

1931

BALKISHEN
DAS
v.
BECHAN
PANDHEY.

who was to blame throughout. On two occasions he did not appear before the Sub-Registrar and he did not turn up before the District Registrar. † He also frivolously resisted the plaintiff's suit under section 77, and then although the decree was against him he did not obey that decree. The plaintiff has been knocked about from court to court but it cannot be said that he was in any way negligent. The Munsif had passed a decree in his favour and against the defendant, and although the form of it was not proper the plaintiff submitted to it, hoping that the defendant would be bound by it. In view of all the circumstances we agree with the view taken by the court below. We accordingly uphold the decree of the court below and dismiss the appeal with costs.

Before Mr. Justice Kendall and Mr. Justice Baijpai.

1931

June, 22.

GANGA NATH AND ANOTHER (APPLICANTS) v. ZALIM
SINGH AND ANOTHER (OPPOSITE PARTIES).*

Provincial Insolvency Act (V of 1920), sections 9(1)(c) and 16—Petitioning creditor withdrawing his application for adjudication—Substitution of another creditor to continue the proceedings—Not necessary that such creditor should have himself duly petitioned within three months of the act of insolvency.

In the wording of section 16 of the Provincial Insolvency Act the only condition laid down, as a requisite for the person to be substituted for the original petitioner who does not proceed with due diligence on his petition, is that such person must be a creditor to whom the debtor may be indebted in the amount required by the Act in the case of a petitioning creditor. It is not necessary that such creditor should have himself presented a petition for the adjudication within three months of the act of insolvency or that at the time of the substitution he should be entitled according to section 9(1)(c) of the Provincial Insolvency Act to present an insolvency petition.

*Second Appeal No. 7 of 1930, from an order of Rai Behari Lal, Additional District Judge of Aligarh, dated the 17th of March, 1930.

Mr. *M. L. Chaturvedi*, for the appellants.

Messrs. *Gopi Nath Kunzru* and *T. N. Agha*, for
the respondents.

1931

GANGA NATH
v.
ZALIM SINGH.

KENDALL and BAJPAI, JJ. :—This is an appeal from an order of the Additional Judge of Aligarh in an insolvency matter. The facts are briefly as follows. A petition was filed in the court of insolvency against the present appellants by a firm, Ramdayal Rupkishore, on the 26th of February, 1929. While this was pending, but more than three months after the alleged acts of insolvency, viz. on the 30th of April, 1929, another petition was put in by Zalim Singh to the effect that he had no objection to the appellants being declared insolvent. On the 19th of October, 1929, the original petitioning creditors made an application to withdraw their petition, and this was allowed by the trial court. An appeal was filed against this order by Zalim Singh, who claimed that he should have been allowed to substitute his own name for that of the original petitioning creditors and to pursue the insolvency proceedings. The question considered by the lower appellate court was whether Zalim Singh could be allowed to be substituted for the original petitioning creditors after three months had elapsed from the date of the act of insolvency. This question the court decided in favour of Zalim Singh, and consequently the debtors have appealed against that decision.

It has been argued with much ability by Mr. *Chaturvedi* that under the provisions of the Act the court has no jurisdiction to substitute the name of Zalim Singh. Under clause (c) of sub-section (1) of section 9 of the Provincial Insolvency Act a creditor "shall not be entitled to present an insolvency petition against a debtor unless the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition."

1931

GANGA NATH

v.

ZALIM SINGH.

and in the present case it is admitted not only that Zalim Singh's application to be substituted was made more than three months after the act of insolvency but that his original petition to the court on the 30th of April, 1929, in which he acquiesced in the insolvency proceedings, was also more than three months after that date. It is true, the argument proceeds, that under section 16 of the Act, where the petitioner does not proceed with due diligence on his petition "the court may substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by this Act in the case of a petitioning creditor." Under this provision the court may substitute another petitioning creditor for the original one, but only, it is argued, under the provisions of the Act, that is to say in accordance with clause (c) of sub-section (1) of section 9. In other words, unless the creditor who wishes to be substituted has presented an application within three months of the act of insolvency he cannot come into court at all, and the court has no jurisdiction to substitute him for the original petitioning creditor.

