1936

U CHAN MYA v. MRS. WHITTAM.

PAGE, C.J.

period from the 6th November to the 11th November as being "time requisite for obtaining a copy" of the decree. The appeal is concluded against the appellant by the decision of the Privy Council in *Pramatha Nath Roy* v. *Lee* (1). [See also *J. N. Surty* v. *T. S. Chettyar, a firm* (2) and *McKenzie & Co., Ltd.* v. *Ah Win* (3).] In *Ma Dan* v. *Tan Chong San and others* (4) the learned Judges apparently came to the conclusion that the period which it was sought to exclude for the purpose of limitation was requisite for obtaining copies of the judgment and decree.

For these reasons the appeal fails and is dismissed with costs.

BA U, J.—I agree.

SPECIAL BENCH.

Before Sir Arthur Page, Kt., Chief Justice, Mr. Justice Ba U, and Mr. Justice Dunkley.

1936

Mar. 11.

S.P.K. CHETTYAR FIRM
v.
S. DUTT.*

Insolvency—Jurisdiction of Assistant District Court—Notification No. 37, dated 15th Feb. 1933—Notification No. 207, dated 3rd July 1934—"Value not exceeding fifteen thousand rupees"—Provincial Insolvency Act (V of 1920), s. 3 (1).

In exercise of the powers conferred by s. 3 (1) of the Provincial Insolvency Act the Governor in Council issued Notification No. 37, dated the 15th Feb. 1933 investing every Assistant District Court with jurisdiction to hear and determine any class of cases of a "value not exceeding fifteen thousand rupees." By Notification No. 207, dated the 3rd July 1934, which cancelled Notification No. 37, every Assistant District Court was invested with jurisdiction to hear and determine any class of cases in which "the debts of the insolvent do not amount to over fifteen thousand rupees."

(1) (1922) 49 I.A. 307.
(2) (1928) I.L.R. 6 Ran. 302.
(3) (1934) I.L.R. 12 Ran. 525.
(4) (1928) I.L.R. 6 Ran. 743.

* Civil Revision No. 29 of 1936 arising out of the order of the District Court of Bassein in Civil Misc. Appeal No. 6 of 1935.

1936

S.P.K. CHETTYAR FIRM v. S. DUTT.

Held, that the meaning of Notification No. 37 was ambiguous and difficult to ascertain, but having regard to the later Notification the expression "Value not exceeding fifteen thousand rupees" meant debts of the insolvent which are admitted or proved in the proceedings, and do not exceed fifteen thousand rupees.

Chari for the applicant. By a notification (No. 37) dated the 15th Feb. 1933, issued pursuant to s. 3 of the Provincial Insolvency Act the Local Government has invested all Assistant District Courts with jurisdiction to try any class of cases of a "value" not exceeding 15,000 rupees. At the time the petition was filed the total debts as shown in the petition amounted to Rs. 15,947, the Assistant District Court, therefore, did not possess any jurisdiction to hear the matter. The mere fact that on appeal in a mortgage suit filed by the present applicant the mortgage decree was set aside does not affect the position. In this view the transfer of the case by the District Judge to the Assistant District Court was without jurisdiction.

The test to determine jurisdiction should either be the "value" as shown in the petition, or the value of the total debts of the debtor. Not only did the creditor's debts in this case exceed Rs. 15,000, but the alleged act of insolvency related to a fraudulent transfer of property worth more than Rs. 30,000.

Notification No. 37 was superseded by Notification No. 207 dated the 3rd July 1934, under which the Assistant District Courts are empowered to try cases in which "the debts of the insolvent" do not amount to over Rs. 15,000. If it were permissible to look at the second notification to construe the first it seems that the term "value" means the total debts of the debtor.

[PAGE, C.J. But how is the Court to act when a creditor's petition is presented to it? It cannot compel

1936

S.P.K CHETTYAR FIRM v. S. DUTT.

a debtor to file his schedule before he is adjudicated insolvent.]

