

In Re: L.E. Salsicioni

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Court : Kolkata

Decided On : Jul-06-1934

Reported in : 164Ind.Cas.627

Judge : Remfry, J.

Appellant : In Re: L.E. Salsicioni

Judgement :

ORDER

Remfry, J.

1. This is an application to adjudicate a debtor. It is not suggested that he has not committed an act of insolvency, as alleged, within the jurisdiction.
2. The point taken in his favour is that the petition alleged that this Court had jurisdiction because the debtor carried on business at an address in Calcutta, whereas it is contended that he merely works for gain at the address given, and he admits that at the material times he did so work for gain and also resided within the jurisdiction.
3. For the petitioning creditor it was argued that the debtor did carry on business in person and that even if he did not, under s, 11 of the Presidency Towns insolvency Act, provided that the debtor came within one or other of the grounds on which jurisdiction is based, the Court should, where the act of insolvency also took place

within the jurisdiction, disregard the erroneous allegation made in the petition, and deem it sufficient that the debtor resides and worked for gain within the jurisdiction.

4. It appears that the debtor managed a business at the address given in the petition under a power-of-attorney given to him by his son who it is said owns the business.

5. Now it is clear from the decision of the Judicial Committee in *Goswami Sri Sri Giridhari Lalji v. Shri Goberdhone Lalji* 21 IA 13 at p. 15 : 18 B 291 : 6 Sar. 393 (PC), that carrying on business means, under the Letters Patent of 1865, entering into transactions which may result in personal liabilities.

6. The words of this Act seems to me to mean the same thing, though as their Lordships pointed out the term is very indefinite.

7. The English decisions are not very helpful ; in *Ex parte Breull* (1880) 16 Ch D 484 : 50 LJCh. 381 : 43 LT 580 : 29 WR 299, under the bankruptcy rules of 1870, a clerk in a bank was held to carry on business, but in those rules, unlike the Presidency Towns Insolvency Act and the Letters Patent, there is no reference to working for gain.

8. In the later case are cited, *Gain v. Batler* (1913) 1 KB 759 : 85 LJKB 804 : 114 LT 698 : 60 SJ 539 : 32 TLR 310, the question was under the County Courts Act of 1838 where the words used are 'carries on his business.'

9. It seems to me, therefore, that in this Act distinction has been drawn between carrying on business and working for gain, and that technically the debtor was working for gain and the presumption is that the Legislature adopted the definition given in the decision of the Judicial Committee.

10. The next point is difficult. I declined to allow amendment of the petition, on the ground that the amendment was beyond the period of limitation, that is, if the petition had to be dated with the date of the amendment, then the act of insolvency was no longer available.

11. Now undoubtedly the decisions are all in favour of the view that if the defendant in a civil suit is not prejudiced, a defect in the pleadings ought not to be allowed to defeat a just claim: Annada Chandra v. Brojo Lal 50 C 292 at p. 299 : 74 Ind. Cas. 793 : 36 CLJ 356 : AIR 1923 Cal. 142.

12. When the question is whether the Court has jurisdiction it has been held under the Charter that if leave had been given on the allegation that the defendant resided within the jurisdiction and it transpired that that was not so, but that part of the cause of action arose within the jurisdiction, there was no need to amend and the plaintiff was entitled to a decree: Fink v. Buldeo 26 C 715 : 3 CWN 524.

13. It was argued that the decision should not be followed in insolvency proceedings. But in my opinion, the present Act has for its object, not so much the relief of insolvent debtors, as the prevention of insolvent trading and the protection of the public. A debtor is adjudicated for his own demerits, or it may be his misfortune, and the merits of the petitioning creditor are not material. It seems to me, therefore, that the principle of the cases cited applies to insolvency proceedings at least to applications for adjudication, for the protection of the public is a consideration in such cases. The right which the section gives the debtor is secured where one or other of the conditions is fulfilled. Therefore, instead of relegating the petitioning creditor to a fresh petition in my opinion, the last cited decision should be followed. The only possible prejudice to the debtor is that he will be deprived of some further time in which he will not be under the disabilities of an adjudicated insolvent, and it is not in the public interest to allow him any facilities for obtaining any further credit.

14. The debtor will, therefore, be adjudicated insolvent.