

SRI RAJAH
SINHADRI
RAJU
v.
SECRETARY
OF STATE.
—
SANKARAN
NAIR, J.

entitles the Government to apply Act VII of 1865. In this case it is true the river is found to belong to Government and under its control. The Government may therefore possibly regulate the supply of water without prejudice to the respondents, by constructing sluices, etc. But as the right to the supply of water without liability to pay any charge existed already, it is not dependent on the work constructed by Government and no cess under Act VII of 1865 may be levied. The respondent's right to the water has been declared by a judicial decision. No cess is therefore leviable. He cannot get anything more.
S.V.

APPELLATE CIVIL.

Before Mr. Justice Oldfield and Mr. Justice Tyabji.

1914.
October 23.

TRASI DEVA RAO *alias* ANANTHAYA (CREDITOR), APPELLANT,

v.

PANDIT PARAMESHWARAYA AND ANOTHER (PETITIONER AND RESPONDENT), RESPONDENTS.*

Insolvency, proceedings in—Application to a wrong Court—Limitation Act (IX of 1908), sec. 14, inapplicability of, to insolvency proceedings—Appeal, notice of, only to interested parties.

Section 14 of the Limitation Act does not apply to proceedings under the Provincial Insolvency Act. Hence an application filed in a wrong Court to declare a debtor insolvent and re-presented to a right Court can be said to be presented only on the date of its re-presentation; and if on such date of its re-presentation the application is not maintainable for any reason such as that the act of fraudulent preference, as in this case, having occurred more than three months before the date of re-presentation it is liable to be rejected.

In an appeal by a creditor in insolvency proceedings it is sufficient if notice is given of the appeal only to the parties directly affected by the order of the lower Court, and not to all creditors who may have any remote or possible interest in the result of the appeal.

APPEAL against the order of V. VENUGOPAL CHETTI, the District Judge of South Canara, in Insolvency Petition No. 3 of 1912.

* Civil Miscellaneous Appeal No. 819 of 1918.

One of the creditors of an alleged insolvent filed a petition on 26th September 1912 in the Subordinate Judge's Court of Mangalore to declare the debtor an insolvent on the ground that he committed an act of insolvency in that he fraudulently preferred one of his creditors by creating a mortgage in his favour on 31st July 1912, thus leaving the unsecured creditors without sufficient means of realizing their debts. The petition was returned by the Subordinate Judge on 23rd December 1912 for presentation to the District Court on the ground that the liabilities exceeded the limit of his jurisdiction, namely, Rs. 5,000. After re-presentation to the District Court the mortgagee took objection to the petition, in his written statement to the effect that his mortgage was not a fraudulent preference and that as the petition was filed in the District Court more than three months after the alleged act of insolvency it ought not to be entertained according to section 6, clause 4 (c) of the Provincial Insolvency Act. The District Judge holding that the period of three months did not apply to this petition on the ground that no prayer was made to declare the mortgage fraudulent, adjudged the debtor an insolvent. The District Judge refrained from deciding whether there was a fraudulent preference in favour of the mortgagee. Against the order of adjudication the mortgagee preferred this appeal making the insolvent and the petitioning creditor alone respondents to the Appeal.

B. Sitarama Rao for the appellant.

H. Balakrishna Rao for the respondent.

JUDGMENT.—A preliminary objection has been taken by the respondent that the hearing cannot proceed, because no notice of the appeal has been given to the creditors, other than himself. Section 46 of the Provincial Insolvency Act specifies the class of persons entitled to appeal. But no provision specifies those entitled to be made, or whom the appellant is obliged to make respondents; and we can obtain no indirect guidance on the point by inference from other parts of the Act. For it is not possible to hold that all other creditors of the insolvent, whether named or not named in the petition and whether they have appeared at the adjudication proceedings or not, are necessarily parties, to whom general or special notice of the Appeal should issue. We decide to follow the English procedure, stated in the English Order LVIII, rule 2 (1)—*vide also In re*

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—
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A Debtor(1) and to hold that only parties directly affected by the appeal are entitled to notice. It has not been shown that any special circumstances exist, in consequence of which other creditors than those already on the record can be supposed to be so affected. We therefore disallow the preliminary objection.

On the merits the learned District Judge was wrong in holding, as we understand him to have done, that the date of presentation of the petition was the date on which it was erroneously filed in the Subordinate Court before it was filed in the District Court. He could do so only with reference to section 14 of the Limitation Act; and it has been decided by this Court in *Duraiswami Iyengar v. Meenakshi Sundara Iyer*(2) that the Limitation Act is not applicable to proceedings under the Act. As the petition can be treated as having been presented on the date of its presentation in the District Court, it has not been presented in conformity with section 6 of the Provincial Insolvency Act within three months of the act of Insolvency alleged in it. It is therefore liable to dismissal. The Appeal is accordingly allowed, the petition being dismissed with costs as between the appellant and the first respondent in both Courts. The second respondent, the insolvent, will bear his own costs throughout.

N.R.

(1) (1901) 2 K.B., 354.

(2) (1914) 16 M.L.T., 246.

[NOTE.—Order LVIII, rule 2 of the English Supreme Court Rules of Practice:—“The notice of appeal shall be served upon all parties directly affected by the appeal, and it shall not be necessary to serve parties not so affected; but the Court of Appeal may direct notice of the appeal to be served on all or any parties to the action or other proceeding, or upon any person not a party, and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as may be just, and may give such judgment and make such order as might have been given or made if the persons served with such notice had been originally parties.”]
