

In Re: Ganeshdas Panalal

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Court : Mumbai

Decided On : Aug-21-1907

Reported in : (1907)9BOMLR1093

Judge : Beaman, J.

Appeal No. : Insolvency Suit No. 228 of 1907

Appellant : In Re: Ganeshdas Panalal

Judgement :

Beaman, J.

1. The point to be decided on this Rule is, I believe, as yet uncovered by authority. The Court is asked to order a Receiver in Amritsar to hand over the assets of the insolvents to the Official Assignee. It is objected on behalf of the Receiver, that this Court has no jurisdiction to make any such order. For the Official Assignee, it is contended, to put it shortly, that the Indian Insolvency Act extends to the whole of India, that any High Court Judge empowered to preside as Commissioner of insolvency, has therefore, provided the insolvency occurred within the territorial jurisdiction, power to make an order under Section 26 going to any part of India. It is sufficient for the present to limit the contention to India. As I understand the argument upon which this contention rests, it is that the insolvency jurisdiction is quite distinct from the jurisdiction of the High Court; that it is larger; that notwithstanding anything in the Letters Patent, it cannot be less than was enjoyed

by the old Supreme Court; and that the terms of Section 7, which provide for the making of a vesting order, show that that jurisdiction, is in effect unlimited. On the other hand it is contended that Section 18 of the Amended Letters Patent clearly defines the jurisdiction and restricts it to the Presidency of Bombay. None of the cases cited and argued upon directly touch the point now in controversy. In *re Cowasji Ookorji* (1888) I.L.R. 13 Bom. 114 the question was whether the Commissioner in insolvency had power to order the attendances of an insolvent, residing at Aligarh, under Section 58. The ground of the decision was that the insolvent had invoked the protection of the Bombay Insolvent Debtors' Court and had thereby given it personal jurisdiction over him; it was said, certainly, that the jurisdiction of the Insolvency Court was in some respect larger than that of the High Court, as for example in exercising the powers conferred by Section 36. But that was in reference to a special argument, which aimed at confining the powers of the Commissioner in insolvency, in procuring the attendance of persons before him within the limits prescribed by the Code of Civil Procedure. No question seems to have been made, though perhaps the facts would have admitted of it being at least raised, of any distinction between jurisdiction within and without the limits of the Bombay Presidency. In *Currie's case* ILR (1896) 21 Bom. 405 the point was still simpler and decided on a ground peculiar to that case, although there are dicta in the judgment of Strachey J. which do bear, though indirectly, on the present question. It was held that while the jurisdiction of the old Supreme Court extended over all British subjects, within the Presidency of Bombay, Section 18 of the Amended Letters Patent taken with the Sind Act, now excluded the jurisdiction of the Court of Insolvent Debtors' at Bombay, from the province of Sind *Blackwell's case* (1872) 9 Bom. H.C. 461 and *Tietkin's case* (1868) 1 B. L.R. 48 although not directly in point, seem to me to be as far as they go, in favour of the opponent. I have not been able to find in a single case, where the question was considered directly or indirectly, out of the numerous cases I have looked into, any hint of approval of the broad general proposition, upon which the applicant now founds his argument. Taking it to be the case that the substitution of the High Court for the Supreme Court left the powers of the Commissioner in insolvency at Bombay precisely where they were, I should still think that those powers were locally limited for all purposes of jurisdiction, in the first place to the town and

island of Bombay, in the next where British subjects are concerned to any place within the limits of the Presidency of Bombay. And I apprehend that the applicant would not dispute that conclusion, as being merely the foundation of his further argument, which is, that as soon as the Commissioner in insolvency in Bombay has got lawful jurisdiction, for the purpose of making a vesting order and so forth, then provided that he remains physically within the limits prescribed by Section 18 of the Letters Patent, he may make orders to take effect in any part of India, under such a section as 26. It is that part of the argument which I think to be unsound. A vesting order made with jurisdiction in Bombay affects all the insolvent's property, whether within or without the local limits of the Bombay Insolvent Debtors' Court, for the simple, sufficient reason, that that order substitutes one legal persona, the Official Assignee, for another, the insolvent; but I do not find it to have been anywhere asserted in argument before, that the jurisdiction either of the old Supreme Court or of a Judge of the High Court empowered under the Insolvent Debtors' Act, was locally unlimited in respect, for example, of pursuing the property into other and foreign jurisdictions. Taking the case of *Gowasji Ookerji* to have been rightly decided, it is easily distinguishable in principle from the present case, in which the Court is asked to make an order binding upon a person who has never submitted to the Court's jurisdiction and who does not and never has resided in it. It was contended inter alia, for the applicant that the powers of the Court under Section 26 could not be less than the powers of the Official Assignee and that the Official Assignee might file a suit in the Bombay High Court to compel the Receiver in Amritsar to surrender the insolvents' property. Putting aside the Receiver and substituting for him a private resident of Amritsar, who claimed to hold and retain property which the Official Assignee alleged to belong to the insolvent, I think that the test would be a fair one. But I do not think that in those circumstances the Bombay High Court would entertain the Official Assignee's suit. I cannot assent to the general proposition, that the Court here being once properly vested with jurisdiction, in an insolvency matter, necessarily has the power to make any further orders which the Act authorizes, to take effect anywhere outside the limits of the Court's local jurisdiction. As to the surface objection that any such orders if made would be *brutum fulmen* and unenforceable, the Court having no machinery to compel obedience outside the jurisdiction, the Hon'ble the Advocate

General has referred to Section 108 of the English Bankruptcy Act which seems to contemplate a difficulty of that kind and might if extended to India remove it. But, that is not the reason why I hold that the Insolvent Debtors' Court in Bombay has no jurisdiction or power to make an order under Section 26 to a stranger outside the jurisdiction as defined either for the old Supreme Court or by Section 18 of the Amended Letters Patents for the Judge of the High Court deputed to sit as Commisisioner in the Bombay Insolvent Debtors' Court. I think the simple answer to the applicant's prayer is that the local Insolvent Debtors' Court never had and therefore now has not power or jurisdiction of that practically unlimited kind. The Rule must therefore be discharged with costs.

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