

## Hans Raj vs Rattan Chand, Etc on 3 April, 1967

**Equivalent citations: 1967 AIR 1780, 1967 SCR (3) 365, AIR 1967 SUPREME COURT 1780, 1961 2 SCWR 941, 1968 MAH LJ 164, 1968 MPLJ 82, 1968 SCD 405, 1967 3 SCR 365, 1968 (1) SCJ 468**

**Author: G.K. Mitter**

**Bench: G.K. Mitter, K.N. Wanchoo, Vishishtha Bhargava**

PETITIONER:

HANS RAJ

Vs.

RESPONDENT:

RATTAN CHAND, ETC.

DATE OF JUDGMENT:

03/04/1967

BENCH:

MITTER, G.K.

BENCH:

MITTER, G.K.

WANCHOO, K.N.

BHARGAVA, VISHISHTHA

CITATION:

1967 AIR 1780

1967 SCR (3) 365

CITATOR INFO :

RF 1979 SC 993 (4)

F 1989 SC1179 (17)

D 1991 SC1581 (8)

ACT:

Provincial Insolvency Act (Punjab Act 5 of 1920) ss. 4 & 68- application against act of receiver alleging property, taken over by him not of insolvent-whether an application under s. 4 or s. 68-Whether Iimiation of 21 days it s. 68 applies.

HEADNOTE:

The appellant's brother was adjudicated insolvent by the Insolvency Judge, Barnala, Punjab on the 23rd November., 1954. Two days later it Receiver in insolvency was appointed by the Court and was directed to take possession of the property of the insolvent On the 26th and 27th

November, 1954 the receiver took possession of various properties and on the 21st December, 1954, the appellant filed an objection application alleging that some of the property belonged to him and was exclusively in his possession. He therefore prayed for its release and restoration to him. The insolvency Judge -rejected a contention that the application was time-barred under s. 68 of the Act but held that the property did not belong to the appellant. After first and second appeals to the District Judge, and a single Bench of the High Court, a division Bench allowed a Letters Patent Appeal on the ground that the appellant's application was incompetent as barred by limitation.

In appeal to this Court the question for determination was whether the appellant's application was one under s. 68 of the Provincial Insolvency Act, and as such having been made beyond the period of 21 days from the date of the act of the receiver complained of, was covered by the proviso to that section. It was contended on behalf of the appellant that the application was one under s. 4 of the Act in which there is no mention of any period of limitation.

HELD : The application was one under s. 68 and was incompetent on the ground of limitation after the lapse of 21 days from November 25, 1954.

A person complaining of the act of the receiver may either apply under 68 or proceed under the ordinary law of the land. Section 4 does not prescribe any application for relief under that section. Its object is to, . define the limit,% of jurisdiction of the courts exercising powers in insolvency. A question as to whether an insolvent has any interest in the property attached by the receiver would fall within the purview of s. 4, but the application for the adjudication of such a question when the receiver acts otherwise than under the order of a court would be covered by s. 68 and as such the period of limitation of twenty-one days would be attracted to any such application. Sub-s. (1) and sub-s. (2) of s. 4 both start with the phrase "subject to the provisions of this Act" and even if it. was possible to construe that s. 4 envisaged the making of an application for relief, such application would be subject to s. 68 of the Act. [370F; 372E-G]

Daulat Ram v. Bansla A.I.R. 1937 Lahore page 2, approved-, Venkatarama v. Angathayammal A.I.R. 1933 Madras 471, Heerabai v. Official Receiver A.I.R. 1963 A.P. 296; disapproved.

Vellayappa Chettiar v. Ramanathan Chettiar I.L.R. 47 Madras 446, G. N. Godbole v. Mr. Nani Bai A.I.R. 1938 Nagpur 546, Muthupalaniappa

366

v. Raman Chettiar A.I.R. 1941 Madras 75; Mul Raj v. Official Receiver A.I.R 1937 Lahore 297, Ganda Ram v. Shiv Nand Ganesh Das A.I.R. 1937 Lahore 757; and Ma, Sein Nu v. U. Mg. Mg. A.I.R. 1934 Rangoon 97; Bhairo Prasad v. S. P.

