

## APPEAL FROM ORIGINAL CIVIL.

Before Greaves and B. B. Ghose JJ.

ANUPAMA DEBI

v.

GURUDAS CHATTERJI.\*

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June 22, 30.

*Insolvency—Act of insolvency—Execution—Attachment continuing more than 21 days—Presidency Towns Insolvency Act (III of 1909), ss. 9 (e), 12 (1) (c).*

Attachment of property, in execution of decree, for 21 days and more, is not a continuing act of insolvency. It is completed when 21 clear days have elapsed from the date of attachment.

*In re Beeston* (1) followed.

APPEAL by the creditor.

Anupama Debi was a judgment creditor of Gurudas Chatterji, for a decretal amount of Rs. 5,408-5-4. In execution of this decree, a writ of arrest was issued by the High Court, on the 30th July, 1924, and the debtor filed a petition in insolvency in the District Judge's Court at Hooghly, on the 31st October, 1924.

Anupama Debi filed a petition for the adjudication of the respondent in the High Court, on the 30th April, 1925. The acts of insolvency relied on in the creditor's petition were as follows :

(1) The said Gurudas Chatterji's share in No. 12, Madanmohan Chatterji Lane, Calcutta, was attached for a period of not less than 21 days in execution of a money decree and the said attachment was subsisting.

(2) The debtor had filed a petition of insolvency at Hooghly, on the 31st October, 1924, and no order for adjudication has yet been made.

The application was heard by Buckland J., who dismissed the petition with costs, on the ground that the property was attached more than three months

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ago. On the second point, he held that the fact of presentation of a petition for insolvency was the act of insolvency and not the fact that it remained on the files of the Court for disposal and that time must run from the date of the presentation of the petition.

The creditor appealed.

*Mr. B. L. Mitter* and *Mr. S. N. Banerjee*, for the appellant.

*Mr. A. K. Roy*, for the respondent.

*Cur. adv. vult.*

GREAVES J. This is an appeal from an order of Mr. Justice Buckland, dated the 13th May last, refusing to adjudicate the respondent an insolvent, at the instance of the appellant. The learned Judge was asked to reconsider his order on the 25th May, but he adhered to his previous decision and dismissed the application.

The acts of insolvency alleged in the petition for adjudication were two in number, but the second one is not now relied on and need not be considered in this appeal, and the act of insolvency relied on is that, in execution of a money decree, obtained by one Jeebandas Agarwalla, in suit No. 2349 of 1923, immovable property of the respondent was attached on the 20th day of February, 1924, and remained under attachment, at the date of the presentation of the petition, namely, the 28th April, 1925.

There is no doubt that the attachment of the 20th February, 1924, was an available act of insolvency, had the petition been presented within three months of the 20th February, 1924, but the appellant contends that, as the attachment was subsisting at the date of the presentation of the petition for adjudication, it is an available act of insolvency even though more than three months have elapsed since the expiration of 21 days from the date of the attachment. The argument urged in support of this is based on the wording of section 9 (e) of the Presidency Towns Insolvency Act, which provides that a debtor commits an act of

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insolvency, if any of his property has been sold or attached for a period of not less than twenty-one days in execution of the decree of any court for the payment of money. It is said that, by virtue of the words "not less than twenty-one days," the act of insolvency is a continuing act and that the greater includes the less and that a petition could be founded on the attachment of the 20th February, 1924, not merely for a period of three months after the expiration of twenty-one days from that date, but during any time that the attachment remained after the 21 days, and, I suppose, for three months after its removal.

The learned Judge in the Court below relied on the case of *In re Beeston* (1), where it was held that, under similar circumstances, the act of bankruptcy was not a continuing act of bankruptcy, but was complete on the expiration of 21 days from the attachment and was not available as an act of bankruptcy, after the expiry of three months from the completion of the period of twenty-one days.

