

(1916) 10 MAD CK 0034
In the Madras High Court

P.V. Allapichai

APPELLANT

Vs

Kuppai Pichai Rowther and Others

RESPONDENT

Date of Decision : 26-10-1916

Acts Referred:

Citation : (1917) ILR (Mad) 752 : 39 Ind. Cas. 429 : (1917) 32 MLJ 449

Hon'ble Judges : Seshagiri Aiyar, J; Oldfield, J

Bench : Division Bench

Judgement

Oldfield, J.—This is an appeal against the order of the District Judge of Ramnad, rejecting an application u/s 22, Provincial Insolvency Act, to revise the order of the Official Receiver of his district, dismissing the appellant's application to be adjudicated insolvent.

2. The preliminary objection has been taken that such an order is not appealable. The objection is supported on the ground that the Official Receiver is a Court subordinate to the District Court and that the decision of the latter in appeal from him is final u/s 46(1). The questions are, whether the Official Receiver is a Court and whether an application u/s 22 against his decision is an appeal. If they are answered in the affirmative, it would, in my opinion, follow that he is a Court subordinate to the District Court. I deal with each question, as far as possible, separately, although they must be dealt with to some extent on common grounds.

3. As regards the first, it is greatly against respondent's contention that neither Official Receivers nor Receivers under the Act generally are expressly included in any definition of Court, "the Court" or "the District Court" which the Act contains. If then they are to be treated as Courts, it must be by implication from the provisions regarding their duties and the character of their orders; and argument has accordingly been based on Section 52(2). That provision does not apply to one portion of the Official Receiver's duties, those which he performs in exercise of the powers which an ordinary Receiver possesses u/s 20, which are merely the executive acts of an officer of the Court and which need no more be supposed subject to appeal (in the strict sense) than those of any Receiver appointed

under the Civil Procedure Code. The provision applies only to the exercise by the Official Receiver of the Court's powers, which can be delegated to him u/s 52(1). No doubt those powers, which include such a refusal to pass an order of adjudication as is in question before us, are of a judicial character; and respondent relies on the fact that u/s 52(2) an act done or order made in their exercise is to be deemed an act of the Court." But that wording seems to me rather to support appellant's contention that the Official Receiver's judicial acts and orders have a judicially binding authority, not intrinsically, but only derivatively in consequence of the character attached to them by legal implication, as acts of the Court, not of a Court, as respondent's argument requires.

4. The wording of Section 52(2) reproduces with one qualification, to which I return, that of Section 99(1) of the English Bankruptcy Act of 1883, which was in force when the Provincial Insolvency Act was passed; and its effect is to make the decisions of the Official Receiver authoritative and appealable as decisions of the Court under which he works, like those of the Registrars of Courts in England. Vide *Maugham, Ex parte, Maugham, In re* (1888) 21 Q.B.D. 21 The qualification above referred to consists in the provision that the Official Receiver's decisions shall have this authoritative character subject to the appeal to the Court provided by Section 22, the wording of which follows that of the English Section 90. Section 90, however, provides for a right of application to the Court in order to displace the acts or decisions of the Official Receiver or trustee, which are of an executive character and, with one exception (the disposal of proofs of debts), correspond with those of a Receiver under the Indian Act Section 20. The conclusion is, that in India the Official Receiver with delegated powers combines the functions of the English Receiver or trustee and Registrar, and that the procedure u/s 22, which in England is applied only to the acts and decisions of the former, has been applied by the Indian Act to those of an Official Receiver who fills both capacities. When the procedure u/s 22 was not in its origin of the nature of an appeal against a Court's order and when it need not be treated as providing one in cases in which the Official Receiver's proceedings u/s 20 are in question, it is difficult to hold that its nature is changed, when it is applied to the decisions covered by Section 52(2). As the Bankruptcy Act contemplated no application to the Court against a Registrar's decision, direct English authority for this view is not to be expected, But the analogy between the decisions of an Official Receiver in India and those of an Official Referee with regard to the English Order XL, Rule 6, is, as respondent contends, close; and it was held in *Wynne-Finch v, Chaytor* (1903) 2 Ch. 475, overruling *Daglish v. Barton* (1900) 1 Q.B. 284 ; 81 L.T. 551 cited by respondent, that an application to displace the latter was not an appeal.

5. Other support for the same conclusion is afforded, to return to Section 46 of the Provincial Insolvency Act, by the considerations that (1) Section 22 occurs in a different portion of the Act from Section 46 and is not referred to in it, although the period of limitation specified in the former differs from that in the latter, and

(2) if respondent's contention be accepted, Section 46 provides in Clause (1) for the anomaly of a second appeal to the District Court from the Official Receiver's decision without restriction of the grounds on which it can be taken. There is on the other hand no doubt of the fact that an application u/s 22 is referred to in Section 52(2) as an appeal. But the difficulties already referred to in the way of strict construction of the term are such that an interpretation of it in one of the ways enumerated by Subramania Iyer, J., in *Chappan v. Moidin Kutti* 22 M.K 68 or as it was used loosely by the learned Judge in *Daglixh v. Barton* (1900) 1 Q.B. 284 must be preferred. The considerations referred to, especially that regarding limitation, in my opinion, justify a decision in appellant's favour, that an application u/s 22 is not an appeal.

6. An authority also supports this view. In *Chidambaram Chetty v. Nagappa Chetty* 16 Ind. Cas. 820 an application u/s 22 is, no doubt described as an appeal. But nothing turned on the description. In *Duraisami Aiyangar v. Meenakshi Sundara Aiyar* 25 Ind. Cas. 610 and *Thakur Prasad v. Punno Lal* 20 Ind. Cas. 673 it was held that an application u/s 48 was not an appeal. In these circumstances I hold that the preliminary objection is unsustainable and turn to the merits.