C. Dass, A.I.R. 1919 Allahabad 274, Hussain, v. Muhammad Zamir Abdi A.I.R. 1924 Oudh. 294 and Mul Chand v. Murari Lal, I.L.R. 36 Allahabad 8; referred to Nathu Ram v. Madan Gopal, A.I.R. Allahabad 408; distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : CIVIL APPEAL No. 1000 of 1, 964.

Appeal from the judgment and order dated November 28, 1962 of the Punjab High Court in Letters Patent Appeal No. 212 of 1961.

Bishan Narain and B. P. Maheshwari, for the appellant. Naunit Lal, for respondent Nos. 1 to 3.

The Judgment of the Court was delivered by Mitter, J. This is an appeal by a certificate against a judgment of a Division Bench of the High Court at Chandigarh in Letters Patent Appeal No. 212 of 1961. The High Court allowed the appeal on the ground that the application out of which it arose was incompetent as barred by limitation and, in our opinion, it did so correctly. The short question before us is, whether application leading to this appeal was one under s. 68 of the Provincial Insolvency Act, and as such having been made beyond the period of 21 days from the date of the act of the receiver complained of, was covered by the proviso to that section ? In substance, the argument on behalf of the appellant was that the application was one under s. 4 of the Act in which there is no mention of any period of limitation. The facts necessary for the disposal of this appeal are as follows :-Brij Lal and Hans Raj were brothers. On an application having been made by the creditors of Brij Lal in the year 1949, the insolvency Judge, Barnala adjudicated him as an insolvent, on 23rd November, 1954. Two days thereafter, one Mohinder Lal was appointed as a receiver in insolvency by the order of the Court and he was directed to take possession of the property of the insolvent. On 26th and 27th November, 1954 the receiver took possession of various properties of the insolvent and attached some urban property and agricultural land which are the subject-matter of the present litigation. Hans Raj filed an objection application on 21st December, 1954 alleging that the property detailed therein belonged to him and was exclusively in his possession. He prayed for release of the property from attachment and restoration of possession to him. The receiver pleaded that he had taken possession thereafter at the instance of two creditors. The insolvency Judge framed two issues, namely, (1) Is the objector owner of the suit property and in possession thereof and is it accordingly not liable to be attached by the receiver ? and (2) whether the objection petition was time-barred ? The learned Judge decided the first issue against the objector but held that the application was not covered by s. 68 of the Act. In appeal, the District Judge differed from both the findings. He held that there had been no partition of the joint Hindu family of the insolvent and his brother, but, on the point of limitation he found against the objector. In the result, he accepted the appeal and dismissed the objection petition. Hans Raj went up in Second Appeal to the Punjab High Court. The learned single Judge of the High Court came to the conclusion that the property in dispute must be deemed to be the separate property of Hans Raj and held that the application was within time. Rattan Lal who replaced the original receiver on the latter's death tiled

a Letters Patent Appeal to the High Court. The High Court, as already noted, held that the Application of Hans Raj was not within time resulting in the dismissal of the objection petition.

We must first consider the nature of the application made by the objector and then find out whether it is covered by s. 68 of the Act. Section 4 of the Act on which Great reliance was placed by learned counsel for the appellant is one of the three sections in Part I of the Act i.e. ss. 3, 4 and 5. Section 3 lays down that the District Courts shall be the courts having jurisdiction under the Act. Section 4 defines the jurisdiction of the Court and runs a.-, follows :-

"(1) Subject to the provisions of this Act, the Court shall have full power to decide all questions whether of title or priority, or of any nature whatsoever, and whether involving matters of law or of fact, which may arise in any case of insolvency coming within the cognizance of the Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case.

