APPELLATE CIVIL.

Before Mr. Justice Maung Ba and Mr. Justice Brown

WOR LEE LONE & Co.
v.
V.E.R.M.V. CHETTYAR FIRM.*

1929
Sept. 11

Act of insolvency—Attachment of property for more than twenty-one days—Attachment neither a continuing act nor a repeated act of insolvency—Creditor's petition must be within three months from completion of first twenty-one days—Presidency-Towns Insolvency Act (III of 1909), Ss. 9 (e) and 12 (1) (c).

Where a debtor's property has been attached in execution of a money decree for a period of twenty-one days, an act of insolvency is committed by the debtor. But merely because the attachment continues, it is not a continuous act of insolvency, nor is it a repeated act of insolvency on the happening of each fresh period of twenty-one days. Consequently a creditor who wishes to adjudicate the debtor for such an act, must do so within three months from the completion of the first twenty-one days of attachment.

In re *Beeston* (1899) 1 Q.B. 626; In re *Hyderbhai Hussenbhai*, 52 Bom. 126 —*referred to.*

N. M. Cowasjee for the appellants.

Venktaram for the respondents.

MAUNG BA and BROWN, JJ :—The appellants have been adjudicated insolvents on the application of the respondents. The acts of insolvency on which the respondents relied in their application for adjudication were that certain properties of the appellants had been under attachments for not less than 21 days. They claimed that rice mill had been attached on the 23rd of August 1928, that other properties of the appellants had been attached on the 6th of November 1928 and that in both cases the attachments were still in force when the application for adjudication was filed.

* Civil Miscellaneous Appeal No. 131 of 1929 from the order of the Original Side in insolvency case No. 150 of 1929.

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The application for adjudication was filed on the 20th of June 1929 and the contention on behalf of the appellants is that the acts of insolvency alleged were committed more than three months before the application for adjudication and that the adjudication should not therefore have been allowed.

In the case of each attachment it is clear that a period of 21 days had elapsed far more than three months before the presentation of the petition. Under section 12 (1) (*c*) of the Presidency-Towns Insolvency Act a creditor is not entitled to present an insolvency petition unless the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition.

The contention of the appellants in this case is that the act of insolvency alleged occurred on the expiry of the 21 days and that therefore the respondents were not entitled to present the petition under section 12.

The learned trial Judge held that the attachments were continuing acts of insolvency and that as they were still in force at the time of the application, the application was within time. That this is not the law in England is made quite clear in the case of *In re Beeston* (1). The relevant section of the English Bankruptcy Act reads as follows :—

> "A debtor commits an act of bankruptcy if execution against him has been levied by seizure of his goods under process in an action in any Court or in any Civil proceeding in the High Court, and the goods have been either sold or held by the sheriff for twenty-one days."

In the case of *In re Beeston* the goods had been seized by the Sheriff and had remained in his possession for over a year before the application for

(1) (1899) I.Q.B. 626.

adjudication had been made. It was held by the Court that the act of of bankruptcy was complete 21 days after the Sheriff had entered on possession and that there was therefore no act of bankruptcy within three months of the receiving order being made. On this point Lindley, M.R., remarks at page 631 :—

"Now, is it possible to fairly construe that section so as to make continued possession for more than twenty-one days either a continued act of bankruptcy, or, if it should be a succession of periods of twenty-one days, a succession of acts of bankruptcy? I do not think that is consistent with the language. We know perfectly well that acts of bankruptcy have to be regarded critically and carefully. There is no such thing as an act of bankruptcy except that which the statute declares to be one, and when the statute says an act of bankruptcy is committed if an execution has been levied by seizure and the goods have been held by the sheriff for twenty-one days, that means that the seizure and holding for twenty-one days together are essential for the consideration of whether there is an act of bankruptcy or not. It seems to me it would be straining this section beyond all reason to say that there was a succession of acts of bankruptcy at the expiration of every period of twenty-one days, or that there has been one continued act of bankruptcy running over a year and a half"

In a concurring judgment Vaughan Williams, L.J., remarks at page 633 :—

"I have only one word to add, and that is a word about whether the bankrupt here by the seizure and the possession for twenty-one days has committed either a *continuous* act of bankruptcy for the whole term of possession, or an act of bankruptcy which will be repeated each time that there is a fresh period of twenty-one days of possession. I have no doubt myself that it is one act of bankruptcy; that it is not a continuous act of bankruptcy; and it is not a repeated act of bankruptcy on the happening of each fresh period of twenty-one days.

