

In Re: Ca Washi Ookerji

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SooperKanoon Citation : sooperkanoon.com/329784

Court : Mumbai

Decided On : Apr-27-1888

Reported in : (1889)ILR13Bom114

Judge : Charles Sargent, C.J. and; Scott, J.

Appellant : In Re: Ca Washi Ookerji

Judgement :

Charles Sargent, C.J.

1. This is an appeal from an order made by Mr. Justice Bayley, the Commissioner of the Insolvent Court, on the application of the Official Assignee. The order directs the insolvent, who has for years been residing at Aligarh in the North-West Provinces and who is residing there at present, to come to Bombay and appear before the Insolvent Court in order that he may be examined with regard to certain property which the Official Assignee believes may be made available for the payment of the insolvent's creditors.

2. The insolvent has appealed against this order, and two points have been raised on his behalf: first, it has been argued that the Court in Bombay has no jurisdiction to make such an. order against a person resident more than two hundred miles from Bombay; and secondly, that even if it has the jurisdiction, the granting of such an order is a matter of discretion, and that in the present case that discretion has been improperly exercised.

3. The order in question was made under Section 58 of the Indian Insolvent Act (Stat. 11 and 12 Viot., cap. 21). The provisions of that section are stated in the most general terms (His Lordship read the section). But it has been contended that we must read it with Section 4, and that the combined effect of these two sections taken together is that the Insolvent Court has only the same powers as are possessed by the High Court, and that by the Civil Procedure Code (Act XIV of 1882) the High Court has no power to order the attendance of any person residing at a distance of more than two hundred miles from Bombay. We are of opinion, however, that we cannot thus limit the power of the Insolvent Court. The Act (11 and 12 Viot., cap. 21,) confers upon that Court very large powers (e.g. Section 36), and we think that we must give to Section 58 a construction in harmony with the general provisions of the Act. It is to be remembered also that the Insolvent has already submitted to the jurisdiction of the Court. He has applied for and obtained the benefit of the Insolvent Act, and we think that he is now bound to submit to any further order which the Court may think fit to make under the Act. We hold that the Judge had power in this case to make the order appealed against.

4. It has been argued that the discretion of the Judge was improperly exercised. That is a matter, however, with which we should be reluctant to interfere, especially in a case like this. The learned Judge of the Insolvent Court must necessarily have a far greater knowledge of all the circumstances of the case than we have; and he no doubt took them into consideration before making the order.

We must dismiss this appeal with costs.