

In Re: Ganeshdas Panalal

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Court : Mumbai

Decided On : Jan-10-1908

Reported in : (1908)10BOMLR77

Judge : Lawrence Jenkins, ;K.C.I.E., C.J. and ;Batchelor, J.

Appeal No. : Appeal No. 1499

Appellant : In Re: Ganeshdas Panalal;r.D. Sethna

Respondent : ;r.S.D. Chopra

Judgement :

Lawrence Jenkins, C.J.

1. The only question that arises on this appeal is whether the Court for the Relief of Insolvent Debtors sitting in Bombay has jurisdiction to make an order under Section 26 of the Indian Insolvent Act against a person residing at Amritsar. The merits of the case have not been discussed before us.

2. The Act was passed by the Imperial Parliament, which was competent to give the jurisdiction claimed; the words of the section are sufficiently wide for that purpose; and it is clear that under Section 7 the Court sitting here is authorised to make an order that would affect estate and effects situate outside the Presidency of Bombay. I can, therefore, find no sufficient reason on the face of the Act for withholding from Section 26 its literal and natural effect.

3. But then it is argued that the Amended Letters Patent have affected the jurisdiction of the Court.

4. By Section 2 of the Indian Insolvent Act it is provided that the Courts established as therein mentioned shall be continued and continue to be Courts of Record and each shall continue to be styled 'The Court for the Relief of Insolvent Debtors' and to be holden before any one Judge of the Supreme Courts of Judicature at Calcutta, Madras and Bombay, respectively, within the limits of the said Towns of Calcutta, Madras and Bombay.

5. By 24 & 25 Vict. c. 104 the High Courts were established and the Supreme Courts were abolished and by the Section 11 it was provided as follows:

Upon the Establishment of the said High Courts in the said Presidencies respectively all Provisions then in force in India of Acts of Parliament, or of any Orders of Her Majesty in Council, or Charters, or of any Acts of the Legislature of India, which at the Time or respective Times of the Establishment of such High Courts are respectively applicable to the Supreme Courts at Fort Willim in Bengal, Madras, and Bombay respectively, or to the Judges of those Courts, shall be taken to be applicable to the said High Courts and to the Judges thereof respectively, so far as may be consistent with the Provisions of this Act, and the Letters Patent to be issued in pursuance thereof, and subject to the Legislative Powers in relation to the Matters aforesaid of the Governor General of India in Council.

6. The Insolvent Courts still continued to be separate tribunals and were not affected by the Act 23 & 24 Victoria except that provision was thereby made as to the officers who were to preside over them (vide Clause 13 of the Secretary of State's Despatch of the 14th of May 1862. Page 44 of the Rules of the Bombay High Court).

7. Then by Clause 17 of the Letters Patent of the 26th June 1862, which accompanied the despatch, it was provided as follows:

And We do further ordain that the Court of Belief of Insolvent Debtors at Bombay shall be held before one of the Judges of the said High Court of Judicature at

Bombay, and the said High Court, and any such Judges thereof shall have and exercise, whether within or without the Presidency of Bombay, such powers and authority with respect to original and appellate jurisdiction and otherwise as are constituted by the laws relating to insolvent debtors in India.

8. On the 28th of December 1865 the Amended Letters Patent were granted; the purpose being to make further provision respecting constitution of the High Court, and the administration of justice thereby.

9. By the 18th clause it was provided as follows :

And we do further ordain that the Court for Relief of Insolvent Debtors at Bombay shall be held before one of the Judges of the said Court Judicature at Bombay, and the said High Court, any such Judge thereof, shall have and exercise, within the Presidency of Bombay, 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.

10. Relying on the difference of language in this clause as contrasted with that which it superseded, it is argued before us for the respondent that the Insolvent Court's jurisdiction is now limited to the Presidency in the sense that no order can be made under Section 26 against a person residing outside its limits.

11. If that be so, then it must follow that the Court cannot make an order vesting property outside the Presidency. But it is conceded that the Court has jurisdiction to make such an order, and undoubtedly this is the view that always has been accepted by the Courts.

12. But if Clause 18 of the Amended Letters Patent has not for the purpose of a vesting order curtailed the jurisdiction of the Court it cannot have cut it down for the purposes of Section 26, as obviously the mere construction as distinguished from the operation of that section cannot have been altered by anything contained in the Amended Letters Patent. The first clause of the Amended Letters Patent does not require the construction for which the respondent contends, and I, therefore, hold that the Court has jurisdiction, but whether it should be exercised or

not must be determined by the Commissioner when all the facts have been placed before him.

13. The result of my conclusion is that the order under appeal must be reversed with costs including the costs occasioned before the Commissioner by the contention that he had no jurisdiction and the case must now go back to the Commissioner in order that it may be heard and determined by him.

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