

APPELLATE CIVIL.

Before Mr. Justice Young, and Mr. Justice Lentaigae.

MAUNG KYI OH AND ONE

v.

S.M.A.L. ARNUCHALLAM CHETTY*.

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Apt. 11.

Petition in insolvency against Burman Buddhist couple—Joinder in one petition by creditor—Provincial Insolvency Act (Ist of 1920), section 15, 18, 79 (2), 61 (4)—Provincial Insolvency Act (Act III of 1907), section 47—General Clauses Act (X of 1897), section 13.

Held, that a single petition in insolvency may be filed under the Provincial Insolvency Act, 1920, against a Burmese Buddhist husband and his wife, where they were alleged to be jointly indebted to the petitioning creditor and to have committed a joint act of insolvency.

Bolisetti Mammaya v. Kolla Kollaya and others, 44 Mad., 810—*followed*.

Kali Charan Saha v. Hari Mahan Basak and others, 58 I.C., 531 ; *Sarada Prasad Ukil v. Ram Sukh Chandra*, 2 C.L.J., 318—*dissented from*.

Thein Maung—for the Appellant.

Dass—for the Respondent.

YOUNG, J.—The question in this appeal is whether one petition in insolvency can be filed under the Provincial Insolvency Act against two Burman Buddhists, husband and wife, or whether separate petitions are necessary.

The two are alleged to be jointly indebted to the petitioners and to have committed a joint act of insolvency. The question, therefore, is whether two joint-debtors, who have committed a joint act of insolvency, can be included in one petition.

The question has been decided by the Madras High Court, under Act III of 1907, relying on section 47 of that Act, now section 5 of the present Act, in the affirmative, holding that the question is

* Civil Miscellaneous No. 85 of 1923 against the order of the District Court of Prome in Civil Miscellaneous No. 21 of 1923.

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one of procedure; that the Civil Procedure Code allows two joint-debtors to be sued in one suit, and that section 47 directs the Insolvency Court to follow the same procedure as it follows in the exercise of its Original Civil Jurisdiction. *Bolisetti Mammaya v. Kolla Kottaya and others* (1). On the other hand, the Calcutta High Court in *Kali Charan Saha v. Hari Mohan Basak and others* (2), has decided the matter in the contrary way, holding, on the authority of *Sarada Prasad Ukil v. Ram Sukh Chandra* (3), a case decided under the old Insolvency Law contained in the former Code of Civil Procedure, that separate petitions must be presented. With all deference, I prefer the reasoning contained in the Madras ruling. I do not think, having regard to the provisions of the General Clauses Act, too much stress can be laid on the fact that the Act speaks of a debtor in the singular; it similarly speaks of a creditor in the singular also; but I have never heard it contended that two joint-creditors cannot join in filing a petition. Again, to take the provisions of the Act into consideration, the special provision in section 8, prohibiting petitions against incorporated companies, would be meaningless if a petition against an ordinary unincorporated partnership were not legal.

It is not clear to me that in section 15 the words "when separate petitions are presented against joint-debtors" do not mean, especially having regard to the context, petitions by separate persons against joint-debtors, as they do in the former part of the section relating to an individual debtor, in which case there is plain, though implied, legislative authority for the procedure.

(1) (1921) 44 Mad., 810.

20) 58 I.C., 531.

(3) (1905) 2 C.L.J., 318.

The provisions of section 18 seem to me to point in the same direction as section 5 (section 47 of the former Act). The provisions of section 61 4) seem to me a clear indication that partners may be joined in one petition, and, if partners may be joined, I do not see why joint-debtors liable upon a joint-debt, who have each committed either a joint or a separate act of insolvency, should not be similarly joined.

There is, it is true, no similar provision in the Provincial Insolvency Act to that contained in section 99 of the Presidency Towns Insolvency Act, but that merely gives power to sue the partners under the partnership name.

On the whole, therefore, I am of opinion that these joint-debtors, who have committed a joint act of insolvency, may be proceeded against in one petition, and would accordingly dismiss the appeal.

LENTAIGNE, J.—I concur. It is quite true that various sections of the Provincial Insolvency Act, 1920, refer to a "debtor" in such terms that it might appear that a separate petition should be presented against each debtor. Apart from the rule of construction in section 13 of the General Clauses Act, 1897, that words in the singular shall include the plural, we have a clear indication in clause (c) of sub-section (2) of section 79 of the Provincial Insolvency Act, 1920, that the term "debtor" may include a firm, because that provision authorizes the making of rules providing for the procedure to be followed "where the debtor is a firm." In law, a firm is not an artificial person like a company but merely a collection of individuals, and formerly it was necessary to set out all the names of the partners in any suit. It is only under modern legislation that the rule was

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enacted permitting the use of the firm name as a sufficient description of the persons suing or being sued. Consequently, this provision in section 79, recognizing the application of the term "debtor" to a firm, is a clear indication that no restriction can be held to arise by reason of the use of the term "debtor" in the singular, and that the term is capable of applying at least to two or more persons jointly and severally liable as partners.

In the case of a Burmese Buddhist married couple, and more especially in the case of a couple who are trading jointly and signing jointly on promissory-notes, etc., the position is very similar to that of a firm; and I can see no sound reason why they should not be included in a single petition under the Act. In fact, I am of opinion that very important advantages will be obtained by joining them as joint-debtors. I have known cases where a Burmese Buddhist husband has been trading in his own name and acquired property and when sued on mortgages executed by himself, has waited until the final order was passed for the sale of the property to set up the claim that his wife was the owner of a half interest. In such cases it was more often found that the husband had been dealing with the property throughout with the consent of his wife and as her agent, and that the claim made at the late stage was merely a fraudulent claim to defeat the creditor. It is obviously desirable that such questions should be avoided by compelling the wife to assert her claims at an early stage.

For the above reasons, I would dismiss the appeal with costs.