

In Re: the Advocate General of Bombay

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Court : Mumbai

Decided On : Jan-15-1913

Reported in : (1913)ILR37Bom464

Judge : Basil Scott, Kt., C.J., ;Chandavarkar, ;Davar and ;Macleod, JJ.

Appellant : In Re: the Advocate General of Bombay

Judgement :

Basil Scott, Kt., C.J.

1. The question before the Court is whether any legal practitioner save counsel has a right of audience before the officer appointed by the Chief Justice to exercise powers under Section 6 of the Presidency Towns Insolvency Act. The officer so appointed is the Clerk of the Court, and he has been appointed inter alia to hold the public examination of insolvents and to examine any person summoned by the Court under Section 36.

2. It is provided by Section 121 of the Presidency Towns Insolvency Act that nothing contained therein shall take away or affect any right of audience that any person may have had immediately before the commencement of the Act, or shall be deemed to confer such right in insolvency matters on any person who had not a right of audience before the Courts for the relief of insolvent debtors.

3. By Section 3 of the Indian Insolvency Act (11 and 12 Vict., c. 21), it was enacted that every advocate and attorney of the Supreme Courts at Calcutta, Madras and

Bombay respectively should be entitled to practise in the way of his profession in the Court for the relief of insolvent debtors of that presidency, and no other persons should practise as advocates or attorneys in the said Courts for the relief of insolvent debtors.

4. It is contended by the Advocate General that the words 'in the way of his profession' do not cover work in the nature of examination of insolvents or witnesses which would ordinarily be within the scope of an advocate's functions.

5. When the Statute 11 and 12 Vict., c. 21, was enacted, the Insolvency Jurisdiction in England under the Act for the relief of insolvent debtors, 5 and 6 Vict., c. 116, was exercised by the Judge or Commissioners of the Court of Bankruptcy. That Court was established by 1 and 2 Will. IV, c. 56, by Section 10 of which it was enacted that all attorneys and solicitors of any of the superior Courts of Law or Equity of Westminster might be admitted after their names were enrolled in the Court of Bankruptcy and might appear and plead in any proceedings in the said Court without being required to employ counsel except in proceedings before a Court of Review and upon trial of issues by Jury.

6. The inference is that the words 'in the way of his profession' in Section 3 of 11 and 12 Vict., c. 21, would be sufficiently wide to cover the exercise by attorneys in matters of insolvency except before Courts of Review or in Jury trials of the functions ordinarily assigned in litigation to advocates.

7. In Bombay, so far as we are aware, it has not been the practice to permit attorneys to plead before the Commissioner of the Insolvent Court. But Rule 37 of the Bombay Insolvency Rules, which were approved by Her Majesty in Council on the 14th of July 1870, provided that the examiner appointed by the Court might examine witnesses, and the insolvent or the creditor of the insolvent or assignee of the estate and effects of the insolvent should be at liberty to attend the examiner by himself or counsel or attorney and put all such questions to the witnesses which should be proper and relevant in the matter in issue. The office of the examiner in insolvency was abolished on the 1st of November 1881. In certain correspondence with Government, which preceded the abolition of the office, the Chief Justice Sir Michael Westropp stated on the 20th March 1879: 'The office of examiner in the

Court for the relief of insolvent debtors has, for the purpose for which it mainly existed, namely, the examination of the accounts of opposed insolvents, of late years fallen nearly into disuse, that task being for the most part performed by the Court itself at the hearing of the case when the opposed insolvent or his clerk are examined as witnesses with books of accounts before them. On the rare occasions on which under the present system it may be necessary to refer the books and accounts to the scrutiny of an officer of the Court, that duty may be performed by the Clerk of the Court.'

8. It therefore appears that the functions of the examiner were to be discharged by the Clerk of the Court, when necessary, and as the Rule 37 was not rescinded, it must be inferred that the right of audience in such matters as might have been brought before the examiner was not taken away from attorneys.

9. In matters other than insolvency, which are conducted before delegates of the Court, It has always been the practice to permit attorneys to appear and conduct examinations. For example, not only since the establishment of the High Court but during the continuance of the Supreme Court, attorneys have always appeared to conduct proceedings in the office of the Master in Equity and the Commissioner for taking accounts, and it is a matter beyond dispute that in all Chamber matters, whether before the Prothonotary or before the Judge sitting in Chambers, attorneys have the same right of audience as counsel.

10. It is true, as pointed out by the Advocate General, that the express rule relating to the right of audience of attorneys in Chamber matters is confined to the Original Side Jurisdiction. But it is illustrative of the practice of the legal professions in matters which do not come before the Courts. If we were to accede to the contention of the Advocate General, it appears to us that we should be taking away or affecting a right of audience which attorneys had before the delegate of the insolvent Court immediately before the commencement of the Act, and we, therefore, answer the question referred to us as follows:

11. Attorneys of the High Court have a right of audience before the officer appointed by the Chief Justice in the exercise of the powers conferred upon him under Section 6 of the Presidency Towns Insolvency Act.

12. There will be no order as to costs.

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