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A.K.R.M. M.C.T. CHETTYAR FIRM v. S. C. MUNNEE.

CHARI, J.

1928, July 10. [His Lordship referred to and followed the ruling in the above case in **Tong Hock Hin** *v.* **Eng Hoe Seng and others**, Civil Regular Suit No. 236 of 1928 on the Original Side.]

APPELLATE CIVIL.

Before Mr. Justice Das and Mr. Justice Doyle.

1928

May 9.

MANSOOKHLAL DOLATCHAND & CO.

v.

NAGARDASS MOOLCHAND.*

Fraudulent preference—Provincial Insolvency Act (V of 1920), *s.* 54—*Creditor's zeal to secure his own interests—Dominant motive of insolvent—Preference given to escape pressure.*

Held, that where a creditor threatens insolvency proceedings against a debtor in difficulty, in order to induce him to come to terms, it is only an action on his part to secure his own interests as against those of any other creditor and cannot be characterized as fraudulent. If the dominant view of an insolvent is not to prefer such creditor, but to escape the pressure brought upon him, a transfer made by him to such creditor is not fraudulent.

N. N. Burjorjee for the appellant.

P. B. Sen for the respondent.

DAS and DOYLE, JJ.—The appellants sued to have the respondent, Nagardass Moolchand, declared insolvent on the ground that he had come to a fraudulent arrangement with one of his creditors. The circumstances under which this arrangement was come to, and the grounds on which the learned District Judge declined to entertain the application are set forth in his judgment as follows :—

"The substance of the debtor's evidence and that of the creditor with whom he came to an agreement (D.W. No. 5) would tend to show that the arrangement was come to partly under pressure from the creditor with whom the arrangement was come

* Civil Miscellaneous Appeal No. 203 of 1927 against the order of the District Court of Myingyan in Civil Miscellaneous No. 3 of 1927.

to and partly for the personal benefit of the debtor himself. The debtor obviously had got into difficulties. He had commenced the season by running his own mill and he found himself in need of money. No one was apparently prepared to advance this money and he was compelled to make the best of a bad situation. At the same time he was being pressed by the alleged favoured Chettyar creditor No. 1, and, according to the statement of the debtor, was even being threatened with a suit against him. There is nothing on the record to contradict this portion of the evidence and as the petitioning creditor has chosen to examine the debtor and the favoured creditor as his own witness the Court cannot but accept their statements for what they are worth. The facts of the case are therefore practically on all fours with the finding of the Hon'ble Judges of the High Court at Rangoon in Civil Miscellaneous Appeal No. 66 of 1924 in the case of *P. M. A. Chettyar Firm* v. *N. A. Pillay*. There it was held that if the dominant view of the insolvent was not to prefer the creditor but to escape from the pressure enforced by him, the transfer is not fraudulent. Similarly in this case, I think the debtor, Moolchand, yielded to the pressure brought upon him by the firm of S. R. M. M. R. M. Chettyar of Myingyan when he came to a working agreement I must, therefore, hold that no case has been made out of fraudulent preference. It will not, therefore, be necessary to go into the evidence produced by the debtor and the *petition is dismissed.*"

It is clear from the evidence on the record that there was great difference of opinion betwen the creditors as to the advisability of having Nagardass Moolchand declared insolvent. It cannot be denied from the evidence that Nagardass Moolchand did come to an arrangement to favour one creditor more than the others. At the time he made the arrangement, however, proceedings in insolvency had not taken place ; and, as pointed out by the learned District Judge, it is not improbable that that particular creditor held possibilities of insolvency proceedings *in terrorem* over the head of Nagardass Moolchand as an inducement to come to terms. Such action on his part only amounted to securing his own interests as

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against those of any other creditor and could in no way be characterized as fraudulent.

The learned advocate who argued the appeal frankly admits that he is unable to adduce any positive evidence of fraud.

We concur in the finding of the lower Court and dismiss the appeal with costs.

DAS AND DOYLE, JJ.

APPELLATE CIVIL.

Before Mr. Justice Baguley.

1928

May 9.

MAUNG CHIT U
v.
MAUNG PYA.*

Accounts settled, cause of action on—Promise to pay balance due as correct, liability on—Items of settled account, whether to be proved.

Held, that where accounts have been settled and agreed upon between two parties and one party has promised to pay, a suit can be filed on that promise. A settled account gives rise to a cause of action and the plaintiff need not prove that the balance found was correct, provided it was accepted as correct by the defendant.

Magniram v. *Laxminarayen*, 32 Bom. 353 ; *Marimuthu* v. *Saminatha*, 21 Mad. 366 ; *Ramnath* v. *Pitambar*, 43 Cal. 733—*referred to.*

Maung Ni and *Ba So* for the appellant.
Maung Gyee for the respondent.

BAGULEY, J.—Chit U sued Maung Pya in the Township Court of Pwinbyu on a settled account (*shindan*). The lower Court held that the parties had settled accounts or rather had had a balance sheet struck of their mutual accounts as partners in a certain rice business by Maung Ba Thin and gave a decree for the amount stated to be due in the *shindan*, namely, Rs. 834-8-6. The defendant appealed

† Special Civil Second Appeal No. 260 of 1917 against the judgment of the District Court of Minbu in Civil Appeal No. 16 of 1926.