(2) Subject to the provisions of this Act and notwithstanding anything contained in any other law for the time being in force, every such decision shall be final and binding for all purposes as between, on the one hand, the debtor and the debtor's estate and, on the other hand, all claimants against him or it and all persons claiming through or under them or any of them.

(3) Where the Court does not deem it expedient or necessary to decide any question of the nature referred to in sub-section (1), but has reason to believe that the debtor has a saleable interest in any property, the Court may without further inquiry sell such interest in such manner and subject to such conditions as it may think fit."

Section 5 lays down the general powers of courts under the Act. Part 11 which has the heading "Proceedings from the act of insolvency to discharge" deals generally with the course of the proceedings in insolvency beginning from the acts of insolvency to the order for discharge of insolvency. Part III is headed "administration of property" and deals with different subjects like method of proof of debts, effect of insolvency on antecedent transactions, realisation of property, distribution of property" and lastly "appeals to court against receiver". The last topic is covered by s. 68 which provides as follows :-

"If the insolvent or any of the creditors or any other person is aggrieved by any act or decision of the receiver, he may apply to the Court, and the Court may confirm, reverse or modify the act or decision complained of, and make such order as it thinks just :

Provided that no application under this section shall be entertained after the expiration of twenty-one days from the date of the act or decision complained of."

Part IV deals with penalties, Part V with summary administration, Part VI with appeals and Part VII with topics like costs, power to make rules, etc. Under s. 20 (contained in Part 11) the court when making, an order admitting the petition may, and where the debtor is the petitioner ordinarily shall appoint in interim receiver of the property of the debtor or of any part thereof and the interim receiver, shall thereupon have such of the powers conferable on a receiver appointed under the Code of Civil Procedure as the court may direct. If an interim receiver is not so appointed, the court may make such appointment at any subsequent time before adjudication. Under s. 21, at the time of making an order admitting the petition or at any subsequent time before adjudication the court may either of its own motion or on the application of any creditor make orders to suit the occasion. namely, direct the attachment by actual seizure of the whole or any part of the property in the possession or under the, control of the debtor, order a warrant to issue with or without bail for his arrest, or order the debtor to reasonable security for his appearance until final orders are made on the petition. Under s. 28(2) on the making of an order of adjudication ', the whole of the property of the insolvent is to vest in the court or in a receiver as provided in the Act and become divisible among the creditors in terms of the Act. Under s. 56(1) the court may at the time of the order of adjudication or at any time afterwards, appoint a receiver for the property of the insolvent, and such property shall thereupon vest in such receiver. Under subs. (3) of the section, where the court appoints a receiver, it may remove the person in whose possession or custody any such property as aforesaid is from the possession or custody thereof but nothing in this section is to be deemed to authorise the court to remove from the possession or custody of property any person whom the insolvent has not a present right so to remove. Under sub- s. (5) the provisions of this section shall apply so far as may be to interim receivers appointed under s. 20. It will be noted from the above that S. 4, sub-s. (1) lays down the ambit of the powers of the court exercising insolvency jurisdiction. Its primary object is to empower such courts to decide all questions whether of title or priority or of any nature whatsoever and whether involving matters of law or fact which may arise in any case of insolvency coming within the cognizance of the court. In other words, the aim of this provision is that all questions of title or priority arising in insolvency should primarily be disposed of by the insolvency courts so as to achieve expedition. It will be noted at once that resort to ordinary courts of law is not proscribed and at the same time the legislature provided that a person could resort to the insolvency court if the matter arose in insolvency proceedings. Under sub-s. (2) however every such decision arrived at by the insolvency court was to be final and binding for all purposes as between on the one hand, the debtor and the debtor's estate, and, on the other hand, all claimants against him or it and all persons claiming through or under them or any of them. This provision is however subject to the other provisions of the Act and notwithstanding anything contained in any other law for the time being in force. It is also to be noted that this section does not lay down what procedure or what steps should be taken by any person who is aggrieved by any order of the insolvency court or of any act or omission or commission of the receiver.

