

APPELLATE CIVIL.

Before Mr. Justice Ramesam and Mr. Justice Jackson.

1928,
February 7.

DINAVAZHI VENKATA HANUMANTHA RAO
(SECOND PETITIONER), APPELLANT,

v.

YERUGALAPATI GANGAYYA AND OTHERS (RESPONDENTS),
RESPONDENTS.*

Provincial Insolvency Act (V of 1920), sec. 16—Petition by a creditor to adjudicate debtor an insolvent—Petitioner, refusing to proceed with the petition—Substitution of another creditor to continue the petition in the place of original petitioner—Debt due to substituted petitioner, not barred on the date of original petition, but barred on the date of substitution—Competency of latter creditor to continue original petition.

Where a creditor applied to have his debtor adjudicated an insolvent but would not proceed with his petition, another creditor, whose debt was not barred by limitation on the date of the original petition, can be substituted as petitioner, under section 16 of the Provincial Insolvency Act (1920), and be allowed to continue the petition, even though his debt might be barred by limitation on the date of the substitution, provided he was otherwise qualified to be a petitioning creditor under the Act.

APPEAL against the order of the District Court of Kistna in I.P. No. 19 of 1924.

The material facts appear from the Judgment.

N. Rama Rao for appellant.

P. Satyanarayana and *A. Lakshmayya* for respondents.

The JUDGMENT of the Court was delivered by

RAMESAM, J.

RAMESAM, J.—The facts of the case are as follows:—A creditor filed a petition for adjudicating the respondents as insolvents on 28th April 1924. Notices were issued on the petitioners and one D. Hanumantha Rao,

* Appeal against Order No. 290 of 1926.

the appellant was entered in the list of creditors in August 1924. On 5th September 1924 it was found that the original petitioner would not proceed with his case. The pleader said to the Court that he had no instructions. On that day an order was made allowing D. Hanumantha Rao to prosecute the petition (vide B. Diary). A later order shows that this order on 5th September 1924 was regarded as an order substituting Hanumantha Rao for the original petitioner within the meaning of section 16 of the Act (vide order, dated 20th April 1925 in I.A. No. 337 of 1925). Later on the objection was taken that the appellant's debt was barred by August 24th or September 24th and as his debt was not subsisting, he cannot prosecute the petition. The District Judge allowed the objection. Hence the appeal.

VENKATA
HANUMANTHA
RAO
v.
GANGAYYA.
RAMESAN, J.

The only question before us is what is meant by the words "any other creditor to whom the debtor may be indebted in the amount required by this Act". Do these words mean that the debt should be actionable on the date of substitution? The words are copied from the English Acts of 1883 and 1914—section 107. But the decisions in the English courts do not help us. In *In re Maugham, Ex parte Maugham*(1) the petition was first dismissed by the Registrar and then it was reviewed by the County Court Judge on review. The learned Judge held that there was no such power of review. CAVE, J., added that the power under section 107 should not be exercised after three months. But A. L. SMITH, J., made no such observation. The remark of CAVE, J., was obiter. In *In re Maund, Ex parte Maund*(2), the original petition was filed by a creditor not entitled to file it. It was not a valid petition. It was sought to be amended

(1) [1888] 21 Q.B.D., 21.

(2) [1895] 1 Q.B., 194.

VENKATA
HANUMANTHA
BAO
v.
GANGAYYA.
RAMESAM, J.

by the addition of other petitioners. The Court held that this could not be done. This decision does not touch the present case.

The object of the section is to prevent other creditors from being injured by the action of one creditor, who, by reason of collusion or otherwise, may not diligently prosecute the petition. If it is to be regarded as a new petition, this object is frustrated and there is no purpose in having a section of the kind. If the original petition had proceeded up to adjudication or if another creditor whose debt is not barred by the date of substitution is substituted and obtained an order of adjudication, the appellant's debt which was not barred by the date of the petition could be proved. If so, we see no reason why he cannot be substituted. The words "as petitioner" in the section show that, on substitution, the petition becomes his petition with the original date and it is enough if the debt was an enforceable debt on the original date.

We allow the appeal, reverse the order of the Judge and direct the petition to be restored to file for the purpose of proceeding according to law.

The respondents will pay the appellant's costs in this appeal.

K.R.
