APPELLATE CIVIL

Before Harnam Singh, J.

SHRI JAGAT DHIS BHARGWA, Official Receiver, and as a Receiver of the Estate of Messrs Shibba Mal Kishore, Delhi,—*Petitioner,*

1951

Aug. 6th

versus

BAKASHI GURCHARAN SINGH, Advocate, Receiver of the Estate of R. S. Roop Narain, Delhi,—*Respondent.*

Second Appeal from Order No. 32 of 1950

Provincial Insolvency Act (V of 1920) Section 75 (i) - Interpretation of—Appeal—when lies.

Held, that the word "decision" in Section 75 (i) does not mean only a final decision. An order passed by an Insolvency Judge in the exercise of Insolvency jurisdiction which does not merely regulate procedure but decides questions arising on the merits of the application is an order falling within the ambit of section 75 (i) and is appealable.

Case-Law discussed.

Second Appeal from the order of Shri S. L. Madhok, 1st Additional District Judge, Delhi, dated the 20th July 1950, affirming that of Shri P. S. Bindra, Insolvency Judge, Delhi, dated the 23rd February 1949, dismissing the objections of the petitioner, and ordering the parties to appear on the 10th March 1949 and a fine of Rs 50 as costs.

BISHEN NARAIN, for Petitioner.

GURDEV SINGH, for Respondent.

JUDGMENT

HARNAM SINGH, J. In Civil Suit No. 3 of 1926 the Court of first instance decreed the plaintiff's claim for rupees 1,66,570 with future interest at annas fourteen per cent. per mensem with a lien for that amount on the properties of Rai Sahib Rup Narain insolvent. The relevant portion of the decree passed in that suit on the 5th of August 1929, reads :— Harnam Singh J.

> "It is hereby ordered that the defendants are directed to pay Rs 1,66,570 with future interest at Re. 0-14-0 per cent. per mensem till payment with costs of the suit.

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It is also ordered that in default of payment 3|4th share belonging to R. S. Mr. Rup Narain in Barh Shahbulla property would be sold and the sale proceeds after deducting thereout expenses of the sale would be paid to the plaintiff up to the amount due to him, the balance if any would be paid to the Official Receiver during the insolvency of Mr. Rup Narain and otherwise to him; in case of deficiency the plaintiff would be entitled to get his *pro rata* share from the Official Receiver during insolvency but after annulment of the insolvency of R. S. Mr. Rup Narain or discharge he would be at liberty to apply for a personal decree against him.

It is further ordered that defendant do also pay Rs 3,344 the costs of this suit to the plaintiff."

From the decree passed by the Senior Subordinate Judge, Delhi, in Civil Suit No. 3 of 1926 the Official Receiver of the estate of Rai Sahib Rup Narain insolvent preferred Civil Appeal No. 2699 of 1929, in the High Court of Lahore.

On the 16th of November 1933, the High Court while disallowing the claim of Lala Shibba Mal for priority over other creditors maintained the decree for rupees 1,66,570 with interest thereon at annas fourteen per cent per mensem from the 5th of August 1929, up to the date of the realization of the decretal amount. Parties were left to bear their own costs in both the Courts.

During the pendency of Civil Appeal No. 2699 of 1929, Lala Nand Kishore, legal representative of Lala Shibba Mal, applied for execution and the executing Court gave permission to Lala Nand Kishore to bid at the auction sale on his furnishing security for the restitution of the amounts realized by him in

the execution of that decree. Pursuant to that order by a registered bond Lala Nand Kishore charged annas fourteen pies six share in the Royal Hotel, Queens Road, Delhi, for the restitution of the money he might realize in execution. In the execution proceedings Lala Nand Kishore realized rupees 1,09,000.

From the decree passed by the High Court Lala Nand Kishore applied for leave to appeal to the Privy Council. That leave was granted in Civil Miscellaneous No. 701 of 1933. In those proceedings Lala Nand Kishore applied that the Official Receiver may be restrained from realizing from him rupees 1,09,000 pending the decision of the Privy Council appeal. The application was granted subject to the applicant furnishing security for the restitution of rupees 1,09,000 carrying interest at the rate of rupees six per cent per annum. The security was furnished on the 13th of March 1934. The appeal in the Privy Council failed on the 17th of October 1938.

In these proceedings it is not necessary to trace the history of the litigation between the 17th of October 1938, and the 26th of July 1948. On the last-mentioned date Bakshi Gurcharan Singh, Special Receiver of the estate of Rai Sahib Rup Narain, applied under section 4 of the Provincial Insolvency Act, 1920, hereinafter referred to as the Act, for the refund of rupees 1,09,000 with interest. In the proceedings arising out of that application the Receiver of the estate of Lala Shibba Mal in the administration suit raised objections giving rise to the issues specified hereunder—

(1) Has this Court no jurisdiction to try this case ?