Section 20 of the Act empowers the court to appoint an interim receiver of the property of the debtor as soon as an order is made admitting the petition. For the preservation of the insolvent's property, the court may direct such interim receiver to take immediate possession of the whole or any part thereof. A duty is therefore cast on the interim receiver to see that the property of the debtor is not lost and for that purpose he must act quickly. As it is not possible for him except on the application of the debtor to know all the details of the insolvent's property, he may take the help of the creditors

to ascertain what they are. In this case, on the day of the making of the order for adjudication, the court did not appoint a receiver but did so two days afterwards directing him to take possession of the property of the insolvent. It is possible that the receiver may be misled by the creditors and he may attach properties in which as a matter of fact, the insolvent has no interest. In such a case, the stranger to the insolvency proceedings is not without a remedy. He need not resort to the ordinary and dilatory proceedings by filing a suit and getting an adjudication of title to his property, removal of the attachment, etc. Section 68 is aimed at giving him speedy relief by enabling him to make an application to the court straight way against any act or decision of the receiver and asking for appropriate relief. If however the party aggrieved seeks to benefit by this provision, he must also bring his case within the four corners of the section and prefer his application within 21 days from the date of the act or decision of the receiver complained of. When the receiver does an act under the express directions or orders of the court, an application by a third party complaining thereof does not fall within S. 68 because the receiver's act is a ministerial one. The aggrieved person is however not without a remedy. He can inter alia apply to the insolvency court for undoing the wrong complained of and the court can give such relief as the circumstances may call for. The jurisdiction of the court and the ambit of its powers are as contained in s. 4 which however does not lay down any procedure for obtaining such relief. It is not therefore correct to describe an application for relief as one under s. 4.

Leaving aside the decisions which were cited at the Bar, it appears to us, on a plain reading of the sections mentioned above and in particular, ss. 4 and 68, that there can be no doubt that a person (like the appellant before us) complaining of the receiver taking possession of or attaching property in which the insolvent has no interest, must apply for relief within 21 days of the wrongful act of the receiver. He cannot be heard to say that his application is not under s. 68 but under s. 4 and thus seek to avoid the short period of limitation prescribed under s. 68. Moreover, subs. (1) and sub-s. (2) of S. 4 both start with the phrase "subject to the provisions of this Act" and even if it was possible to construe that s. 4 envisaged the making of an application for relief, such application would be subject to S. 68 of the Act.

We may now consider some of the decisions cited at the Bar for or against the proposition put forward on behalf of the appellant.

The sheet anchor of the appellant's case is the decision of the Allahabad High Court in *Nathu Ram v. Madan Gopal*(1). There the Official Receiver, in pursuance of an order of the insolvency court, attached a property on 8th June 1929. On 2nd July following, the son of the insolvent applied to the insolvency court alleging that the property belonged to him and not the insolvent. The court decided in favour of the son but was not called upon to go into the question as to whether the application was within time.

(1) A.I.R. 1932 Allahabad 408.

This question of limitation was raised before the District Judge and the objection was over-ruled by him. It was observed by a Division Bench of the Allahabad High Court:

"The house was attached under an order of the Insolvency Court, and not by any independent decision of the Official Receiver. The actual attachment was a mere ministerial act done in pursuance of the order of the Court. The objector was not challenging the act of the receiver, who had no voice in the matter, but the order of attachment passed by the Court ex parte. It seems to us that it was not an act or decision of the receiver within the meaning of s. 68. On the other hand, it was a claim put forward by a stranger to the insolvency proceedings setting up his own independent title, and it fell within the scope of s. 4, Provincial Insolvency Act."

