

Privy Council Appeal No. 73 of 1926.

Bengal Appeal No. 39 of 1925.

Sasti Kinkar Banerjee - - - - - *Appellant*

v.

Hursookdas Chogemull - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 5TH MAY, 1927.

Present at the Hearing :

VISCOUNT HALDANE.

LORD SHAW.

LORD WARRINGTON OF CLYFFE.

[*Delivered by VISCOUNT HALDANE.*]

In this case the only real question is whether the High Court had jurisdiction to make the order that was made at Calcutta, adjudicating the appellant insolvent. The history of the case is that on the 6th August, 1924, the appellant was adjudicated insolvent by the Court of the District Judge of Birbhum. Then on the 15th September the respondent firm filed a petition in the High Court of Calcutta on the Original Side in Insolvency Jurisdiction, making a claim to money, and that was supported by an affidavit. Some controversy was at first raised by the appellant on this matter, and it was alleged that the High Court had no jurisdiction. On the 17th March, 1925, the High Court in its Insolvency Jurisdiction treated itself as having jurisdiction and made an order adjudicating the appellant insolvent. Then there was an appeal to the High Court and the High Court agreed with the learned Judge, who decided for insolvency, and held that he was acting under his jurisdiction in accepting, upon the petition which was verified by affidavit, that the acts of insolvency against the debtor had been established and that the Court was

not hampered by the proceedings in the other Court. Then leave to appeal was given and the appellant comes here.

What the appellant says is this. He does not dispute the jurisdiction which arises under the Insolvency (Presidency Towns) Act, 1909, but he says that, having regard to section 22 of that Act, it was wrong to make the order that was made at Calcutta. Section 22 is in these terms :

“ Where it is proved to the satisfaction of the Court that insolvency proceedings are pending in any other British Court within or without British India against the same debtor and that the property of the debtor can be more conveniently distributed by such other Court, the Court may annul the adjudication or may stay all proceedings thereon.”

Their Lordships think that makes it quite clear that the High Court in Calcutta had power to stop these proceedings and to say it is more convenient that matters should go on at Birbhum ; but there seems to have been some suspicion that the proceedings at Birbhum were not proceedings which were in the best interest of the creditors and that it was better that the jurisdiction should be exercised by the High Court, and accordingly the High Court Judge exercised his jurisdiction, and, on appeal to the Court of Appeal, the view taken by Mr. Justice Buckland in so deciding the case was affirmed.

The judgment of the Court of Appeal, so far as it is material to refer to it, said this :

“ From the minutes it appears that it was not contended that the Court had no jurisdiction to make the order prayed for, and it also appears from the minutes that the matter that was argued was that inasmuch as there had been an adjudication in Birbhum this Court should not make a further adjudication order in Calcutta. From the minutes it also appears that the learned Judge held that the adjudication order in Birbhum did not interfere with his jurisdiction to make the adjudication order in this Court, and he stated that it was open to any party to make such an application as he might be advised to make under the provisions of section 22 of the Presidency Insolvency Act ”—which is the section quoted above—“ for a stay of proceedings.”

Then the judgment of the Court of Appeal goes on to say that counsel who conducted the case in the lower Court on behalf of the insolvent, on being asked by them the question, expressly stated that he did not desire to raise the contention urged in the affidavit with regard to the jurisdiction of the Court to deal with the matter, having regard to the place of residence and business of the debtor, thus clearly showing that the debtor was treated as being within the ambit of the insolvency jurisdiction of the Calcutta Court.

The whole point, therefore, became this : There being this order in the first Court, there should not be a further order in the other Court ; but the Court of Appeal is of opinion that in the circumstances

“ the learned Judge had authority in his discretion, notwithstanding the previous adjudication in Birbhum, to make an adjudication here, and that he exercised a discretion in making such an order, which is not a discretion

which should be interfered with by a Court of Appeal. After all, as the learned Judge has pointed out, it was open to any party who so desired, notwithstanding the fact that an adjudication order had been made, on proper materials to satisfy the Court that the proceedings in Calcutta should be stayed, having regard to the insolvency proceedings that were going on in the Court at Birbhum. The result is that there is no substance in this appeal or in the argument by which it is sought to support the appeal."

Their Lordships take the same view as the Court of Appeal. They think that, for the reasons given by the learned Judges there, and having regard to the language of section 22, there is no substance in the point that is now made. The Court had a discretion, it had jurisdiction, but might have had, at a subsequent stage, to restrain the exercise of that jurisdiction in any way which the circumstances required. The circumstances, in the opinion of the Court below, did not require that the jurisdiction should be restrained, and their Lordships can well understand that the Court below was justified in its refusal. In any event, their Lordships do not propose to interfere with the discretion so exercised.

The result is that the appeal fails, and must be dismissed with costs. Their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

SASTI KINKAR BANERJEE

v.

HURSOOKDAS CHOGEMULL.

DELIVERED BY VISCOUNT HALDANE.

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