The purport of the notification is that if, at whatever stage, the proceedings involve the consideration of debts of over Rs. 15,000 in value the Court should transfer the proceedings to the Court having jurisdiction.

The notifications are unhappily worded, but, in any event, if the case cannot be brought within them the Assistant District Court cannot have any jurisdiction because its jurisdiction is based upon them.

The question of jurisdiction is of importance because, if the Assistant District Court is held to have had jurisdiction, the applicant would lose his right of appeal to this Court.

Hay for the respondent. It is hard to fix the "value" for purposes of jurisdiction in insolvency matters. All that a debtor need say in his petition is that his debts exceed Rs. 500 in value.

The notifications are not at all clear. It is difficult to understand the meaning of the term "debts"; does it refer to the value of the debts proved or the debts that may arbitrarily be mentioned in the petition? Again, what does "value" mean? Does it refer to the value as stated in the petition or to the value of the property as it is determined in the course of the proceedings? There must be a definite time limit for the determination of questions of jurisdiction; it should not depend upon various stages of the proceedings.

The present case raises no difficulty. At the time the petition was filed one of the petitioning creditor's debt was uncertain, and it was later judicially determined that it was non-existent. In

the circumstances the District Judge's action in adjourning the case from time to time and subsequently transferring it to the Assistant District Court was proper.

Further, no appeal lies in this case, and, treated as a revision, this Court will not interfere with the finding of the District Judge because it is purely a question of fact as to whether a certain debt ought to have been admitted or not.

PAGE, C.J.—This application in revision fails. It appears that a creditor's petition was filed in the District Court of Bassein on the 29th November, 1932. Upon the face of the petition the petitioning creditor alleged that the debt due to him from the respondent amounted to Rs. 15,947-1-9. That sum consisted of two items : (1) Rs. 8,029-9-9 alleged to be due on three promissory notes, and (2) the sum of Rs. 7,917-8 alleged to be due under a registered mortgage. It appeared, however, from paragraph 1 (*b*) of the petition that a mortgage suit in respect of the second item was pending. In these circumstances the learned District Judge refrained from taking further steps in the proceedings until the result of the mortgage suit was known. After the mortgage suit was dismissed, as it appeared upon the face of the petition that the amount of the petitioning-creditor's debt was only Rs. 8,029-9-9, the learned District Judge transferred the proceedings to the Court of the Assistant District Judge for determination. An adjudication order was passed in the Assistant District Court on the 21st August, 1934. Subsequently it appeared that the total debts of which proof was submitted in the insolvency amounted to Rs. 15,707. An application, however, was made by the Receiver in insolvency that a certain debt alleged

1936

S.P.K. CHETTYAR FIRM v. S. DUTT.

PAGE, C.J.

to be due by the insolvent to the present applicant might not be admitted. The application of the Receiver was dismissed by the Assistant District Court, and an appeal was presented by the Receiver to the District Court from the decision of the Assistant District Court admitting these debts. On appeal the learned District Judge reduced the amount of the debts which ought to be admitted by Rs. 3,052, thereby reducing the total amount of debts of which proof was admitted to a figure less than Rs. 15,000. The learned Assistant District Judge further held that he had no jurisdiction in the matter inasmuch as the debts of the insolvent amounted to over Rs. 15,000, and therefore the Assistant District Court had no jurisdiction. On appeal from that order the District Court, in the events that happened, namely, that the debts of which proof was admitted amounted to less than Rs. 15,000, allowed the appeal, and held that the Assistant District Court had jurisdiction.

The mere recital of the nature of the proceedings that have taken place and the orders that the Assistant District Court and the District Court were compelled to pass in the circumstances discloses a situation full of humour, though for those concerned in insolvency proceedings the humour is grim. The difficulty that has arisen is due to the terms of two notifications which were issued by the Governor in Council pursuant to section 3, sub-section (*1*) of the Provincial Insolvency Act, which runs as follows :

"The District Courts shall be the Courts having jurisdiction under this Act :

Provided that the Local Government may, by notification in the local official Gazette, invest any Court subordinate to a District Court with jurisdiction in any class of cases, and any Court so

invested shall within the local limits of its jurisdiction have concurrent jurisdiction with the District Court under this Act."