The learned Judges distinguished the cases of Bhairo Prasad vS. P. C. Dass<sup>(1)</sup> and Hussaini v. Muhammad Zamir Abdi<sup>(2)</sup> on the ground that in those cases there was no order of the court directing attachment but the act complained of was an act of the receiver himself.

In Bhairo Prasad's case<sup>(1)</sup> the Provincial Insolvency Act, 1907 was in operation and there a stranger to the insolvency complained of an act of attachment after the lapse of 21 days. A Division Bench of the Allahabad High Court held that the application was barred by limitation observing at the same time :

"A stranger to the insolvency is not bound to go to the Insolvency Court at all. He has the ordinary right, which every individual has, to seek redress in the ordinary civil courts for any grievance or trespass to his property, whether committed by an Official Receiver or anybody else, but he can, if he pleases, if he complains against the act of the receiver, apply under s. 22 to the insolvency court itself. . . . But similarly if he applies under s. 22, he must comply with the terms of s. 22."

In Mt. Husaini Bibi's case<sup>(3)</sup> certain houses were proclaimed for sale on 14th June 1922 and on last July the appellant, the wife of the insolvent, put in a claim that the properties belonged to her. The insolvency court referred the appellant to the civil court and a suit was filed on 4th July 1922. The properties were sold by the receiver on 5th July before an injunction of the civil court restraining a sale could be served on the receiver. On 3rd August 1922 the appellant applied to the District Judge for the cancellation of the sale. This was dismissed. The subject of appeal before the (1) A.I.R. 1919 Allahabad 274.

(2) A.I.R. 1924 Oudh 294.

CI/67-11 A.I.R. 1924 Oudh 294.

High Court was the order of dismissal. The learned single Judge relied upon Bhairo Prasad's case<sup>(1)</sup> and observing that the application presented on 3rd of August was apparently one under S. 68 of the Act held that it was barred before the 3rd of August. It was further pointed out that a stranger to the insolvency may seek his redress in ordinary civil court when aggrieved by any act of the Official Receiver, or he may apply under S. 68 of the Act (corresponding to s. 22 of the previous Act). Reference may also be made to an earlier decision of the Allahabad High Court in Mul Chand v. Murari Lal<sup>(2)</sup>. There the receiver in insolvency seized certain movable property on the information

laid by one of the creditors as property of the insolvents. The appellant before the High Court claimed that the property was his and presented an objecting purporting to be one under o. XXI r. 58 of the Code of Civil Procedure. This was dealt with by the Second Additional Judge of Meerut on the merits who after taking evidence came to the conclusion that the property seized belonged to the insolvents and dismissed the appellant's application. The Allahabad High Court pointed out that the appellant's position was that of a person -aggrieved by an act of the receiver and his remedy was by an application under S. 22 of Act III of 1907.

These decisions, in our opinion, do not assist the appellant on whose behalf it was argued that an application might be made either under S. 68 or under s. 4 of the Act. It is clear from the above decisions that a person complaining of the act of the receiver may either apply under S. 68 or proceed under the ordinary law of the land. Section 4 does not prescribe any application for relief under that section. Its object is to define the limits of jurisdiction of the courts exercising powers in insolvency. It is not correct to say that a person aggrieved by an act of the receiver has the choice, of making an application under s. 4 or under s. 68. Section 4 comes into operation whenever any question of the nature mentioned therein is sought to be canvassed before a court exercising insolvency jurisdiction. Such questions may arise because of acts or decisions of the receiver complained of. A question as to whether an insolvent has any interest in the property attached by the receiver would fall within the purview of S. 4, but the application for the adjudication of such a question when the receiver acts otherwise than under the order of a court would be covered by s. 68 and as such the period of limitation of twenty-one days would be attracted to any such application.

Mr. Bishan Narain referred us to a few decisions of different High Courts as illustrating his proposition that applications are permissible under s. 4 of the Provincial Insolvency Act. In *Vellayappa Chettiar v. Ramanathan Chettiar* (2) cited on behalf of the (1) A.I.R. 1919 All. 274.