7. Appellant's application to be adjudicated insolvent was dismissed by the Official Receiver, and the lower Court upheld the dismissal on the grounds that he had no realizable assets that he might be concealing his accounts, some ready cash and some outstandings in the Strait Settlements, which he first mentioned in his examination, that he was not likely eventually to get his discharge, and that, therefore, his petition was an abuse of the process of the Court. This conclusion is, in my opinion, based on a misconception of the objects of insolvency procedure. It is supported by the lower Court by reference to *Bava Jeer Chetty v. Bava Rangasawmi Chetty* 12 Ind. Cas. 618 in which *Girwardhari v. Jai Narain* 7 Ind. Cas. 39 is followed. But both those decisions contemplate refusal of adjudication only in exceptional cases, the second referring explicitly to instances in which that course was upheld; and the present case in no way resembles any of them. In these circumstances the appeal must be allowed, and the orders of the lower Court and Official Receiver be set aside, the latter being directed to restore the petition to file, pass an order of adjudication and take further proceedings in accordance with law. No order as to costs here or in the lower Court.

Seshagiri Aiyar, J.

8. The District Judge of Ramnad transferred the petition of a debtor to be adjudged an insolvent to the Official Receiver. The petition was dismissed. On appeal, the District Judge confirmed that order. The debtor has preferred this appeal to the High Court. Mr. Bashyam Aiyangar took a preliminary objection on behalf of the respondent that the appeal does not lie.

9. His contention was that u/s 46 of the Provincial Insolvency Act, the decision of

the District Judge on appeal is final and that no second appeal is allowable. The point for decision is whether the appeal contemplated by Section 46 covers one from the Official Receiver to the District Judge. The language employed in Clause (2) of Section 52 lends support to the contention of the learned Vakils, But on turning to Section 22, we find that an application is spoken of to revise the order of the Receiver and not an appeal, It looks as if the words subject to the appeal to the Court provided for by Section 22" in Clause (2) of Section 52 have been used per incuriam.

10. Mr, Sitarama Rao drew our attention to the fact that Section 46 provides for an appeal by the person aggrieved against "an order made in the exercise of insolvency jurisdiction by a Court subordinate to the District Court." I do not think that an Official Receiver can be said to be a Court subordinate to the District Court. Section 2 (g) read with the proviso to Section 3(1) makes it clear that the Courts referred to in Section 46 are those on whom the Local Government had conferred insolvency jurisdiction.

11. Another argument of the learned Vakils for the appellant related to the period of limitation provided by Clause (4) of Section 46. Thirty days and ninety days are respectively the period of limitation for appeals to the District Court or to the High Court, as the case may be. If appeals from Official Receivers were within Section 46, there can be no necessity for making a special provision in regard to them, as has been done in Section 22, by shortening the period to twenty-one days. It is, therefore, clear that Section 46 does not cover appeals from the Official Receiver. The language of Section 86 of the Presidency Towns Insolvency Act confirms this conclusion. Unlike Section 22 of the Provincial Insolvency Act, it speaks of an appeal from the decision of the Official Assignee. This is apparently because the Legislature has given more powers to the Official Assignee and has clothed him with greater judicial responsibility than the Official Receiver. It is noteworthy that under the Insolvent Debtors Act, before the Presidency Act of 1909 was passed, an application was spoken of to revise the Official Assignee's order and not an appeal.

12. Further, under the (notification of the Government, there can be an Official Receiver in a Munsif's Court. u/s 22 this Officer's orders are revisable by the District Munsif. Against that an appeal would lie to the District Judge. Thus there will be a second appeal in such cases: whereas in the case of orders passed by an Official Receiver working under a District Judge, there can be only one appeal, if the contention of the appellant were upheld. I see no reason for imputing this inconsistency to the Legislature.

13. As regards decided cases, in *Chidambaram Chetty v. Nagappa Chetty* 16 Ind. Cas. 820 it seems to have been assumed without deciding that appeals would lie u/s 46 from the orders of the Official Receiver. On the other hand *Thakur Prasad v. Punno Lal* 20 Ind. Cas. 673 holds that proceedings against the orders of the Official Receiver are not by way of appeal. *Duraisami Aiyangar v. Meenakshi Sundara Aiyar* (1914) M.W.N. 831 follows this decision. *Mool Chand v. Mvrari Lal*

21 Ind. Cas. 702 is to the same effect. Mr. Bashyam Aiyangar quoted *Daglish v. Barton* (1900) 1 Q.B. 284 [it is also reported in (1900) 1 Q.B. 284 for the position that where a case is referred to an Official Referee, an appeal would lie to the Court of Appeal from his decision, There is some analogy between that and the present case. But the analogy would only lead to the inference that the appeal from the Official Receiver should have been preferred to the High Court. Apart from this in *Wynne-Finch v. Chaytor* (1903) 2 Ch. 475. Lord Justice Stirling, in a considered judgment of the Court of Appeal, points out that although the Official Referee had all the powers of the Court delegated to him, under Order XL, Rule 6, of the Judicature Act, the proper procedure was to apply to set aside the judgment. The Court of Appeal refused to accept the dictum in *Daglish v. Barton* (1900) 1 Q.B. 284 as correct. The language of Section 22 of the Provincial Insolvency Act is apparently based on Order XL, Rule 6. Further, it has been generally the practice in this Court to hear appeals from the decisions of the District Judges, interfering with the order of the Official Receivers. That practice seems to be in consonance with law. I, therefore, agree in overruling the preliminary objection. On the merits, I am clear, for the reasons given by my learned colleague, the order of the District Judge is wrong. The order must, therefore, be set aside.