APPELLATE CIVIL.

Before Sir Owen Beasley, Kt., Chief Justice, and Mr. Justice King.

1934, September 17.

K. P. RAMAN MENON (PLAINTIFF), APPELLANT,

v.

THE MALABAR FOREST AND RUBBER COMPANY, LIMITED, IN LIQUIDATION NOW REPRESENTED BY H. H. WADIA, ESQ., AND ANOTHER (DEFENDANTS), RESPONDENTS.*

Lease—Forfeiture and re-entry—Insolvency of lessee—Forfeiture and re-entry on—Clause providing for—Construction of—Lessee benamidar for another—Insolvency of benamidar lessee or of real lessee for whom he is benamidar intended, in case of.

The material part of the forfeiture clause in a lease deed was as follows :—

"Or if the lessee becomes bankrupt the lessee's rights shall *ipso facto* cease and this shall be void and the lessor shall have the right to re-enter and take possession of the said premises as if this lease were non-existent and without the lessee being entitled to claim damages or compensation of any kind from the lessor."

The person named in the deed as lessee was only a benamidar for a registered company. On a petition presented by the managing agents of the company to whom the lessee named in the lease deed had assigned his rights under the lease the company was ordered to be compulsorily wound up. The question was whether there had been a forfeiture of the lease giving the lessor the right of re-entry.

Held that the proviso as to forfeiture and re-entry was intended to apply to the insolvency of the benamidar, that is the person named in the deed as lessee, and not to the contingency of the company going into liquidation and that there had therefore been no forfeiture of the lease giving the lessor the right of re-entry.

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* Second Appeal No. 689 of 1930.

APPEAL against the decree of the District Court of South Malabar at Calicut in Appeal No. 443 of 1928 preferred against the decree of the Court of the District Munsif of Calicut in Original Suit No. 220 of 1927.

T. R. Venkatarama Sastri for *Advocate-General* (*Sir A. Krishnaswami Ayyar*) and *N. Rajagopala Ayyangar* for appellant.

V. K. John for second respondent.

Cur. adv. vult.

JUDGMENT.

BEASLEY C.J.—The plaintiff is the appellant. His suit was dismissed in the trial Court and his appeal to the District Court was also dismissed.

The appellant by Exhibit E, a lease deed, dated 4th February 1924, leased the suit properties to one Nilkanath Narayan Khale for a term of seventy-five years. It was admitted during the trial and in the lower appellate Court and here that Khale was a benamidar for the Malabar Forest and Rubber Company, Limited. The High Court of Bombay on 8th July 1926 made an order for the compulsory winding up of that company on a petition, dated 12th May 1926, presented by Messrs. Sabnis & Co., the managing agents of the company to whom Khale had assigned his rights under the lease, and a Mr. Moos was appointed the Official Liquidator of the company and represents them here as the first respondent.

The point for consideration is whether there has been a forfeiture of the lease giving the appellant the right of re-entry as claimed by him. Both the lower Courts, upon a consideration of

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Exhibit E, have negatived the appellant's claim. The material part of the forfeiture clause in Exhibit E reads as follows :—

"Or if the lessee becomes bankrupt the lessee's rights shall *ipso facto* cease and this shall be void and the lessor shall have the right to re-enter and take possession of the said premises as if this lease were non-existent and without the lessee being entitled to claim damages or compensation of any kind from the lessor."

The appellant claims that by reason of this clause the company by going into liquidation has forfeited the lease. The appellant contends that the words "lessee becomes bankrupt" mean and are intended to mean, as regards the word "lessee", the company and, as regards the word "bankrupt", its being ordered to be wound up by the Court. It is argued that the parties to Exhibit E regarded the company as the lessee and not Khale who admittedly was merely the benamidar for the company, that the contract really was with the company and not with Khale, and that it was the company's going into liquidation and not the insolvency of Khale that was to incur the forfeiture and give the appellant the right of re-entry.

It is the admittedly *benami* character of the transaction which enables the appellant to set up the first position, namely, that the company is the lessee. If that position should be established, it is contended next that the word "bankrupt" there must be given an artificial and extended meaning which embraces the compulsory or even voluntary winding up of the company, and English decisions have been cited in support of this contention. In the Conveyancing and Law of Property

Act, 1881, in section 2 (xv) "Bankruptcy" is defined as follows :—

"Bankruptcy includes liquidation by arrangement, and any other act or proceeding in law having, under any Act for the time being in force, effects or results similar to those of bankruptcy ; and bankrupt has a meaning corresponding with that of bankruptcy."

