

The Official Assignee of Rangoon Vs. the Official Assignee of Madras and ors.

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SooperKanoon Citation : sooperkanoon.com/823095

Court : Chennai

Decided On : Apr-14-1924

Reported in : 91Ind.Cas.126

Judge : Ramesam and ;Wallace, JJ.

Appellant : The Official Assignee of Rangoon;annamalai Chetty

Respondent : The Official Assignee of Madras and ors.;The Official Assignee of Madras and anr.

Judgement :

ORDER

1. This is an application by the Official Assignee of Rangoon for leave to appeal to His Majesty in Council against the order on C.M.P. No. 3032 of 1922 Official Assignee of Madras v. Official Assignee of Rangoon : AIR1924 Mad118(1) passed by Schwabe C.J., and myself, That order was passed under Section 8 of the Presidency Towns Insolvency Act of 1909 annulling a prior order of Wallis, C.J., and Seshagiri Iyer, J.

2. The first and second respondents now contend that there is no appeal to His Majesty in Council against the order under Section 8 of Act III of 1909. Upto 1909, the insolvency jurisdiction in Presidency Towns was governed by 11 and 12 Vict.

C. 21. In 1818 there were no High Courts in India and the Supreme Court had no insolvency jurisdiction and the Act of 1848 constituted an Insolvency Court. Even after the issue of the Letters Patent in 1852, it was generally supposed that the Insolvency Court was, strictly, a Court separate from the High Court. Having regard to Clause 18 of the Letters Patent, it is doubtful how far such a view was correct. Clause 18 of the Letters Patent shows that the insolvency jurisdiction was part of the civil jurisdiction of the High Court and there was an original and appellate jurisdiction in insolvency, matters also.

3. All these doubts were certainly resolved after the Act of 1909. Section 3 makes the High Court the only Court competent to exercise insolvency jurisdiction. That being so, in an insolvency matter (original or appellate) an application for leave to appeal lies under Clause 39 of the Letters Patent even if no such application lies under Section 109 of the C.P.C. The Advocate-General contends that the C.P.C. itself applies. He points out that Section (2) of the C.P.C. was repealed by Act III of 1909 with the result that all the portions of the Code applying to the Original Side of the High Court (see Section 117) also apply to insolvency matters. This result being consistent with Section 90(1) of the Insolvency Act of 1909. Still, it may be doubted whether the provisions of the C.P.C. so made applicable to the Original Side of the High Court (Section 117) including the insolvency jurisdiction [Section 90(1)] including the Chapter relating to appeals to His Majesty in Council should be confined to those relating to the procedure to be followed in the High Court. If the C.P.C. Section 101} does not apply, Clause 39 of the Letters Patent certainly applies. The decision in *Rangoon Botatoung Co., Ltd. v. Collector of Rangoon* 16 Ind Cas. 188 : 40 C.P 21 : 16 C.W.N. 961 : (1912) M.W.N. 781 : 12 M.L.T. 195 : 16 C.L.J. 245 : 23 M.L.J. 276 : 14 Bon. L.R. 833 : 10 A.L.J. 271 : 39 I.A. 197 : 5 Bur. L.T. 205 : 6 L.B.R. 150 has nothing to do with, this matter. The Judicial Committee held that no appeal lay in land acquisition proceedings for they were in the nature of arbitration proceedings vide *Secretary of State for India v. Chelikani Rama Rao* 35 Ind. Cas 902 : 39 M.P 617 : 31 M.L.J. 324 : 20 C.W.N. 1311 : (1916) 2 M.W.N. 224 : 14 A.L.J. 1114 : 20 M.L.T. 435 : 4 L.W. 486 : 18 Bom. L.R. 1007 : 25 C.L.J. 69 : 43 I.A. 192 and the award passed thereon is not of the nature of a judgment, decree or order within the meaning of Clause 39 of the Letters Patent see *Special Officer, Salsettle Building Sites v. Dasabhai Bezanji Motivalla* 20 Ind. Cas. 763 : 17

4. It may be added that the words 'on appeal' in Clause 39 obviously mean the same thing as 'in appellate jurisdiction,' and it was held by Schwabe, C.J., and myself that the petition (C.M.P. No. 3032 of 1922) Official Assignee of Madras v. Official Assignee of Rangoon : AIR1924 Mad118(1) properly lay on the Appellate Side and not on the Original Side as its object was to review the appellate order of Wallis, C.J., and Seshagiri Iyer, J. The order on review was in substitution of the original order passed in appeal and takes its place. But this point has no importance. Our order must be either on the Appellate Side or on the Original Side. It cannot be that it is neither. In either case, the application is competent and Clause 39 applies. We hold that an application for leave to appeal is competent if other conditions are satisfied. The Official Assignee of Rangoon is a party to the proceedings and has a right to appeal whether 'aggrieved' or not.

5. It is not denied that the value of the properties involved is several lakhs.

6. It is not, therefore, necessary for us to certify that the case is a fit one for appeal within the latter part of the proviso to Clause 39--the first part of the proviso being satisfied.

7. The application is granted and the usual certificate will issue.

Official Assignee of Rangoon : AIR1924 Mad118(1) He supported the Official Assignee of Rangoon. The final order went against them and the petitioner feels aggrieved like the Official Assignee of Rangoon. The leave applied for is granted and the usual certificate will issue.

C.M.P. Nos. 1012 AND 1017 OF 1924.

9. The first respondent will pay himself--the taxed costs of the petitions--out of the estate.