
(1936) 03 BOM CK 0010

In the Bombay High Court

Case No : O.C.J. Appeal No. 43 of 1935 and Case No. 760 of 1931

Nowroji Ardeshir Cooper

APPELLANT

Vs

The Official Assignee

RESPONDENT

Date of Decision : 13-03-1936

Acts Referred:

Presidency Towns Insolvency Act, 1909 — Section 8(1)

Citation : AIR 1936 Bom 321 : (1936) 38 BOMLR 575

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

John Beaumont, Kt., C.J.—This is an appeal from an order of Mr. Justice Blackwell made in insolvency. It appears that the insolvent was engaged in heavy litigation, and he was ordered to pay the costs, and the bill of costs was taken in for taxation. Of course it was to the interest of the Office; Assignee and the estate to get the bill taxed at as low a figure as possible. The Taxing Master made his allocation and reduced the original amount which the bill had been provisionally taxed by a considerable sum on the application of the Official Assignee. An application was then made to Mr. Justice Kania as Insolvency Judge asking him to direct the Official Assignee take the bill of costs for review before the Judge in Chambers, but Mr. Justice Kania refused the application. Subsequently an application was made to the Insolvency Judge, who was then Mr. Justice Blackwell, to review the order of Mr. Justice Kania, that application being made u/s 8(1) of the Presidency-towns Insolvency Act, and the learned Judge refused to review the order made by Mr. Justice Kania. He considered that on the merits the Official Assignee was very unlikely to gain any advantage by challenging the taxation, because the only question in dispute was really as to quantum, and the Court does not usually interfere with the Taxing Master's discretion as to quantum. From that order of Mr. Justice Blackwell this appeal is brought, and a preliminary objection is taken that an appeal does not lie. u/s 8(2) of the

Presidency-towns Insolvency Act, order in insolvency matters shall, at the instance of any person aggrieved, be subject to appeal " as follows", and then Sub-clause (b), which is the material one is in these terms :-

save as otherwise provided in Clause (a), an appeal from an order made by a Judge in the exercise of the jurisdiction conferred by this Act shall lie in the same way and be subject to the same provisions as an appeal from an order made by a Judge in the exercise of the ordinary original civil jurisdiction of the Court.

Now we have been referred to two cases decided by the Rangoon High Court, *P. Abdul Gaffor v. The Official Assignee* I.L.R.(1925) Ran. 605 and *Arjuna Iyer v. Official Assignee, Rangoon* I.L.R.(1928) Ran. 363, in which the Court took the view that as an appeal from a Judge exercising ordinary original civil jurisdiction would only lie in a case covered by Order XLIII, Rule 1, or against a judgment under Clause 13 of the Letters Patent of that Court, which corresponds with Clause 15 of our Letters Patent, and as the order in question fell neither under Order XLIII, Rule 1, nor was a judgment within Clause 13, an appeal did not lie. I am unable to agree with that reasoning, which seems to me to involve some confusion. Section 8 gives a right of appeal from an order made in insolvency. The appeal is to be subject to the same provisions as an appeal from an order made by a Judge in the exercise of ordinary original civil jurisdiction. But that presupposes a proper appeal from such an order, that is to say, an appeal from an appealable order. Unless you presuppose a proper appeal from an order made by a Judge in the exercise of original jurisdiction, you have no standard of comparison for the order appealed against in insolvency. It is of course plain that an order made in insolvency does not fall within Order XLIII, Rule 1, which does not deal with orders made in insolvency, and it would be very rare that an order made in insolvency, which usually does not settle any question between parties, would fall within the definition of "judgment" adopted in this and other Courts. In my opinion, the direction that an appeal in insolvency is to lie in the same way and be subject to the same provisions as an appeal from an order made by a Judge in the exercise of original jurisdiction, does not import that an appeal only lies if conditions exist which would make an Original Side order appealable. The meaning of the words " in the same way " and " subject to the same provisions " was considered in this Court in *Mahomed Haji Essack v. Shaik Abdool Rahiman* I.L.R.(1915) 40 Bom. 461 : 17 Bom. L.R. 989 but it is not necessary for the purposes of this case to consider the exact meaning of those words. I think the section does give a right of appeal to the appellants.

2. [After discussing the merits of the case his Lordship concluded.]

3. In my opinion, although an appeal lies, the appeal fails on the merits. The appeal is dismissed with costs.

4. I agree.