APPELLATE CIVIL.

Before Sir Owen Beasley, Kt., *Chief Justice.*

KATARI LAKSHMI BAI (PLAINTIFF), PETITIONER,

v.

BANDUBODE RUKMAJI RAO AND FOUR OTHERS (DEFENDANTS), RESPONDENTS.*

1934, February 21.

Provincial Insolvency Act (V of 1920), ss. 78 (2) proviso and 49—Proof of debt—"Proved"—"Provable"—Distinction between.

A debt "proved" under the Provincial Insolvency Act (V of 1920) in the proviso to section 78 (2) means a debt in respect of which a proof has been lodged and all the requirements of section 49 of the Act fulfilled.

It is not also necessary that the debt must have been admitted by the Official Receiver under the provisions of the Act.

"Provable" in the said proviso means a debt due to a creditor in respect of which he has not put in a claim in the shape of lodging a proof.

PETITION under section 25 of Act IX of 1887 praying the High Court to revise the order of the Court of the District Munsif of Guntūr, dated the 30th day of June 1930 and made in Small Cause Suit No. 1507 of 1929.

N. Rama Rao for petitioner.

K. Ramamurthy for *Konda Kotayya* and *B. T. M. Raghavachari* for *V. Pattabhirama Sastri* for respondents.

JUDGMENT.

The question raised in this civil revision petition is whether the words used in the proviso to section 78 (2) of the Provincial Insolvency Act

* Civil Revision Petition No. 69 of 1931.

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namely "debt provable but not proved under this Act," are to be read as meaning that the debt must have been admitted by the Official Receiver under the provisions of the Act, that is to say, satisfactorily established before him or whether "proved" means that a proof of the debt has been lodged within the provisions of section 49. The question arose on a plea of limitation. The petitioner here, a woman, was the payee of a promissory note alleged to have been executed in her favour by a person who subsequently became insolvent. The promissory note was for Rs. 100 and after the execution of the promissory note the drawer was adjudicated insolvent. The adjudication was on 8th December 1923; and it is alleged that the promissory note was executed about the middle of 1922. The adjudication was annulled on the 8th March 1929, the Official Receiver not having passed any orders with regard to the proof lodged by the petitioner, either admitting it or rejecting it. The suit on the promissory note was filed in 1929. That was clearly time-barred unless it could be saved from the bar of limitation. It was claimed by the petitioner that it was not barred because of the adjudication of the insolvent, as the time between the order of adjudication and the date of the annulment should be excluded. It is here that the proviso to which I have already referred becomes important, because in it are excepted from that sub-section debts which are merely provable but which have not been proved under the Act, that is to say, if a debt has been "proved" under the Act that debt gets the benefit of sub-section 2 to section 78 and the exclusion of the time therein specified. The learned District

Munsif held against the petitioner's contention stating that

"in the absence of anything definitely to show that the claim was admitted I do not think that it can be contended that the debt has been proved within the meaning of section 78. No doubt section 49 prescribes the mode of proof but under the rules the Receiver has to either admit the debt or reject it. If it is rejected the debt could not be deemed to have been proved. So unless the plaintiff shows that the debt has been admitted by the Official Reciver and included in the schedule of liabilities it cannot be taken that the debt has been proved."

On behalf of the petitioner it is argued here that a debt "proved" under the Act means a debt in respect of which a proof has been lodged under section 49 (1) and (2) and that as soon as a proof has been lodged the debt has been "proved". The contention therefore is that the word "proved" in the Insolvency Act has a different meaning to be given to it to that in the Indian Evidence Act. Turning to section 49 of the Provincial Insolvency Act the marginal note is "Mode of proof" and sub-section (1) says :

"A debt may be proved under this Act by delivering or sending by post in a registered letter to the Court an affidavit verifying the debt";

and sub-section (2) says :

"The affidavit shall contain or refer to a statement of account showing the particulars of the debt and shall specify the vouchers (if any) by which the same can be substantiated. The Court may at any time call for the production of the vouchers."

In this case the petitioner filed an affidavit as required by sub-section (1) in the approved form verifying the debt and in the schedule to the affidavit set out the amount of the debt and that it was on a promissory note further stating that the promissory note was missing but would be produced later. The date of the promissory note

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was not given. The Official Receiver, as he was entitled to do under sub-section (2), called for the production of the promissory note. The question arises here whether a person who has lodged a proof and fulfilled all the requirements of section 49 has "proved" his debt under the Act. Some assistance upon this point is to be got from the English Bankruptcy Act and the rules which are set out in the second schedule of that Act. Rule 23 deals with the admission or rejection of proofs and the Trustee has to examine every proof and may admit or reject it in whole or in part or require further evidence in support of it. Rules 24, 25 and 28 also speak of proofs. What therefore the English Bankruptcy Act is dealing with is a proof, that is to say, the formal claim lodged by the creditor in the insolvency. The position is similar under the Provincial Insolvency Act; and the Official Receiver after proof has been lodged has either to admit it or reject it and can, if he requires, ask for further evidence in support of the proof. Has a person who has lodged a proof "proved" within the meaning of the Insolvency Act? In my opinion, he clearly has, and that is the meaning to be given to the word "proved" in the proviso to sub-section (2) of section 78 of the Act. "Provable", in my view, means a debt due to a creditor in respect of which he has not put in a claim in the shape of lodging a proof. I am supported in this opinion by the fact that the proviso must clearly have in view merely a claim by the creditor and not a claim which has been substantiated. No question of limitation could arise—and this is admitted on behalf of the respondents—in respect of a proof which has been

admitted by the Official Receiver. The proviso, therefore, must apply to some other kind of debt and, in my opinion, clearly applies to a debt of which proof has been lodged within the provisions of section 49. The further question is whether the requirements of that section have been satisfied here. For the respondents it is argued that the affidavit did not give the required details and that therefore the requirements of that section were not complied with. In my view, that contention is wrong and sufficient information was given in the affidavit and the schedule thereto to comply with the requirements of that section. No argument can, in my opinion, be based upon the words in section 49 (2), namely :

"The Court may at any time call for the production of the vouchers."

That, in my view, only deals with the admissibility or the rejection of the proof. It is power given to the Official Receiver to call for evidence in support of the proof. For these reasons, in my view, the learned District Munsif was wrong in holding that the suit was barred by limitation. This civil revision petition must, therefore, be allowed with costs here and in the District Munsif's Court and the suit remanded to the District Munsif's Court for disposal according to law. The seventh respondent here raises the point that he is entitled to his costs on the ground that he has been brought here unnecessarily. In my view, that is so. He will, therefore, be entitled to his costs from the petitioner.

K.W.R.