I entirely agree with all that has been said by the Master of the Rolls as to the words of the section; but I

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wish to add one observation. Until the recent legislation there was no such act of bankruptcy as this act of bankruptcy constituted by seizure and remaining in possession for twenty-one days or any other time. The act of bankruptcy was by execution for a certain amount followed by sale and it is that which has been extended. One finds here in this section two things together and I have no doubt myself that if, as the Legislature intended, the act of bankruptcy defined in respect of the seizure and sale be one act done at the instance of the execution creditor for the purpose of the realization of his security—a security gained by seizure—so in respect of the continuing in possession the act of bankruptcy is an act of bankruptcy which takes its origin at the seizure, and whether the seizure be followed by sale or whether the seizure be followed by possession for twenty-one days, there is only one act of bankruptcy; and if there is no fresh seizure, there is no fresh act of bankruptcy."

This decision was followed by the High Court of Bombay in the case of *In re Hyderbhai Hussenbhai* (1). The learned Judge in that case considered the difference between the wordings of the English Act and the Presidency-Towns Insolvency Act and held that the view of the law taken in *In re Beeston* was the correct view to take in construing section 9 (*e*) of the Presidency-Towns Insolvency Act. Section 9 (*e*) of the Presidency-Towns Insolvency Act reads :—

"If any of his property has been sold or attached for a period of not less than twenty-one days in execution of the decree of any Court for the payment of money."

It is contended on behalf of the respondents that the law as laid down in *In re Beeston* cannot be followed in India because of the difference in the wording of the Acts applicable. The English Bankruptcy Act provides that the Sheriff shall hold the property for 21 days. In the Presidency-Towns Insolvency Act the words used are "for a period of not less than twenty-one days."

(1) (1927) 52 Bom. 126.

The argument as we understand it is that under the Indian Act at the conclusion of any period of 21 days or more there is a definite act of bankruptcy on which the creditor is entitled to rely for the purposes of section 12 (1) (c) of the Presidency-Towns Insolvency Act. We are unable to accept this view. The Presidency-Towns Insolvency Act was enacted after the delivery of the judgment in *In re Beeston.* In its general terms it follows the English law as regards this particular act of insolvency. If the Legislature had intended to introduce such a change in law from the English law as is suggested here, it seems to us that they would have done so clearly and unequivocally. The section as drafted merely lays down that if the property has been attached for 21 days or more there has been an act of bankruptcy. That act is clearly complete at the conclusion of the 21 days. The same considerations would apply as were applied in the case of *In re Beeston* under the English Act.

In the Bombay case the learned Judge remarks :

" Having regard to the similarity between the Indian and English sections, in fact they are identically the same as pointed out above, I think that the view of the law taken in *In re Beeston* is the correct view to take in construing section 9 (c) of the Indian Act, and that is clear if we look to the reason of the rule as regards the period of twenty-one days. The reason appears to be that, if a debtor is unable to satisfy a decree against him, and his property is attached in execution, it shows, *primâ facie*, that he is not in a position to pay his debts, and therefore, is liable to be adjudged an insolvent in order that his property may be distributed rateably amongst his creditors. But the Legislature provides that a certain period, after attachment, should be given to the debtor as an allowance made to him in order to enable him to pay off the debt and redeem both his property and his character, and that period is fixed both in India and England at twenty-one days. It is then provided that if the debtor fails to do so within

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that period, he will be held to have committed an act of insolvency. It is, therefore, clear that the act of insolvency is committed immediately on the expiry of the definitely fixed period of twenty-one days; and just as the English section does not say that this becomes a recurring or a continuing act of insolvency if the attachment continues for more than 21 days equally so there is nothing in the Indian section to that effect."

With these remarks we are in general agreement. We do not know why the Indian Legislature used the words "for a period of not less than twenty-one days" instead of the words "for a period of 21 days." But we do not think that it can be held that by such a change in the wording they intended to introduce a radical difference between the law in force in India and the law in force in England.

It has been suggested before us that if we hold against the respondents on the point that has been argued, we should not set aside the adjudication order but should remand the case for hearing as to whether the adjudication should be allowed on other grounds. It is clear, however, that in the application for adjudication the sole ground relied on was the attachment of the properties, and we see no reason to allow the raising of fresh grounds now.

The result is that we set aside the order of the trial Judge adjudicating the appellants as insolvents and direct that the application of the respondents be dismissed. The respondents will pay the costs of the appellants in each Court, advocate's fee in each Court, 5 gold mohurs.