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District Munsif has refused to take evidence merely because he thinks that certain facts are probable, we think that this is certainly a material irregularity in the exercise of his jurisdiction. There are allegations in the respondent's affidavit to the effect that he was fraudulently kept out of knowledge of the proceedings in Court, and the question of whether substituted service was duly effected has not been tried by the District Munsif. We must, therefore, set aside his order and remand the petition to him for fresh disposal after admitting any evidence on this point which may be adduced and in the light of the above remarks.

Costs of this petition will abide the result.

N.R.

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## APPELLATE CIVIL.

*Before Mr. Justice Devadoss and Mr. Justice Jackson.*

MACHANJEERI AHMED (DEPENDANT), PETITIONER,

v.

K. GOVINDA PRABHU (PLAINTIFF), RESPONDENT.\*

*Provincial Insolvency Act (V of 1920), ss. 78 and 28 (2)—Adjudication, not annulled—Suit by a creditor against insolvent in a Civil Court—Leave of insolvency Court obtained prior to suit—Limitation—Computation of time—Time during which insolvency proceedings are pending, whether can be deducted.*

In computing the period of limitation for a suit or proceeding, the benefit of section 78 of the Provincial Insolvency Act (V of 1920), can be invoked by a party, who institutes the suit or proceeding in an ordinary Civil Court

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\* Civil Revision Petition No. 843 of 1927.

against an insolvent, only where the adjudication has been annulled.

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Where, therefore, a creditor, having obtained the leave of the Insolvency Court, sued the insolvent in an ordinary Civil Court to recover a debt, the adjudication being in force, the former was not entitled, in computing the period of limitation for the suit, to exclude the time during which the insolvency proceedings were pending.

PETITION under section 25 of Act IX of 1887 praying the High Court to revise the decree of the Court of Subordinate Judge of South Malabar, in Small Cause Suit No. 732 of 1926.

The respondent sued, in the Sub-Court of South Malabar, the appellant, who had been adjudicated insolvent, to recover a sum of money due on account of dealings between them from 16th November 1922 to 16th August 1923. The order of adjudication as insolvent was made by the District Munsif on 22nd February 1924. The insolvent applied for his discharge which was refused, but no order of annulment was passed. The respondent applied to the District Munsif's Court for leave to bring this suit and leave was granted on 22nd September 1926, and the present suit was instituted on 10th January 1927. The appellant pleaded the bar of limitation. The lower Court held that the period between the date of the adjudication and the date when leave to sue was granted, should be deducted, that the suit was not barred by limitation, and decreed the suit in favour of the plaintiff. The defendant preferred this revision petition.

*K. P. Ramakrishna Ayyar* for petitioner.—During the insolvency of a debtor, if a creditor wants to sue, he cannot have exemption of time, by applying for leave of Court to sue. Section 78 of the Provincial Insolvency Act, 1920, does not apply to suits during the pendency of insolvency proceedings, though there may be no limitation after adjudication for claims made in insolvency proceedings, if such claims were not barred at the

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time of application for insolvency: see *Ramasami Pillai v. Govindasami Naicker*(1), *Sidhraj Bhojraj v. Alli Haji*(2), *Benson, In re, Bower v. Chetwynd*(3). Insolvency proceedings do not amount to an injunction or stay of proceedings. After adjudication and before annulment, if a creditor sues with leave of Court, he cannot have exemption under section 15 of the Limitation Act.

*K. Kuttikrishna Menon* for respondent.—Insolvency proceedings save limitation. Adjudication order is an injunction. Section 78 of the Provincial Insolvency Act, 1920, shows that limitation ceases to run from the date of the order of adjudication. The creditor cannot sue after the order of adjudication. Order of adjudication stays suits by creditors against the insolvent: See *Mul Chand v. Rajdhar*(4), *Shanmugam v. Moidin*(5).