(2) I.L.R. 36 Allahabad 8.

(3) I.L.R. 47 Madras 446.

appellant, the facts were as follows. The respondent obtained a mortgage decree against a person who was subsequently adjudicated an insolvent and the Official Receiver assumed jurisdiction over his properties. While the latter was taking steps to realise the assets, the appellant asserted that some of the properties covered by the mortgage decree were his and denied the right of the insolvent to such properties, at the same time, preferring a claim petition before the Official Receiver. The Receiver enquired into the same and allowed it. Against that order, the mortgagee-decreeholder filed a petition before the District Judge under s. 68 who set aside the order of the Official Receiver and further directed that the claim petition also do stand dismissed. The claimant went up in appeal to the Madras High Court. The learned Judges of the Madras High Court said that the whole of the proceedings was misconceived observing that the Official Receiver had no power to make any order in a claim petition as this was not a power delegated to him under s. 80 of the Provincial Insolvency Act of 1920. According to the High Court, if the claimant wanted to prevent the sale of the property as belonging to the insolvent, he should have applied to the District Judge direct to take action under s. 4 of the Act. He did not however do so. In the result, the High Court set aside all the



proceedings in the lower court and left the parties in status quo ante, commenting at the same time, that if the claimant found that the Official Receiver proposed to sell the properties he might apply to the District Judge under s. 4 of the Act. The last portion of the above paragraph was quoted as supporting the proposition that an application lay under s. 4 of the Act. That is not what the learned Judges of the Madras High Court meant. In our view, what was meant was that the claimant might make an application to the District Judge who would under s.4 of the Act have jurisdiction to pass a proper order thereon.

Our attention was also drawn to the case of Venkatarama v. Angathayammal<sup>(1)</sup> where the above Madras decision was cited and at more than one place, the learned Judge used the expressions "an application under s. 4" and "an appeal under s. 68". With all respect to, the learned Judge, it seems, to us that these expressions were not accurate for s. 68 although headed "appeals to court against receiver"

does not, as a matter of fact, use the word "appeal" in the body of the section. The application under s. 68 however in reality amounts to an appeal to a court from a decision of the receiver but the section itself lays down that the party aggrieved must "apply to the court". Similarly, a proceeding in which jurisdiction under S. 4 may be exercised is not an application under S. 4. The proceeding has to be started by way of an application whenever anybody seeks to have an adjudication by the court of the nature described in S. 4.

((1) A.I.R. 1933 Madras 471.

In this connection, our attention was drawn to several other decisions; it is not necessary to go into the facts of these cases. In G. N. Godbole v. Mt. Nani Bai<sup>(1)</sup> and Muthupalaniappa V. Raman Chettiar<sup>(2)</sup>, the expression "proceedings under S. 4" had been used while in Heerabai v. Official Receiver<sup>3</sup> ) the petitioner before the High Court, mother of the two insolvents, laid a claim to 1/3rd share in the properties which the Official Receiver sold on 16th April, 1960 purporting to be those of the insolvents. According to the judgment "the petitioner filed I.A. No. 1900 of 1960 on 28-6-1960 purporting to be under ss. 4 and 68 of the Provincial Insolvency Act." She also filed I.A. No. 1899 of 1960 for condoning the delay in filing this application as ordinarily "the appeal under S. 68 should have been filed by her on or before 5-7-1960". The insolvency court held in the proceedings under s. 68 that there could be no condonation of delay but failed to ascertain with reference to the nature of I.A. No. 1900 of 1960 whether it fell under s. 4 of the Provincial Insolvency Act. The learned Judge found that the petitioner had not made any claim before the Official Receiver and even if she chose to make any such claim, the Official Receiver had no power whatever to decide upon such claim petitions. It was observed :

"Therefore, an application such as I.A. No. 1900 of 1960 cannot be taken in any sense to be an appeal against the act of the Official Receiver as such. On the other hand, when the petitioner herein wanted that her share should be untouched, it is certainly

a case where the petitioner approached the court to determine the question of her title, which it is competent to do only under s. 4 of the Provincial Insolvency Act. Therefore, in my view, it is idle to contend that I.A. No. 1900 falls within the purview of s. 68, and that it should be taken to be an appeal and not an application which is contemplated and competent under s. 4 of the Provincial Insolvency Act."