Accordingly, on the 15th February, 1933, the Governor in Council issued the following notification :

"*No. 37.*—In exercise of the powers conferred by section 3, sub-section (*1*), of the Provincial Insolvency Act, 1920, the Governor in Council hereby invests every Assistant District Court in Burma with jurisdiction to hear and determine any class of cases of a value not exceeding fifteen thousand rupees."

This notification was in force when the petition was originally filed on the 29th November, 1932, and also when the proceedings were transferred to the Assistant District Court on the 10th May, 1934, after the petition had been re-presented on the 9th May, 1934. On the 3rd July, 1934, a further notification, by which notification No. 37 was cancelled, was issued by the Governor in Council. It was to the following effect :

"*No. 207.*—In exercise of the powers conferred by section 3, sub-section (*1*), of the Provincial Insolvency Act, 1920, the Governor in Council hereby invests every Assistant District Court in Burma with jurisdiction to hear and determine any class of cases in which the debts of the insolvent do not amount to over fifteen thousand rupees."

Now, the learned advocate for the applicant contends that the Assistant District Court never had jurisdiction to hear and determine these insolvency proceedings because the meaning of the expression "value not exceeding fifteen thousand rupees" in notification No. 37 is the value according to the amount of the debts of the insolvent as they appear in the petition. He urged that, inasmuch as one of the acts of insolvency alleged was that the transfer on the 29th September, 1932, of the insolvent's property to the S.P.K. Firm, who are the present

1936

S.P.K. CHETTYAR FIRM v. S. DUTT.

PAGE, C.J.

applicants, was either made with intent to defeat or delay the insolvent's creditors or was a fraudulent preference, and in either case amounted to an act of insolvency and was subject to annulment, the Court must assume that if the act of insolvency was valid and the transfer to the applicant was annulled the applicant would have a claim for more than Rs. 15,000 as an unsecured debt provable in the insolvency, and therefore upon the face of the petition the value of the case exceeded Rs. 15,000. We cannot so construe the expression "value not exceeding fifteen thousand rupees" in notification No. 37. To place such an interpretation upon the notification would make the jurisdiction of the Court depend upon surmise, hypothesis, and contingency, which could never have been intended. At the same time we are at one with the learned advocates who appeared both for the applicant and the respondent that it is a matter of no little difficulty to extract an intelligible meaning from the expression "value not exceeding fifteen thousand rupees." Various attempts were made by the learned advocates on the one side and on the other to give it some working meaning but without avail. It would appear, however, from Notification No. 207 that the Governor in Council intended the expression "value not exceeding fifteen thousand rupees" to refer to a case "in which the debts of the insolvent do not amount to over fifteen thousand rupees", and we are prepared in the absence of any more acceptable interpretation to accept the view of the Governor in Council as to the meaning of the expression "value not exceeding fifteen thousand rupees."

Now, the effect of accepting this construction of notifications 37 and 207 is that the Court may or may not possess jurisdiction to hear an insolvency

proceeding at any particular time according to the amount of the debts of the insolvent that at that particular time may appear to be outstanding. The present case is a simple but cogent illustration of the situation that results from the issue of these notifications, and, if the Court were at liberty to express an opinion upon a matter of policy, it would appear advisable that steps should be taken by amending either the Burma Courts Act or the Provincial Insolvency Act in order that an end should be put to the present *impasse*. Adopting the construction which finds favour with us, it is plain that the Assistant District Court at present has jurisdiction to hear and determine the present proceedings.

For these reasons, in our opinion, the application fails and must be dismissed with costs five gold mohurs.

BA U, J.—I agree.

