

In Re: in the Matter of Abdool Hamed

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Court : Kolkata

Decided On : Jun-20-1878

Reported in : (1879)ILR4Cal94

Judge : Markby and ;Prinsep, JJ.

Appellant : In Re: in the Matter of Abdool Hamed

Judgement :

Markby, J.

1. The only objection to the jurisdiction of the Deputy Commissioner with which we have to deal upon the present reference is that arising out of Section 66 of the Burma Courts Act and Sections 4 and 6 of the Civil Procedure Code. Section 66 of the Burma Courts Act provides that, within the towns of Rangoon, Moulmein, Akyab and Bassein, the Recorder shall have and exercise such powers and authorities with respect to insolvent-debtors and their creditors as are for the time being exercisable with respect to insolvent-debtors and their creditors by the High Court or a Judge thereof in Calcutta. Section 4 of the Code of Civil Procedure provides that 'nothing in the Code shall be deemed to affect the Burma Courts Act, 1875. Section 6 of the Code of Civil Procedure provides that nothing in the Code 'affects' the jurisdiction or procedure of the Recorder of Rangoon sitting as an Insolvent Court in Rangoon, Moulmein, Akyab or Bassein.' Section 344 of the Code of Civil Procedure, under which this application was made, provides that 'any

person arrested or imprisoned in execution of a decree for money may apply in writing to be declared an insolvent. Such application shall be made to the District Court which ordered his arrest or imprisonment, or when the District Court did not make such order, then to the District Court to which the Court that made the order is subordinate.' These being the provisions of the law, we have no doubt that the Deputy Commissioner had jurisdiction to entertain this application.

2. We consider that the provisions of Section 6 of the Code of Civil Procedure do not interpose any obstacle in the way of the Deputy Commissioner dealing with this application. His doing so will not, in our opinion, affect the jurisdiction of the Recorder within the meaning of that section. It may be that if this same Abdool Hamed should ever be declared an insolvent by the Recorder, that the Deputy Commissioner would be bound to suspend further proceedings. But until that event happens, there appears to us to be no reason why the Deputy Commissioner should not proceed to the exercise of the powers conferred upon him by chapter xx of the Code of Civil Procedure with reference to this person. To hold the contrary would be a manifest hardship. We understand from the observations of the Deputy Commissioner that the Recorder never sits as an Insolvent Court at Akyab; and prisoners, therefore, in the civil jail in Akyab, if they cannot apply to the Deputy Commissioner are in a worse position than other prisoners for debt under the new Code. The result would, in fact, be that they would always have to stay out their full time in jail, an application to the Recorder sitting at Rangoon being practically impossible.

3. The decision of the Bombay Court in Bombay Crown Cases, vol. vii, p. 6, referred to by the Judicial Commissioner, turns upon the construction of the words 'in any way affect' as used in the 24 and 25 Vict., c. 67, Section 42. Words of this kind must be construed with reference to the general provisions of the Act of which they form a part. The decision of the Bombay Court can scarcely, therefore, throw any light upon the construction of Act X of 1877.