(2) of the Provincial Insolvency Act, no doubt, would apply to insolvency proceedings. We have, however, to look

at Clause 18, to see whether upon such transfer being made a Judge sitting in Insolvency could try the case. Such a Judge is to "have and exercise

within the Presidency of Madras, such powers and authorities with respect to Original and Appellate Jurisdiction and otherwise as are constituted

by the laws relating to insolvent debtors in India." Those laws, namely, the Presidency Towns and Provincial Insolvency Acts, do not confer upon a

Judge sitting in Insolvency the power which he would need to exercise if this transfer were ordered to deal with the case under the latter Act.

6. My conclusion accordingly is that the application is not maintainable and I dismiss it with costs.