(2) Is there any order of the High Court or of my predecessor that an application for restitution should be made and, therefore, the present application under section 4 of the Provincial Insolvency Act does not lie ?

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(3) Has any leave of the Court been obtained ? If not, what is its effect ?

(4) Is the present application barred by section 144, C. P. C. ?

(5) Whether or not the Court should allow the present petition to be proceeded with ?

In deciding insolvency case No. 7 of 1948, the Insolvency Judge found against the Receiver of the estate of Messrs. Shibba Mal-Nand Kishore on the points covered by issues Nos. 1 to 5.

From the order passed by the Insolvency Judge on the 23rd of February 1949, the Receiver of the estate of Messrs. Shibba Mal-Nand Kishore appealed under section 75 (1) of the Act in the Court of the First Additional District Judge at Delhi.

In the Court of the First Additional District Judge, Delhi, Bakshi Gurcharan Singh, Special Receiver of the estate of Rai Sahib Rup Narain, urged a preliminary objection that the order passed by the Insolvency Judge on the 23rd of February 1949, was not an appealable order. In dismissing the appeal, leaving the parties to bear their own costs in the appeal, the First Additional District Judge has found that the appeal was not competent.

From the order passed by the First Additional District Judge, Delhi, on the 20th of July 1950, in Miscellaneous Civil Appeal No. 83 of 1949, the Receiver of the estate of Messrs. Shibba Mal-Nand Kishore of Delhi has come up in further appeal to this Court under section 75 of the Act.

Bakshi Gurcharan Singh urges a preliminary objection S. A. O. No. 32 of 1950, is not competent.

From what is stated above, it appears that the question that arises for decision is whether the order passed by the Insolvency Judge on the 23rd of February 1949, was an appealable order. Clearly, S. A. O.

No. 32 of 1950, is competent if the order passed by the Insolvency Judge on the 23rd of February 1949, is '*a decision come to or an order made in the exercise of insolvency jurisdiction*' within section 75 (1) of the Act.

Section 75 (1) of the Act reads—

> "The debtor, any creditor, the receiver or any other person aggrieved by a *decision come to or an order made in the exercise of insolvency jurisdiction,* by a Court subordinate to a District Court, may appeal to the District Court, and the order of the District Court upon such appeal shall be final :
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> Provided that the High Court for the purpose of satisfying itself that an order made in any appeal decided by the District Court was according to law, may call for the case and pass such order with respect thereto as it thinks fit :
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> Provided, further, that any such person aggrieved by a decision of the District Court on appeal from a decision of a subordinate Court under section 4 may appeal to the High Court on any of the grounds mentioned in subsection (1) of section 100 of the Code of Civil Procedure, 1908."

Basing itself on *K. Lakshmappa and another* v. *Talasani Venkata Reddi* (1), the District Court has found that the order passed by the Insolvency Judge on the 23rd of February 1949, was not an appealable order. In deciding *K. Lakshmappa and another* v. *Talasani Venkata Reddi* (1), Patanjali Sastri, J. (Wadsworth, J., concurring) said :—

> "While we are sensible of the difficulty of stating in sufficiently clear-cut and definite

(1) 1942 A.I.R. (Mad.) 305.

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terms what is and what is not an order for the purposes of S.75, Provincial Insolvency Act, we are convinced that the recording of a mere finding, albeit in a formal manner, that the Court has jurisdiction to entertain an application cannot be deemed to be an order within the meaning of that section. A decision upon jurisdiction has only the effect of regulating procedure and, where it is not sufficient to dispose of the application, hardly stands on a different footing from a ruling as to the admissibility of a document tendered or the relevancy of a question put and objected to in the course of the trial. Such decisions as to details of procedure and admissibility of evidence may, no doubt, be regarded as orders in a sense but it could not, we apprehend, have been intended that such decisions should by themselves be open to appeal apart from the final decision disposing of the application or matter."

In the present case the order passed by the Insolvency Judge on the 23rd of February 1949, does not merely deal with the jurisdiction of the Insolvency Judge to entertain the application under section 4 of the Act. In making that order the Insolvency Judge has found against the appellant in these proceedings on pleas covered by issues Nos. 1 to 5. Clearly, *K. Lakshmappa and another* v. *Venkata Reddi* (1), does not govern the case.

In *Wamanrao Deorao* v. *Shrikumar Jaikumar and another* (2), it was said that in the case of a claim sought to be made under section 4 of the Act, a finding which does not dispose of the claim amounts to *a decision come to or an order made within the meaning of S. 75 (1) of the Act.*

(1) 1942 A.I.R. (Mad.) 305.
(2) 1946 A.I.R. (Nag.) 42.