The corresponding words in the English Bankruptcy Act are "for 21 days" and it was sought, before us, to distinguish *In re Beeston* (1) on this ground, it being said that the words "for 21 days" meant for 21 days and no more, whilst the words "for not less than 21 days" in the Indian Act meant for 21 days and so long thereafter as the attachment continued. I do not think, however, that any such distinction can be made and I think the words in both acts have the same meaning and that "not less than 21 days" only means that 21 clear days must have elapsed since the attachment for it to be available as an act of insolvency. Once these days have elapsed, the act of insolvency is complete and no petition can be founded upon it after the expiration of three months from the completion of the period of 21 days. To hold otherwise would, I think, present difficulties, as, if the attachment were available at any time as an act of insolvency so long as the attachment were

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subsisting, it might be argued that, under the provisions of section 51 (a), the insolvency, and therefore the title of the Official Assignee, related back to the expiration of 21 days from the date of the attachment, which would present manifest difficulties. In the course of the argument, we were referred to an order of adjudication passed by me in No. 84 of 1922 on the 27th April, 1922. It was said that in this case the argument now addressed to us on behalf of the appellant prevailed and that an adjudication order was made on an attachment effected on the 17th November, 1921, and still subsisting on the 27th April, 1922, that is to say, after the lapse of more than three months from the expiry of 21 days from the date of the attachment. A reference to the order of adjudication certainly supports this, but no judgment was delivered and I do not know if any other facts were before me, as I have not the petition upon which the order of adjudication was made. If the facts are as appearing in the order, then I think the order was incorrect.

In the result, I think that Mr. Justice Buckland rightly dismissed the petition for adjudication and this appeal must be dismissed with costs.

B. B. GHOSE J. I agree. The appellant, a creditor of the respondent, presented an insolvency petition against his debtor on the 28th of April, 1925. The act of insolvency alleged, which only we need consider, was the attachment of the debtor's immovable property on the 20th February, 1924, which attachment was subsisting at the date of the petition. Under section 12 (1), clause (c), of the Presidency Towns Insolvency Act, a creditor is not entitled to present an insolvency petition, unless the act of insolvency has occurred within three months before the presentation of the petition. Buckland J. has held that the act of insolvency occurred prior to that period and has, therefore, dismissed the petition. Reference was made to the case of *In re Beeston* (1) in which it was held, on a construction of section 1 of

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the English Bankruptcy Act, 1890, that, after the lapse of twenty-one days from the seizure of the debtor's goods by the Sheriff, his subsequent continuing in possession under the same seizure did not constitute a further or continuing act of bankruptcy. It is contended, on behalf of the appellant, that that case has no application, having regard to the difference in the words used in the Indian Act, while it is contended, on the other hand, that the difference is not material. As a rule, I feel considerable hesitation in following an English case construing an English statute, as authority for the construction of an Indian statute, even where the difference in the language of the two statutes is slight. I think an Act should be construed with reference to the words used in the Act itself. It will, however, be useful, in construing the Indian Act, to bear in mind the observations of Lindley M. R. in the case cited, which are of general application, that "acts of bankruptcy have to be "regarded critically and carefully" and "that there "is no such thing as an act of bankruptcy except that "which the statute declares to be one." Under section 9, clause (e), of the Presidency Towns Insolvency Act, a debtor commits an act of insolvency, "if any of his property has been sold or attached for "a period of not less than twenty-one days in execution "of the decree of any court for the payment of "money." The contention of the appellant is that the words "for a period of not less than twenty-one days" import that, if the attachment subsists for more than twenty-one days, the act of insolvency continues each day beyond that period so long as the attachment remains in force. I am unable to accept that contention. It seems to me that the act of insolvency is complete if the attachment subsists for the requisite period, *i.e.*, 21 clear days, and it is not a continuing act during the subsequent period of attachment, which may terminate by a sale of the property. The creditor has two starting points for presenting his petition, either when the period of attachment provided in this section is complete or when the property is sold. If

it was intended that the continuance of attachment would be a continuing act of insolvency, apt words might have been used to convey that meaning. A continuing act of insolvency is not unfamiliar to the Code, *e.g.*, the acts referred to in section 9 (*d*), where the language used clearly expresses that intention. In my opinion, therefore, the creditor was not entitled to present his insolvency petition when it was presented under section 12 (*1*), (*c*), of the Act and this appeal must be dismissed with costs.

*Appeal dismissed.*

Attorneys for appellant: *Chatterjee & Co.*

Attorneys for respondent: *N. C. Gupta & Co.*

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