

APPELLATE CIVIL.

Before Mr. Justice Heald and Mr. Justice Maung Ba.

HAJEE ALLY MOHAMED AND OTHERS

v.

M. M. BHAM AND ONE.

1928

Mar. 12.

Insolvency Court, power to issue temporary injunction—Dispute between rival creditors over property of debtor—Provincial Insolvency Act (V of 1920), s. 5.

Held, that under the provisions of s. 5 of the Provincial Insolvency Act the Insolvency Court has the same powers as a Civil Court and so it would be justified in granting a temporary injunction preventing a creditor from selling the debtor's property over which he claims a lien which is disputed by other creditors, pending the decision of such dispute.

HEALD, J.—On the 23rd of March 1927 the present 2nd respondent filed a suit against the 1st respondent to recover a sum of over Rs. 20,000 alleged to be due on promissory notes, and he claimed that by virtue of a deed executed by the 1st respondent he had a lien for that debt on the stock-in-trade of the 1st respondent's two shops. He accordingly applied for the appointment of a Receiver for the stock of the shops pending the decision of the suit, and the Court appointed its Bailiff to be Receiver.

On the 9th of April 1927, that is on the last day before the Court closed for the April holidays, a decree was passed by consent against the 1st respondent for Rs. 18,500 with interest and costs and with a declaration of the 2nd respondent's lien over the stock of the shops.

On the 25th of April, that is on the day on which the Courts reopened after the April holidays, the 1st respondent filed an application to be adjudicated an

* Civil Miscellaneous Appeal No. 108 of 1927 from the order of the District Court of Amherst in Civil Miscellaneous No. 21 of 1927.

insolvent, and the Bailiff of the Court was appointed to be *interim* Receiver of his property.

On the 30th of April the Bailiff, as Receiver in the 2nd respondent's suit, applied to the Court for permission to sell the stock of the 1st respondent's two shops, and the Court gave permission for the sale.

On the 10th and 12th of May appellants, who were some of the 1st respondent's creditors, applied for stay of the sale. They pointed out that the property, which the Receiver was proposing to sell, constituted practically the whole of the 1st respondent's assets and they alleged that in fact the 2nd respondent had no lien over that property and that his decree declaring that lien had been procured by fraud and collusion.

The Court said that until an adjudication order had been made and a Receiver in insolvency had been appointed it had no power to enquire into appellants' allegations, and it dismissed their applications and ordered that the sale should be stayed and that the properties should be retained by the Receiver.

Appellants appeal mainly on the ground that the Insolvency Court must have power to prevent fraud in respect of property which admittedly belongs to the debtor although it is alleged to be subject to a lien in favour of a creditor who by reason of that lien claims to be a secured creditor, and that the Court must therefore have power to protect such property from sale in execution pending a decision on the question of the alleged fraud.

It seems to me that the only way in which the Court could act in such circumstances would be by way of a temporary injunction. Under section 5 of the Act the Insolvency Court has the same powers which an ordinary Civil Court has under the Code of Civil

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Procedure, and it seems clear that those powers include the powers mentioned in Order 39, that is the power in suitable cases and in its discretion to issue a temporary injunction.

A case where one creditor claims that he is a secured creditor by reason of a lien over certain of the debtor's assets, which lien another creditor disputes, and where the dispute arises at a stage in the Insolvency proceedings at which there is no provision for an immediate decision on it would seem to be a case in which the Insolvency Court if it is satisfied that there are grounds for believing that the opposing creditor has a reasonable chance of establishing his case, would be entirely justified in granting an injunction to prevent the creditor who claimed the lien from bringing the property to sale pending the decision of the dispute between the two creditors.

So far there is no material on the record on which the Insolvency Court could decide whether or not there is a reasonable chance of appellant's establishing their allegations of fraud and collusion. There are no affidavits or evidence of any sort on either side. The Insolvency Court merely refused to make any order because it held that it had no power to make an order.

I am of opinion that the Court had power to grant an injunction on sufficient cause being shown and I would therefore set aside the order of the lower Court and remand the matter for disposal according to law.

I would direct that each side bear its own costs in this Court.

MAUNG BA, J.—I concur.