In support of this argument two English decisions have been quoted, the first of which is the case of *In re Maugham* (1). The real question for decision in that case was whether a County Court Judge could review the order of the Registrar, and the matter was decided on that issue, but one of the learned Judges remarked that a petition for bankruptcy could not be presented after more than three months had elapsed from the date of the act of insolvency and that the court had no jurisdiction to extend the time for filing such a petition beyond the statutory period of three months, though it was certainly suggested that if fraud were alleged the court "would strain its jurisdiction to the utmost". It should be remarked that in the present case the question of collusion was raised, but

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

that both the courts have found that it was not proved. This decision so far as it goes is in favour of the appellant, but a more useful one from his point of view is the case of *In re Maund* (1), in which the court held that "The court will not amend a bankruptcy petition by adding as petitioners, after three months have elapsed from the date of the act of bankruptcy upon which the petition is founded, creditors whose debts are other than those in respect of which the petition was presented", though one of the learned Judges qualified this by saying that "if within that period (three months) a debt has been made ground of the petition and it afterwards becomes desirable to add another party to the petition in respect of that debt, leave may be given to join that other party as a petitioner where it will not lead to any injustice".

On the other hand, the only two Indian decisions to which we have been referred are in favour of the respondent. In the case of *Venkata Hanumantha Rao v. Gangayya* (2) the debt of the petitioner who wished to be substituted for the original petitioner was barred by time when he was substituted, and it was held that the effect of substituting him gave him the benefit of the date of the petition of the original petitioning creditor, and so saved limitation for the barred debt. It is argued by Mr. *Chaturvedi* that this is distinguishable from the present case, but the logic appears to be exactly the same as that applied on behalf of the respondents. Under sub-section (7) of section 28 of the Provincial Insolvency Act "an order of adjudication shall relate back to, and take effect from, the date of the presentation of the petition on which it is made" and if the substituted creditor can, by assuming the date of the presentation of the original petition, save his debt from being barred under the Limitation Act, it is only logical to suppose that he

1931

GANGA NATH
v.
ZALIM SINGH

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

(2) (1928) I.L.R., 51 Mad., 594.

1931
 GANGA NATH
 v.
 ZALIM SINGH. can have the same benefit for the purpose of saving the limitation prescribed by clause (c) of sub-section (1) of section 9 of the Provincial Insolvency Act. In the other case quoted, *Sathappa Chettyar v. A. S. Chettyar Firm* (1), the point raised in this appeal has been definitely raised and decided against the appellant.

In the wording of section 16 of the Provincial Insolvency Act, moreover, the legislature have definitely laid down one condition for the substitution of a creditor and one only, viz., that his debt shall be not less than "the amount required by this Act". But the amount referred to is required not only by the Act, but by section 9 of the Act, and it would be indeed remarkable if the legislature had intended to prescribe all the conditions set forth in section 9 and yet mentioned only this one. In fact the wording of this section is definitely in favour of the respondent and against the appellant, and the two Indian decisions to which we have referred above are to the same effect. In these circumstances we do not think that it would be safe to have recourse to the view of the law that has been taken in the English courts, though the English statute does not differ in any material way from the Provincial Insolvency Act. We therefore dismiss this appeal with costs.

Before Sir Shah Muhammad Sulaiman, Acting Chief Justice
 and Mr. Justice Banerji.

1931
 June, 22.

GAURI SHANKAR PRASAD (DEFENDANT) v. SITA RAM SAH (PLAINTIFF) AND KUNWAR NAND LAL (DEFENDANT).*

Custom—Pre-emption—Muhammadan law—Sale of house site—Building sites covered by ruins or by sheds erected by lessees of the land—Whether pre-emptible.

In the matter of pre-emption the same rule which applies to houses has been applied to building sites and small parcels

* First Appeal No. 125 of 1929, from a decree of J. N. Kaul, Additional Subordinate Judge of Benares, dated the 18th of February, 1929.

(1) A.T.R., 1929 Rang., 291.