In *Wamanrao Deorao* v. *Shrikumar Jaikumar and another* (1), the questions that were referred to the Division Bench for decision were—

(1) In the case of a claim sought to be made under S. 4, Provincial Insolvency Act, does a finding, which does not dispose of the claim amount to a decision come to or an order made within the meaning of S. 75 (1), Provincial Insolvency Act? What limit is to be placed on the word 'order' in S. 75 (1)?

(2) Is a decision that the Court has jurisdiction to entertain an application under S. 4 of the Act or a decision that there is no legal obstacle to the application, a decision under S. 4 within the meaning of the second proviso to S. 75 (1) of the Act?

In deciding the case Niyogi and Bose, JJ, said—

"The first part of the first question is accordingly answered in the affirmative. We also hold that the decision referred to was under S. 4 and accordingly is a 'decision' under S. 4 within the meaning of Proviso 2 to S. 75 (1). Our answer to the second question is also in the affirmative."

Indeed, there are no words of limitation in section 75 (1) of the Act. The order in question was passed by the Insolvency Judge in the course of insolvency application. That order must, therefore, be deemed to have been passed in the exercise of insolvency jurisdiction. Section 75 of the Act specifically provided for appeals and revision petitions against orders made in the exercise of insolvency jurisdiction. Clearly, if the order in question is an *order made or decision given* in the exercise of insolvency jurisdiction the order comes within section 75 (1) of the Act.

(1) 1946 A.I.R. (Nag) 42.

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In the Act there is no definition of the word 'order' or 'decision'. In rule 5 of Order XX of the Code of Civil Procedure, it is said that in suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit. In the second edition of Stroud's Judicial Dictionary, page 479, the expression 'decision' is defined as under :—

> "'Decision' is a popular, and not a technical word, and means little more than a concluded opinion."

In section 109 of the Code of Civil Procedure a clear distinction is made between 'orders' and 'final orders'. In section 11 of the Code the words "*finally decided*" as opposed to "*decided*" are used. The Civil Procedure Code was before the Legislature when the Act was passed. That being so, the omission to place the word 'final' before the word 'decision' in S. 75 (1) of the Act must have been deliberate. In any case since we have the Legislature drawing distinction between 'decision' and 'final decision' I am bound to interpret the expression 'decision' occurring in section 75 (1) of the Act to mean a decision whether it is final or otherwise.

In these proceedings it is unnecessary to express an opinion on the soundness of the opinion expressed in *K. Lakshmappa and another* v. *Venkata Reddi* (1), for a perusal of the order passed by the Insolvency Judge on the 23rd of February 1949, shows that the order passed by the Insolvency Judge does not come within the rule laid down in *K. Lakshmappa and another* v. *Venkata Reddi* (1). Clearly, the order passed by the Insolvency Judge on the 23rd of February 1949, is not merely an order regulating procedure but decides questions arising on the merits of the application.

Finding, as I do, that the order passed by the Insolvency Judge on the 23rd of February 1949, falls

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(1) 1942 A. I. R (Mad.) 305.

within section 75 (1) of the Act, I allow the appeal, set aside the order passed by the Insolvency Judge, Delhi, on the 20th of July 1950, and remand the case to the lower appellate Court for decision of the appeal on merits.

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No order as to costs in these proceedings.

Parties are directed to appear in the Court of the First Additional District Judge, Delhi, on the 6th of September 1951.

FULL BENCH

Before Eric Weston, C.J., Khosla and Falshaw, JJ

1951

July 31st

GURMUKH SINGH,—*Petitioner,*

versus

THE UNION OF INDIA AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 26 of 1951

Constitution of India, Articles 12, 15, 53 and 341—Constitution (Scheduled Castes) Order 1950, Whether ultra vires *the Constitution—Article 15 (1) is subject to exceptions contained in Clause (4) and Article 341—President—Official Acts—Whether Acts of State—Article 341—President—power to specify Scheduled Castes or Groups within the castes on grounds of religion.*

Held, the Constitution (Scheduled Castes) Order, 1950 promulgated by the President under Article 341 is not *ultra vires* the Constitution. Clause 4 of Article 15 and Article 341 are exceptions grafted by the Constitution on the general rule embodied in clause 1 of Article 15 which prohibits the State from discriminating against citizens on grounds of religion, caste etc. The President can, therefore, legitimately choose for special treatment members of a certain caste, or some members of that caste, or group within that caste.

Held further, that all official Acts of the President are the Acts of the State and, for the purpose of Article 15, the "State" is synonymous with the "President" or, at any rate, includes his official personality. Article 15 which prohibits the States from discriminating against citizens on grounds of religion, etc., equally prohibits the President from discriminating against citizens on those grounds in his official capacity. The Government is, for all practical purposes, synonymous with the Executive of a country and,