The JUDGMENT of the Court was delivered by

DEVADOSS, J. DEVADOSS, J.—This is an application to revise the decree of the Subordinate Judge in Small Cause Suit No. 732 of 1926. The contention for the petitioner is that the suit is barred by limitation and that section 78 of the Provincial Insolvency Act does not apply to this case. The Subordinate Judge held that the suit was not barred inasmuch as the insolvency proceedings were pending at the time of the suit. The question is whether a person, who brings a suit against an insolvent during the pendency of the insolvency proceedings, is entitled to the benefit of section 78. Section 78 says “Where an order of adjudication has been annulled under this Act, in computing the period of limitation prescribed for any suit or application for the execution of a decree (other than a suit or application in respect of which the leave of the Court was obtained under sub-section (2) of section 28), which might have been brought or made but for the making of an order of adjudication under this Act, the period from the date of the order of adjudication to

(1) (1919) 1 L.R., 42 Mad., 319.

(2) (1923) 1 L.R., 47 Bom., 244.

(3) [1914] 2 Ch., 68.

(4), (1925) 23 All. L.J., 975.

(5) (1885) 1 L.R., 8 Mad., 229 (233).

the date of the order of annulment shall be excluded.”

The benefit of section 78 can only be invoked by a party who wants to proceed against the insolvent after the adjudication has been annulled. It does not say anything about proceedings during the pendency of the insolvency proceedings. Section 28 (2) of the Act says “No creditor to whom the insolvent is indebted in respect of any debt provable under the Act shall during the pendency of the insolvency proceedings have any remedy against the property of the insolvent in respect of the debt or commence any suit or other legal proceedings, except with the leave of the Court and on such terms as the Court may impose”. When a debtor is adjudicated insolvent, the creditor is not entitled to proceed against him except with the leave of the Court. This does not entitle the plaintiff to come years after the order of adjudication is made and file a suit against the insolvent in the ordinary Court and claim the benefit of section 78. So long as the insolvency proceedings are pending the period of limitation is suspended, provided the claim was not barred on the day of adjudication, and if the order of adjudication is annulled the right to proceed against the insolvent would revive and the period during which the insolvency proceedings were pending would be excluded if the person wishes to proceed against the insolvent or his property. The case *Benson, In re, Bower v. Ohetwynd*(1), is a clear authority for the position that a person who wants to sue in the ordinary Courts for relief against an insolvent cannot claim the benefit of section 78. As observed by CHANNELL, J.,

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“a debt does not become barred by lapse of time if it was not so barred at the commencement of the bankruptcy, and

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of this there can be no doubt, but this is only in the bankruptcy.”

This decision was followed in *Ramaswami Pillai v. Govindasami Naicker*(1). The same view was held in *Sidhraj Bhojraj v. Alli Haji*(2).

We hold that the plaintiff is not entitled to exclude the time during which insolvency proceedings were pending because they have not yet been annulled.

We allow the Civil Revision Petition with costs and at the same time allow the respondent to withdraw the suit with liberty to bring a fresh suit if so advised.

K.R.

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## APPELLATE CRIMINAL.

*Before Mr. Justice Phillips and Mr. Justice  
Madhavan Nair.*

MARIDU GOPAYYA (PETITIONER).\*

1927,  
November  
29.

*Local Boards Act (XIV of 1920) (Madras), sec. 221—A person erecting a pandal without obtaining a licence from a Union Board—Penalty imposed—If recoverable under sec. 221.*

Where a person erected a pandal without applying for or obtaining a licence from the Union Board, and the Board agreed to license the pandal on payment of the usual fee, the Board cannot move a Magistrate under section 221 of the Local Boards Act for the recovery of the same, as it could not be said to be a licence fee within the meaning of the section.

*Quare* : Whether in a proper case under section 221 a defaulting party cannot by way of defence plead that no amount was due from him as he had not erected a pandal ?

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(1) (1919) I.L.R., 42 Mad., 319. (2) (1923) I.L.R., 47 Bom., 214.

\* Case referred No. 62 of 1927.