APPELLATE CIVIL.

Before Mukerji and Guha JJ.

OFFICIAL TRUSTEE OF BENGAL

v.

TULSHICHARAN PAL.*

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Dec. 13, 17.

Insolvency—Landlord if entitled to claim priority in respect of rent accrued after petition for adjudication was filed—Whether such rent is provable debt—"Expenses of administration or otherwise"—Provincial Insolvency Act (V of 1920), ss. 34 (2), 61 (3).

On 26th August, 1925, the debtor, the sole proprietor of a firm, applied for being adjudged an insolvent under the Provincial Insolvency Act, mentioning in his schedule the appellant as a creditor to the extent of Rs. 900 for three months' rent accrued. An *interim* receiver was appointed on 28th August, 1925, more or less for the purpose of doing certain priliminary investigations and was not directed to take possession till 9th July, 1927. The order of adjudication was passed on 17th August, 1926. The landlord appellant repeatedly brought to the notice of the Court that rent was accumulating, month by month, at the rate of Rs. 300 and prayed for an order on the receiver to pay off the rent and to vacate the premises as soon as possible. On 3rd September, 1927, the Court ordered the receiver to give notice to the landlord that the premises would be vacated by the end of that month and that the receiver should no longer be held responsible for the rent. It appeared that the property of the debtor for purposes of administration and distribution was kept in the premises. A sum of Rs. 17,000 having been realized from the sale of the insolvent's properties, the landlord claimed priority of payment, in respect of his rents due amounting to Rs. 7,800 which the Court refused, holding that the claim ranked *pari passu* with those of other creditors. On appeal by the landlord, whose interest had vested in the Official Trustee of Bengal,

held that the rent for the period after the order of adjudication was not a provable debt within the meaning of section 34, sub-section (2) of the Provincial Insolvency Act, 1920.

Held, also, that as the premises were occupied to keep property for purposes of administration and distribution, such rent should be regarded as "expenses of administration or otherwise" within the meaning of section 61, sub-section (3) of the Act, and entitled to priority.

APPEAL by landlord creditor.

The facts sufficiently appear in the judgment.

Mr. Gunadacharan Sen (with him *Mr. Radhikaranjan Guha*) for the appellant. Such a claim cannot rank with all other creditors' claims for dividend,

*Appeal from Original Order, No. 294 of 1928, against the order of E. Milsom, Additional District Judge of Howrah, dated May 23, 1928.

inasmuch as the shop and the godowns were occupied in spite of repeated applications by the landlord. Under the Presidency Towns Insolvency Act, as well as under the English bankruptcy laws, the landlord has a preferential claim. The same principle applies here too, though there may not be any analogous provision in the Provincial Insolvency Act. Furthermore, the use and occupation of the premises during the proceedings as after the order of adjudication must be reckoned as a part of the expenses incurred for the administration of the estate. Sub-section (3) of section 61 of the Provincial Insolvency Act makes provision for such expenses.

[MUKERJI J. Can the occupation by the receiver be said to be a continuation of the old tenancy?]

No, My Lord. The old tenancy comes to an end and the receiver becomes a new tenant. A trustee in bankruptcy is a new tenant: *In re Flack. Ex parte Berry* (1). The same principle or dictum applies to a receiver in insolvency proceedings. Hence the old tenancy was at an end.

[GUHA J. You contend that this claim is an expense for administration?]

Yes, My Lord. Hence the landlord is entitled to a payment in full of the rent in priority to all other claims.

Mr. Haradhan Chatterji, for respondent No. 2. The absence of an analogous provision to section 50 of the Presidency Towns Insolvency Act shows that the landlord cannot claim any such priority. Furthermore, the receiver could not take possession till the 25th October, 1926, as the goods in the godowns and the shop were under an order of attachment in execution of a decree in favour of a third party.

Mr. Sitangshubhushan Basu, for respondent No. 43. The landlord can have no preferential claim in such a case. Under the Provincial Insolvency Act, he stands on no better footing and his claim is to rank *pari passu* with those of other creditors. Even under

(1) [1900] 2 Q. B. 32.

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the English Bankruptcy Act no such preference has been given to the landlord. Under the English law, he has only a right of distress and that for a limited period of six months only. See section 35 (*1*) of English Bankruptcy Act, 1914, and the observations of Jessel M. R. in *Thomas* v. *Patent Lionite Company* (1). The landlord, though he made various petitions to the Court, can claim no preference whatsoever, inasmuch as it was a continuation of the old tenancy and the rent cannot be regarded as expenses for administration within the meaning of section 61, sub-section 3 of the Provincial Insolvency Act.

Mr. Mahendrakumar Ghosh for *Mr. Sureshchandra Talukdar*, for Deputy Registrar.

Mr. Radhikaranjan Guha, in reply.

Cur. adv. vult.

MUKERJI AND GUHA JJ. On the 26th August, 1925, Tulshicharan Pal, alleging that he was the sole proprietor of the firm of Akhilchandra Pal & Co., carrying on business in Chandney Chauk, Calcutta, applied that the said firm might be adjudged insolvent. In the schedule to the petition, one of the creditors, being creditor No. 17, was said to be The Official Trustee of Bengal for the estate of Maniklal Sil, and Rs. 900 was said to be due to him for rent of the shop and godowns occupied by the firm for 3 months up to July, 1925, at the rate of Rs. 300 a month. An *interim* receiver was appointed on the 28th August, 1925. On the 9th December, 1925, the Official Trustee put in a petition in which he, amongst other things, brought to the Court's notice that Rs. 900 was due to him for May to July, 1925, and that since the appointment of the *interim* receiver, rent at the rate of Rs. 300 per month was accumulating and that for August to November, 1925, Rs. 1,200 had fallen due, which he asked might be paid to him; and he further asked that the premises might be vacated unless the court thought it necessary to retain possession of them.

