

*Before Sir Shah Muhammad Sulaiman, Chief Justice,  
and Mr. Justice Bennet*

BRIJ KISHORE AND ANOTHER (APPLICANTS) *v.* PARSHOTAM DAS AND OTHERS (OPPOSITE PARTIES)\*

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December, 23

*U. P. Encumbered Estates Act (Local Act XXV of 1934), sections 7(1)(a) and 48(2)—Creditors' insolvency petition against landlord of encumbered estate—Landlord's subsequent petition to Collector for benefit of the Act—Whether concurrent jurisdiction—Insolvency proceedings to be stayed—Provincial Insolvency Act (V of 1920), sections 3, 5(2)—Insolvency courts are "civil courts".*

Creditors petitioned for adjudication as insolvent of a debtor and prayed for the appointment of an *interim* receiver. Thereupon the debtor, who was a landlord of encumbered estate within the purview of the U. P. Encumbered Estates Act, applied to the Collector under section 4 of the Act for benefit of that Act and an order under section 6 was forthwith passed by the Collector. The question arose whether the insolvency court could proceed to appoint the *interim* receiver or whether further proceedings in that court must be stayed:

*Held*, that reading sections 7(1) (a) and 48(2) of the U. P. Encumbered Estates Act it was clear that the insolvency petition must be stayed until the disposal of the case in the court of the Special Judge and of the Collector under the Act. No doubt the petition in insolvency, having been made before the commencement of the period mentioned in section 48(1), was perfectly valid; so also was the application under section 4 made by the debtor, who had not yet been adjudicated insolvent. But the legislature could not possibly have intended that these two proceedings should go on in both courts concurrently. The correct interpretation of section 48(2) must be that the creditors were entitled to present their petition in insolvency, but that upon the subsequent application by the debtor under section 4 the proceedings in the insolvency court would be stayed.

In view of sections 3 and 5(2) of the Provincial Insolvency Act, insolvency courts are civil courts, and accordingly the provisions of section 7(1)(a) of the U. P. Encumbered Estates Act apply to those courts.

Dr. K. N. Katju and Mr. G. S. Pathak, for the applicants.

Dr. N. C. Vaish and Mr. B. Malik, for the opposite parties.

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SULAIMAN, C.J., and BENNET, J.:—This is a civil revision by two creditors under the following circumstances. On the 13th of August, 1935, these applicants made an application against six persons that they should be adjudged insolvents. On the 15th of August, 1935, an application was made for appointment of an *interim* receiver for the estate of these insolvents. On the 16th of August, 1935, the debtors made an application to the Collector under the U. P. Encumbered Estates Act, and on the same date the Collector passed an order under section 6 of that Act. The question therefore arose in the insolvency court whether an *interim* receiver should be appointed or whether the further proceedings in the insolvency court should be stayed under the amended section 7 of the Encumbered Estates Act. The insolvency court held that a stay of these proceedings should be ordered, and that order of stay has been upheld by the District Judge in appeal. No order of adjudication had been passed by the insolvency court. The creditors in revision contend that section 7 of the Encumbered Estates Act, which sets out that "all proceedings pending at the date of the said order in any civil or revenue court in the United Provinces in respect of any public or private debt to which the landlord is subject, or with which his immovable property is encumbered, except an appeal or revision against a decree or order, shall be stayed, etc.", does not relate to insolvency proceedings. The argument is that an insolvency court is not a civil or revenue court. Learned counsel argues that the Provincial Insolvency Act, Act V of 1920, confers a special jurisdiction and therefore the courts exercising that jurisdiction are not civil courts. In the Provincial Insolvency Act it is provided in section 3 that the district courts shall be the courts having jurisdiction under this Act, and in section 5(2) that the district courts shall have the same powers and shall follow the same procedure as they respectively have and follow in regard to civil suits.

In view of these provisions we are of opinion that the insolvency courts are civil courts and that the provisions of section 7(1)(a) of the U. P. Encumbered Estates Act apply to those courts.

