

(1910) 03 BOM CK 0006
In the Bombay High Court

The Official Assignee

APPELLANT

Vs

The Registrar, Small Cause Court

RESPONDENT

Date of Decision : 09-03-1910

Acts Referred:

Citation : (1910) 12 BOMLR 395

Hon'ble Judges : Shaw, J;Macnaghten, J;Collins, J;Atkinson, J;Arthur Wilson, J

Bench : Full Bench

Final Decision : Allowed

Judgement

Arthur Wilson, J.—This is an appeal against a Judgment of the Chief Court of the Punjab, which affirmed that of the Insolvent Estates Court, Amritsar. The controversy involved in the appeal relates to an alleged conflict of jurisdiction between two Courts, both having Insolvency jurisdiction, but jurisdiction created by different legislative authority and different in its local extent.

2. Under the Imperial Act of Parliament, n and 12 Viet., c. 21, relating to insolvency proceedings before what are now the High Courts in the Presidency towns in India, jurisdiction is conferred upon those Courts extending, for the present purpose, over the whole of India, and for many purposes over much wider limits.

3. Under the Punjab Laws Act, IV of 1872, in a series of sections beginning with section 22, the Punjab Legislature has created a system of insolvency of its own, but, of course, such an Act can be effective only within the ambit of the jurisdiction of the Legislature which passed it. These are the two systems of Insolvent administration which have to be considered in disposing of the present appeal, and have, if possible, to be reconciled.

4. There is, indeed, a third system in India, created by yet another legislative authority—namely, the Legislature of India, embodied in Chapter 20 of the Civil Procedure Code. This last-mentioned system need not be further alluded to; for their Lordships are of opinion that the learned Judges of the Chief Court were

right in considering that it had no application to the circumstances of the present case.

5. The facts of the present case are simple. The debtors were a firm of traders who carried on business at Amritsar and other places in the Punjab, and also at Bombay and elsewhere. On the 3rd December, 1906, the Amritsar Insolvency Court, on the application of a creditor, ordered a notice to issue calling upon the debtors to show cause why they should not be declared insolvent, and attaching their property in the Punjab. On the 12th December, in the presence of four out of the live members, of the debtor firm, another order was made declaring them insolvent, and requiring them to furnish security, and to put in lists of property, creditors and debtors.

6. On the 31st May, 1907, certain other creditors applied to the High Court at Bombay, in its Insolvency jurisdiction, against all the members of the debtor firm, praying that they might be adjudicated insolvent under n and 12 Viet., c. 21. An order was made accordingly, and at the same time a vesting order, vesting the property of the debtors in the Official Assignee of Bombay.

7. The Official Assignee, who is the appellant here, applied to the Insolvent Court at Amritsar to abstain from realizing the property of the debtors, and asked that that property should be made over to him. The Amritsar Court refused the application, holding that the property of the debtors in the Punjab had vested in a Receiver appointed by the Court, and that therefore there was no property of the debtors in the Punjab upon which the subsequent vesting order made by the Bombay Court could take effect.

8. Against this refusal there was an appeal to the Chief Court, and that Court held that the Amritsar Court was wrong in saying that the property in the Punjab was vested in the Receiver, but held further that the order appealed against was right on the ground that the property in question was by law vested in the Court, and therefore could not pass under the subsequent vesting order of the Bombay Court.

9. The facts which have been stated are those which appear to their Lordships material for the present appeal, which is brought against the order of the Chief Court.

10. It is clear that under the insolvency system established by the Imperial Act, the High Court of Bombay, if unimpeded by any other Court, can effectually administer the estate of an Insolvent in such a case as the present.

11. The question raised upon this appeal is, whether proceedings under the Punjab Act control the powers of the Bombay Court.

12. It would be matter for regret if the powers of one Court to administer an estate completely were restrained by those of another Court which can only do so locally and partially. But it appears to their Lordships that no such inconvenience necessarily arises.

13. Under the Imperial Act, 11 and 12 Viet., c. 21, when an adjudication is made by the Court which is now the High Court of Bombay the estate of the debtor vests in the Official Assignee and he is to administer it. What has been held by the Chief Court is, that in the present case, that law did not apply to property in the Punjab which had belonged to the debtors concerned, because that property had, before the date of the vesting order of the Bombay Court been transferred under the Punjab Act, already referred to, to the Punjab court. The question therefore is, whether the Chief Court was right in holding that the property in the Punjab had vested in that Court, so as to exclude the operation of the Bombay Vesting Order.

14. Their Lordships are unable to agree with the learned Judges of the Chief Court.

15. The section of the Punjab Laws Act on which the power of the Punjab Court depends for the present purposes, is as follows:-

16. Section 27 says:

The property of the Insolvent shall be sold or administered under the direction of the Court, either through the agency of its own officers or of assignees to be appointed by the Court, in the manner most conducive to the interest other creditors, and the proceeds shall be divided rateably amongst them.

17. It appears to their Lordships to be clear that under the Punjab Act, what is entrusted to the Punjab Court is merely administration, and that under that Act no transfer of property takes place.

18. Their Lordships regret that they have to deal with this question in an appeal heard ex parte. The difficulty thus arising is diminished, however, by the fact that the question is purely one of law.

19. Their Lordships will therefore humbly advise His Majesty that this appeal should be allowed, and the Judgments of the Chief Court of the Punjab and of the Insolvent Estates Court, Amritsar, set aside with costs in both Courts, and in lieu thereof it should be declared that the property of the Insolvents in the Punjab is vested in the Official Assignee, Bombay.

20. The costs of this appeal are to be taxed as between solicitor and client and paid out of the Insolvents' estate.