It is difficult to accept the soundness of some of the dicta in the above judgment. The Official Receiver's act in selling the property on 16-4-1960 may have been wholly wrong, but if the petitioner wanted the same to be set aside, she could either have made an application under s. 68 to the court or she could have filed a suit for relief under the ordinary law of the land. She could not, after a period of 21 days, start a proceeding in the insolvency court describing it as one under s. 4 so as to get out of the bar of limitation imposed by S. 68. She need not have waited till the sale of property. She might have applied to the court as soon as the receiver took the first step by attaching the property.

(1) A.I.R. 1938 Nagpur 546. (2) A.I.R. 1941 Madras 75.

(3) A.I.R. 1963 A.P. 296.

In our opinion, Jai Lal, J. correctly pointed out the correlation between ss. 4 and 68 in *Daulat Ram v. Bansilal*(1). The appellant had a money decree against the insolvents which he executed by attachment of a moiety of a share in a house which he alleged belonged to the judgment-debtors. This was before the order of adjudication. An objection was raised by the respondent, Bansilal, that he was a purchaser for consideration of the attached property. The objection having been allowed, a suit was filed under O. 21, r. 63 C.P.C. by the attaching decree-holder and ultimately decreed, it having been held that the sale by the judgment-debtors was fraudulent as against the creditors. The receivers in insolvency then took possession of the property attached by the appellant and sold the same in the insolvency proceedings. Bansilal thereupon made an application under s. 68 on the ground that the action of the receivers was illegal. The District Judge allowed the application holding that the decree passed in the suit under O. 21 r. 63 was operative only so far as the execution proceeding's were concerned and that it did not enure for the benefit of the other creditors. He therefore set aside the sale by the receivers. The creditors including the appellant came up in appeal from the order of the District Judge. An objection was raised by the respondents that no appeal lay without the leave either of the District Judge or of the High Court. In disposing of this, Jai Lal, J. observed :

"I am inclined to think that though the District Judge was moved under s. 68 which is not one of the sections mentioned in Sch. 1, the investigation, which he is expected to make in a case like, the present, should be under s. 4, Provincial Insolvency Act, and any order passed by him under s. 4 is appealable as of right to this Court."

An observation similar to the above was made, by the same learned Judge in *Mul Raj v. Official Receiver* (2) . This point was also brought out in *Ganda Ram v. Shiv Nand Ganesh Das*(3). The scope of the two sections was brought out even more clearly in a judgment of the Rangoon High

Court in Ma Sein Nu v. U Mg. Mg.(4) where it was said :

"Now, s. 4 defines the powers of the Insolvency Court to decide questions of law and fact arising in insolvency proceedings, but it does not lay down how the court is to be moved to exercise those powers. . . . of course, the powers of the court in deciding such an application are defined in s. 4, but this does not mean that the application itself is made under s. 4, and clearly it cannot be for s. 4 contains no provision as to how the court is (1) A.I.R. 1937 Lahore page 2.

(3) A.I.R. 1937 Lahore 757.

(2) A.I.R. 1937 Lahore 297.

(4) A.I.R. 1934 Rangoon 97.

to be moved to exercise its powers, and for the mode of invoking the authority of the Court other provisions of the Act, such as ss. 53, 54 and 68, have to be consulted."

In the result, we hold that the application being one under s. 68 was incompetent on the ground of limitation after the lapse of 21 days from November 25, 1954. The appeal is therefore dismissed with costs.

R.K.P.S. Appeal dismissed.