Section 14 deals with provisos for re-entry or forfeiture and relief against forfeiture of leases but sub-section (6) of that section expressly does not extend the provision as to relief to a condition for forfeiture on the bankruptcy of the lessee. The Act therefore grants no relief where there is a condition for forfeiture on bankruptcy as defined in section 2 (xv). According to Lord HALSBURY L.C. in *Fryer* v. *Ewart*(1), "Bankruptcy" as defined in section 2 (xv) of the Conveyancing and Law of Property Act, 1881, has an artificial and extended meaning and includes the winding up of companies. In that case there was a proviso in the lease for re-entry if the lessees being a company should enter into liquidation either compulsory or voluntary and it was held that such a proviso applies to the case of a solvent company going into voluntary liquidation for the purpose of reconstruction or amalgamation only, and is "a condition for forfeiture on the bankruptcy of the lessee" within the Conveyancing and Law of Property Act, 1881, section 14 (6). On page 190, there are Lord HALSBURY'S conclusions upon this point and I set them out at length because the appellant has adopted them here in support of his argument. They are as follows :—

"The other point to my mind is equally plain. It is, speaking broadly, whether the Code concerning forfeiture

(1) [1902] A.C. 187.

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contained in section 14 of 44 and 45 Vict. c. 41 has any application at all to the forfeiture which, as I have said, was very plainly incurred by the liquidation. That depends on what interpretation is to be given to the words of sub-section 6 of the Code in question. By that sub-section it is expressly enacted that the section, which, as I have said, embraces a Code for relief against forfeiture, is not to extend to a condition of forfeiture upon the 'bankruptcy' of the lessee. Of course, but for the artificial and extended meaning given to the word 'bankruptcy' this would not be such a condition; but it seems to me, when one reads that extended meaning given to the word 'bankruptcy', I cannot doubt that liquidation by a company comes within it."

"The words in section 2 sub-section (xv) are these: 'Bankruptcy includes liquidation by arrangement' (which I think does not refer to the liquidation by a company in this sense). But then come the words, 'and any other act or proceeding in law, having, under any Act for the time being in force, effects or results similar to those of bankruptcy'. What could be more apt to describe the *cessio bonorum,* which in effect takes place, and the payment by some constituted authority of the creditors of the trading concern and the distribution of its surplus property to its members, so that, but for the purpose of winding up, it ceases to exist as a trading concern at all? This was decided in 1899 by the Court of Appeal and I think rightly decided; and, if so, we are remitted to the first point whether a forfeiture has been incurred."

Lord MACNAGHTEN on page 192 arrives at the same result. Clearly therefore the English Companies Act provides for proceedings having "effects or results similar to those of bankruptcy" and the Indian Companies Act has also the same result. In *Horsey Estate, Limited* v. *Steiger*(1) it was held that the causes of the liquidation, whether induced by insolvency or not, are wholly immaterial. This latter decision is relied upon by the appellant because from the record it is uncertain which of the reasons in the Indian

(1) (1899) 2 Q.B. 79.

Companies Act for asking for a winding up brought about the company's liquidation. It is contended, therefore, that since the word "bankruptcy" which is the one used in the forfeiture clause in Exhibit E is not an apt one to use in connection with a company, as petitions in insolvency cannot be presented against registered companies, the extended meaning given to the definition of "bankruptcy" in section 2 (xv) of the Conveyancing and Law of Property Act, 1881, by Lord HALSBURY L.C. in *Fryer* v. *Ewart* (1) must be applied to this word here and with it all the legal consequences which result therefrom by reason of that Act. There is much force in this argument presented to us, but it will not be necessary for us to express any opinion with regard to it unless we are satisfied that the lessor had in mind at the date of Exhibit E the possibility of the company going into liquidation and intended to guard himself against such a contingency. It is true that this was a *benami* lease but it does not necessarily follow from that that the proviso as to forfeiture and re-entry was not intended to apply to the insolvency of the benamidar. On the contrary, there is one good reason why it should have been intended to apply to him and that is that, in the event of his insolvency, in the absence of such a proviso, the rights of the insolvent under the lease would vest in the Official Receiver who would not be entitled to disclaim that interest without the leave of the Court and who could, if he so desired, affirm the lease and attempt to take all the benefits following from it. I do not suggest that it would not be open to the lessor to

(1) [1902] A.C. 187.

claim in the Insolvency Court that the insolvent was only the benamidar for the real lessee and that the Court would not then enquire into the matter. All this trouble, however, is avoided by a proviso for forfeiture and re-entry in the event of an insolvency It is certainly quite reasonable to suppose that such may have been the appellant's intention and, where, in a lease even admittedly *benami*, there are in the lease deed such words as there are here in the clause in question, in my view, we are not justified in giving to those words any other meaning than on the face of them they have, without some strong indication in the document to the contrary and this I am quite unable to discover. The principle governing the construction of a clause for forfeiture is that it must always be construed strictly as against the person who is trying to take advantage of it and effect should be given to it only so far as it is rendered absolutely necessary to do so by the wording of the clause; [vide *Venkataramana Bhatta* v. *Krishna Bhatta*(1) and *David Cutinha* v. *Salvadora Minazes*(2), the latter of which cases relies on the English case of *Church* v. *Brown*(3) and the observations of Lord ELDON L.C. at page 265]. Applying that principle here I am clearly of the opinion that this appeal must fail and be dismissed with costs.

KING J.—I agree.

A.S.V.

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(1) (1924) 47 M.L.J. 307. (2) (1926) 51 M.L.J. 552.
(3) (1808) 15 Ves. Jun. 258; 33 E.R. 752.