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The next argument made for the applicants in revision was that under the provisions of section 48(2) of the Encumbered Estates Act the insolvency proceedings are an exception to the general rule laid down in section 7 and should not be stayed. The language of this sub-section is as follows: "Subject to the provisions of sub-section (1) the landlord or any creditor may present a petition that the landlord be adjudged insolvent but any amount or amounts due under any order passed by the Collector under section 27 or 28 shall for the purpose of the insolvency proceedings be deemed to be a debt or debts secured upon such of the landlord's subsisting property in land as has been reported by the Special Judge under sub-section (2) of section 19 to be liable to attachment or sale." Now there is no doubt that under the circumstances of the present case the creditors are not barred by the provisions of sub-section (1) because the creditors presented their application to the insolvency court on the 13th of August, 1935, before the application had been made under the Encumbered Estates Act on the 16th of August, 1935. They therefore made their application before the bar arose. But at the same time it must be noted that section 4 of the Encumbered Estates Act has a proviso as follows: "Provided also that no landlord who has been adjudicated insolvent and has not been discharged shall apply under this section." This proviso indicates that a landlord who has not been adjudicated insolvent may make an application under the Act. The application, therefore, by the landlord debtors on the 16th of August, 1935, was a valid application under the Encumbered Estates Act. The matter therefore resolves itself into this that applications which are perfectly valid have been made, one by the creditors under the

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Insolvency Act and the other by the landlords under the Encumbered Estates Act. The contention for the applicants is that these two proceedings should go on in both courts. It does not appear at all probable that the legislature could have intended any such result. Both proceedings are proceedings for the liquidation of the debts of these landlords, and it is difficult to see how concurrent jurisdiction could be exercised by two courts and concurrent proceedings for the same object in regard to the same debts and the liquidation of those debts out of the same property could possibly continue. It appears to us therefore that section 48(2) cannot be construed in the manner desired by the applicants in revision. The meaning which appears to us to attach to this rather difficult sub-section is that it is open to the creditors to present their application outside the period barred by sub-section (1), but when such an application has been presented the provisions of section 7 will apply and the proceedings in the insolvency court will be stayed just in the same manner as the proceedings in any other civil or revenue court. Against this view learned counsel for the applicants in revision urged that there would be no point in such a provision of law and he argued that it was not clear on such a view when the proceedings which were stayed could be continued. It may be that after the period has expired which is defined in section 48(1), then it will be open to the insolvency court to continue its proceedings; but this is not a matter which is the subject of the revision before us. The revision before us is only on the point as to whether the stay order of the insolvency court is a valid order or not. Various sections have been referred to and various comments have been made as to the procedure under the Encumbered Estates Act, but we do not consider that it is necessary to investigate this matter in detail. It appears to us that the plain meaning of section 7 and section 48(2) is that the application in insolvency which has been filed by the

creditors will be stayed and will remain pending during the disposal of the case in the court of the Special Judge and of the Collector under the Encumbered Estates Act. Accordingly we dismiss this application in revision with costs.

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## APPELLATE CIVIL

*Before Sir Shah Muhammad Sulaiman, Chief Justice,  
and Mr. Justice Bennet*

MUHAMMAD MUSA KHAN (JUDGMENT-DEBTOR) v. SRI  
THAKUR GOPALJI (DECREE-HOLDER)\*

1936  
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*U. P. Agriculturists' Relief Act (Local Act XXVII of 1934),  
section 2(2)(a)—Agriculturist—Mutwalli of wakf property  
paying land revenue—Whether an "agriculturist".*

Where a mutwalli of wakf property has a beneficial interest under the wakf, then his payment of land revenue for the property brings him under the definition of an "agriculturist" in section 2(2)(a) of the U. P. Agriculturists' Relief Act. If he takes no beneficial interest whatever under the wakf, then he is merely in the position of a trustee for other persons.

Dr. M. Nasim and Begam M. A. Faruqi, for the appellant.

Mr. Panna Lal, for the respondent.

SULAIMAN, C.J., and BENNET, J.:—This is a first appeal by a judgment-debtor under the following circumstances. The judgment-debtor applied under the U. P. Agriculturists' Relief Act for fixation of instalments and reduction of interest under sections 4 and 30 of the Act. Section 30 is in chapter IV. Accordingly, therefore, the first proviso in section 2(2) applies, and the limit of land revenue does not apply in sub-section (1). The appellant claims that he is a person paying land revenue in a district not permanently settled. The court below has held that he does pay land revenue to the extent of Rs.9,000 but that it is not for himself and that he is not the owner of the

\*First Appeal No. 226 of 1935, from an order of Akib Nomani, Subordinate Judge of Aligarh, dated the 17th of August, 1935.