DUNKLEY, J.—The construction of notification No. 37, dated 18th February, 1933, for which learned counsel for the applicant firm contends is that "value" in relation to the proceedings on a petition in insolvency means and includes the total amount of the debts alleged in the petition *plus* all other debts which on the face of the petition may be brought into question at any stage of the proceedings. It is difficult to give an intelligible meaning to the word "value" in relation to an insolvency proceeding, but the word certainly will not bear the meaning which learned counsel wishes to impose upon it, for that would make jurisdiction dependent on a contingency. I agree with my Lord the Chief Justice that in our endeavour to construe notification No. 37 intelligibly, we are entitled to look at the later and superseding notification,

1936

S.P.K. CHETTYAR FIRM v. S. DUTT.

DUNKLEY, J.

No. 207, dated 3rd July, 1934, and to construe the earlier notification in the light of the later notification on the assumption that the latter was issued by the Governor in Council with a view to explaining what the earlier notification was intended to convey and removing the doubts as to its meaning. On this assumption the meaning of "value" in the earlier notification is the same as that of "debts of the insolvent" in the later notification. "Debts of the insolvent" must clearly mean the debts admitted or proved in the proceedings; the expression cannot include secured or doubtful debts which may or may not become provable at some subsequent stage, for, if so, the jurisdiction of the Assistant District Court will always remain in doubt in every insolvency case. It is urged that the effect of this construction of the expression is that in any particular case the Assistant District Court may have jurisdiction at one time and not at another, and that in consequence several transfers of the case between the District Court and the Assistant District Court, with their attendant evils of prolonged duration and uncertainty, may occur. I agree that this is so, and that in an insolvency case uncertainty as to the Court having original jurisdiction is most unfortunate as it entails uncertainty as to the Court to which appeals lie; but it is impossible to devise any form of notification which will entirely remove this uncertainty, and, if I may make the suggestion, in my opinion the only satisfactory method of meeting the difficulty is by an amendment of the Burma Courts Act to make all appeals, of whatever kind, from the Assistant District Court lie direct to the High Court. As the law now stands the evil can be greatly mitigated if District Judges will bear in mind that Assistant District Courts do not possess exclusive jurisdiction in insolvency cases, their jurisdiction

1936

S.P.K. CHETTYAR FIRM v. S. DUTT.

DUNKLEY, J.

being, under the proviso to section 3 (*1*) of the Provincial Insolvency Act, concurrent with the jurisdiction of District Courts. When a District Judge has once taken an insolvency case on to his file and taken action thereon, he should not transfer it afterwards to the Assistant District Court because of some subsequent happening in the case.

I agree that, in the present case, the Assistant District Court had jurisdiction when the case was first transferred to it on 10th May, 1934, and that in view of the appellate order of the District Court, dated 8th August, 1935, in Civil Miscellaneous Appeal No. 5 of 1935, the Assistant District Court still retains jurisdiction, and that therefore this application in revision fails and must be dismissed.

APPELLATE CIVIL.

Before Sir Arthur Page, Kt., Chief Justice, and Mr. Justice Ba U.

1936

Mar. 11.

MIRZA SAGHIRUL AND OTHERS

v.

THE RANGOON ELECTRIC TRAMWAY & SUPPLY CO., LTD.*

Security for costs—Appellate Court's discretion—Rule of practice—Fettering Court's discretion—Appellant's poverty—Circumstances of each case—Civil Procedure Code (Act V of 1908), O. 41, r. 10.

Under O. 41, r. 10 of the Civil Procedure Code the Court has a discretion as to whether it will or will not make an order for security for costs, and the discretion of the Court ought not to be fettered by any rule of practice. A respondent is not entitled as of course to an order for security for costs merely because the appellant may through poverty be unable to pay the respondent's costs if the appeal fails. Each case turns on its own facts and it is neither right nor expedient to lay down any rule that would have the effect of regulating the discretion of the Court as to the circumstances

* Civil First Appeal No. 13 of 1936 from the judgment of this Court on the Origina Side in Civil Regular No. 554 of 1934.