(1) (1881) 17 Ch. D. 250, 257.

On the 16th April, 1926, another petition was put in by the Official Trustee, in which it was pointed out that, up to March, 1926, Rs. 2,400 had become due to him and more or less similar prayers were made as in the previous petition. On the 9th July, 1926, the Court made an order in these terms: "Creditor "No. 17 must wait, till the order of adjudication is "passed, for an order in regard to the rent of the shop "in Dharmatala Street and godowns in Chandney "Chauk." On the 17th August, 1926, the adjudication order was passed and the *interim* receiver was appointed receiver after adjudication. On the 12th March, 1927, the Official Trustee again applied that his dues might be paid off and also prayed that if the receiver failed to do so, permission might be granted to him to sue the receiver. On the 16th June, 1927, there was a change in the personnel of the receiver. On the 3rd September, 1927, the court ordered notice to be given to the Official Trustee that the premises would be vacated by the end of the month and the receiver should no longer be held responsible for the rent. A sum of Rs. 17,000 appears to have been realised from the sale of the insolvents' properties, and upon that the Official Trustee applied that his dues, amounting to Rs. 7,800 might be paid to him first. The Court refused the prayer with the following order:—

"The rent claimed is mainly for continuation of the "tenancy by the receiver and I cannot see how it can "be described as expenditure for administration of the "estate. In my opinion, this claim ranks along with "all other creditors' claims for dividend and will be "dealt with accordingly by the receiver."

This is the order from which the Official Trustee has appealed.

Arguments advanced on the strength of cases decided under the special provisions of the English Bankruptcy Laws or Preferential payments in Bankruptcy Act or arguments derived from the fact of the presence of section 50 in the Presidency Towns

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Insolvency Act or of the absence of an analogous provision in the Provincial Insolvency Act are of no assistance. The provisions of the last mentioned Act itself, if examined, throw a good deal of light on the matter.

In this case, the *interim* receiver appointed by the Court was not directed to take possession as he might have been under section 20. The proceedings show that his appointment was more or less for the purpose of doing certain preliminary investigations. On the 17th August, 1926, when the order of adjudication was made and the *interim* receiver was ordered to continue as receiver, the insolvents' property vested in him under section 28 (*2*) and from that date the receiver was in possession in the eye of law, whether he actually exercised any act of possession or not.

Now, the scheme of the Provincial Insolvency Act is to vest the insolvent's property in the court or the receiver upon the order of adjudication being made, and to make it divisible amongst the creditors [section 28 (*1*)]. The creditors are to tender proof of their respective debts provable under the Act, on which a schedule is to be framed, which, however, may be amended subsequently (section 33). Section 34 is an important section. It states what debts are provable under the Act. Excluding those which come under sub-section (*1*) of that section, sub-section (*2*) says that "all debts and liabilities, present or future, "certain or contingent, to which the debtor is subject "when he is adjudged an insolvent or to which he may "become subject before his discharge by reason of any "obligation incurred before the date of such "adjudication, shall be deemed to be debts provable "under the Act." The debt to be provable, therefore, must accrue before adjudication, but if it accrues after adjudication and before discharge, it is provable only if the obligation giving rise to the debt was incurred before adjudication. In the present case, there was no such antecedent obligation which accrued for the liability to pay rent for the period after the

adjudication. Debt in respect of such rent is not a provable debt.

On the other hand, the receiver, when the order of adjudication was made, was vested with all rights in the insolvent's property. The several petitions of the Official Trustee asked the Court to order the receiver to vacate the premises, as otherwise Rs. 300 was accruing due every month, and such a prayer was made even before the order of adjudication was passed. Notwithstanding all this and with full knowledge that a liability to pay Rs. 300 a month was being incurred for the use and occupation of the premises, the possession of the premises was retained by the receiver. Had this not been so, the landlord would have been entitled to only such rent from the receiver as was fair and equitable. The premises were occupied to keep the property for the purpose of administration and distribution. It is difficult to see why the rent that accrued should not be regarded as "expenses of administration or otherwise" within the meaning of section 61, sub-section (*3*). It is said that, for a part of the period, the goods in the shop were under attachment in execution of a decree in favour of a third party. We do not see how that makes a difference on the question of the receiver's liability.

The result is that, in our opinion, the view taken by the court below is wrong. If the court had only carefully considered the legal position and passed prompt and proper orders on the Official Trustee's petition of the 9th August, 1925, or the 16th April, 1926, or even on the 17th August, 1926, when the order for adjudication was made, a large sum of money would probably have been available for distribution amongst the other creditors.

The appeal must be allowed. The order of the court below is set aside and it is ordered that the amount of rent due to the appellant for the period from the 17th August, 1926, to the 30th September, 1927, will be treated as "expenses of administration "or otherwise" and will be given priority, while the

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rent due to him from the 1st May, 1925, to the 16th August, 1926, will rank as a debt provable under the law and in respect of which the appellant will rank *pari passu* with the other creditors, who may have proved their debts.

The appellant will be entitled to his costs in this appeal. Hearing fee, 5 gold mohurs from the insolvent's estate.

Appeal allowed.

R. K. C.