

APPELLATE CIVIL.

Before the Hon'ble Mr. A. H. L. Leach, Chief Justice,
and Mr. Justice Varadachariar.

C. MUNISWAMI NAIDU (DEBTOR-RESPONDENT), APPELLANT,

1937,
August 9.

v.

S. RANGACHARI AND ANOTHER (CREDITOR-PETITIONER AND
NIL) RESPONDENTS.*

Presidency-towns Insolvency Act (III of 1909), sec. 9—Commission of act of insolvency as defined by the Act—Condition precedent to adjudication—Agreement between creditor and debtor that failure by the latter to pay an instalment should be treated as an act of insolvency—Debtor, if estopped from pleading to the contrary—Suspension of payment of debt—Notice of—Amounts to an act of insolvency, if and when.

A debtor had agreed with his creditor to treat the failure to pay any instalment due under a mortgage as a suspension of payment within the meaning of section 9 of the Presidency-towns Insolvency Act. On default, a petition for adjudication was presented stating, *inter alia*, that the debtor had committed an act of insolvency under section 9 in that he had suspended payment as per the terms of the above agreement. On the question whether the debtor was estopped from raising any contention to the contrary,

held: (i) The law of estoppel does not operate and cannot operate to prevent the provisions of the Presidency-towns Insolvency Act having effect. (ii) It is an act of insolvency if the debtor gives notice to any of his creditors that he has suspended or that he is about to suspend payment of his debts generally; it is not enough if the notice is with respect to a particular debt. (iii) What the Court has to consider is whether an act of insolvency as defined by the Act has been committed, and in deciding the question it can only look at the provisions of the Act.

The agreement between the parties cannot be deemed to constitute the non-payment an act of insolvency.

* Original Side Appeal No. 73 of 1936.

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APPEAL from the order and judgment of WADSWORTH J., dated 5th October 1936 and passed in the exercise of the Insolvency Jurisdiction of the High Court in Application No. 293 of 1936 in Insolvency Petition No. 363 of 1936 (in the matter of C. Muniswami Naidu, an insolvent).

A. V. Viswanatha Sastri for *M. S. Srinivasa-
raghavan* for appellant.

E. R. Krishnan for first respondent.

Second respondent not represented.

LEACH C.J. The JUDGMENT of the Court was delivered by LEACH C.J.—In 1935 the appellant was indebted to one S. Rangachari in the sum of Rs. 317-12-0 (in respect of which a decree had been obtained against him) and a sum of over Rs. 2,000 due under a promissory note. In execution of the decree the creditor attached a house belonging to the appellant. The attachment continued for more than twenty-one days and this was made the basis of a petition filed in February 1936 in this Court asking that the appellant be adjudicated an insolvent. This petition was withdrawn in April of that year as the result of an arrangement made between the parties. It was agreed that the appellant should execute a mortgage in favour of Rangachari to secure his indebtedness to him and that the appellant should repay this debt in the following instalments : Rs. 400 to be paid on or before 15th July 1936 ; Rs. 500 to be paid on or before 15th December 1936 ; and the balance in two equal instalments within a period of one year from 15th December 1936. It was also agreed that in case of default in the payment of any instalment the creditor should be at liberty to take "further"

proceedings in insolvency. It was also provided in the document which was drawn up that

“ the mortgagor shall not raise any objection thereto and this act of default itself will then be treated as an act of insolvency on the part of the mortgagor as amounting to a suspension of payment within the meaning of the Act ”.

It was on these terms that the petition for adjudication was dismissed.

The appellant failed to pay the first instalment and on 15th August 1936 his creditor filed a fresh petition for adjudication. In this petition three acts of insolvency were alleged : (i) that the insolvent had suspended payment

“ as per the terms of the said deed of 17th April 1936 and had thus committed an act of insolvency under section 9 ”, (ii) that he had departed from his dwelling house with intent to delay his creditors and (iii) that he had secluded himself so as to deprive the creditors of the means of communicating with him. The learned Judge before whom the petition came ordered the adjudication of the appellant on the first ground and did not deal with the two other grounds. The learned Judge was of the opinion that, inasmuch as the appellant had agreed to treat the failure to pay an instalment as a suspension of payment within the meaning of section 9 of the Presidency-towns Insolvency Act, he was estopped from raising a contention to the contrary. With great respect, we are unable to concur in this decision.

The law of estoppel does not operate and cannot operate to prevent the provisions of the Presidency-towns Insolvency Act having effect. It is an act of insolvency if a debtor gives notice to any of his creditors that he has suspended or that he

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is about to suspend payment of his debts, but it must be noticed that he is suspending the payment of his debts generally and not that he is suspending the payment of a particular debt. The fact that the insolvent and his creditor had agreed that default in payment of an instalment under the mortgage should be treated as an act of insolvency does not make it incumbent upon the Court to regard it as an act of insolvency. What the Court has to consider is whether an act of insolvency as defined by the Act has been committed, and in deciding the question it can only look at the provisions of the Act. In our opinion, the agreement between the parties cannot be deemed to constitute the non-payment an act of insolvency. The appeal will, therefore, be allowed and the case remanded to the Insolvency Court for investigation of the two other grounds alleged in the petition. We make no order as to costs.

G.R.
