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MA E MYAING v. THE KING.

BAGULEY, J.

Court has power to deal with the matter in revision. I set aside the order directing payment of compensation. The record does not show clearly whether the money has been realized from the applicant or not : if it has been realized it must be refunded to her.

INSOLVENCY JURISDICTION

Before Mr. Justice Braund.

1937

Dec. 22.

IN THE MATTER OF MOTILAL PREMSUKHDAS AND OTHERS.*

Insolvency—Annulment of adjudication order—Rangoon Insolvency Act, s. 22—Discretion of the Court—Dominating factor—More convenient and efficient administration of assets—"The same debtor"—Adjudication of several persons in one firm name—Adjudication of some of them by another Court with another firm name—Vesting of immovable property situate outside the jurisdiction of adjudicating Court.

The jurisdiction of the Court to annul or stay proceedings on an adjudication order under s. 22 of the Rangoon Insolvency Act is discretionary. The dominating factor which decides the Court whether to exercise its discretion or not is whether the assets can be more conveniently and efficiently administered in the one Court than in the other.

Where several persons are adjudicated insolvents under a firm name then all of them individually become insolvents. If some only of them are carrying on a second business elsewhere under another firm name that firm is automatically involved in insolvency by the adjudication. But *quære* whether the two firms constitute "the same debtor" within s. 22 of the Rangoon Insolvency Act.

Quære whether an order of adjudication made after 1st April 1937 in India is sufficient to vest, under s. 17 of the Presidency-Towns Insolvency Act, in the Official Assignee in India immovable property of the insolvent in Burma.

In re Bujraj Sagarmal, I.L.R. 62 Cal. 659 ; *Sumermull* v. *Rai Bahadur Bansilal*, 35 C.W.N. 997, referred to.

Chatterjee for the Official Assignee, Calcutta.

Choudhury for the insolvents.

Hormasji and *Nair* for creditors.

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* Insolvency Case No. 124 of 1937.

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IN THE MATTER OF MOTILAL PREMSUKH-DAS.

BRAUND, J.—This application raises a question of considerable interest. The facts are not very long and I can state them quite briefly. On the 9th July 1937, an order was made in the High Court of Judicature at Fort William in Bengal, adjudicating nine persons insolvents. I need not set out the actual names of those nine persons, as it is sufficient to say that they constituted all the partners in a firm called "Ramnibas Ramnarain." That firm is described in the petition as carrying on business among other places at No. 192, Cross Street, in the town of Calcutta. I am told that since the making of that order of adjudication, it has been annulled as against two of the individual partners against whom it was made. In the result, therefore, seven partners in the firm have been adjudicated in Calcutta. The petition upon which that adjudication order was made was filed on the 5th July 1937 and the petitioning creditors were a firm of Messrs. Bangshidhar Gazanand of Calcutta.

On the 29th June 1937, that is to say six days before the filing of the Calcutta petition, a petition had been filed in this Court, *i.e.* in the Rangoon High Court, asking for the adjudication of six of the nine persons who had been originally adjudicated in Calcutta. The respondents to the Rangoon petition were the whole nine of the persons originally adjudicated in Calcutta except three, namely, Ghasilal, Jugalkishore and Ramnibas, the two former of whom were the two persons against whom the adjudication order was subsequently annulled by the Calcutta High Court. The Rangoon petition is by a firm of Javerilal Anandjee and is addressed not only to the six insolvents by name but to the firm of "Motilall Premsukhdass", the partners of which it was alleged the six insolvents were. On the 5th

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August 1937 an adjudication order was made in the Rangoon High Court adjudging the "firm of Motilall Premsukhdass" insolvents.

The position, therefore, was that there first occurred the adjudication in Calcutta of seven persons trading under the name of "Ramnibas Ramnarain" and a month later there was the adjudication in Rangoon of the firm of "Motilall Premsukhdass" of which six of those seven persons were partners. I do not think that I am at present concerned with the acts of insolvency upon which those orders were made.

The application which I have before me now is an application dated the 26th October 1937 by the Official Assignee in Calcutta asking under section 22 of the Rangoon Insolvency Act to have the Rangoon adjudication order annulled or, alternatively, to have all proceedings thereon stayed. Since that was filed there has been added to it a petition dated the 3rd December 1937 asking for the same relief by the insolvent firm "Motilall Premsukhdass" itself. It is with those two petitions that I now have to deal.

I desire to point out that neither of the petitioners has challenged the jurisdiction of the Rangoon High Court to make an order of adjudication in the face of the adjudication order already made in Calcutta. Indeed, upon the authorities the jurisdiction could not, I think, be challenged. What the petitioners do, however, state is that, in the particular circumstances of this case, "the same debtor" has been adjudicated in two places and, moreover, that the properties of the debtor can be more conveniently distributed by the Calcutta High Court in its insolvency jurisdiction than by the Rangoon High Court. A number of facts are alleged upon

which that contention is founded. Before going any further, it will be convenient, and I think desirable, for me to refer specifically to section 22 of the Rangoon Insolvency Act. It runs thus :

"Where it is proved to the satisfaction of the Court that insolvency proceedings are pending in any other British Court whether within or without British Burma against the same debtor and that the property of the debtor can be more conveniently distributed by such other Court, the Court may annul the adjudication or may stay all proceedings thereon."

As I conceive, the jurisdiction of the Court to annul or stay proceedings on an adjudication order under this section is a discretionary jurisdiction. It is a jurisdiction which cannot be invoked as of right though no doubt there are settled principles upon which the discretion is either exercised or not. And I take it as settled that, assuming the matter to fall within section 22 at all, then the dominating factor which decides the Court whether to exercise its discretion or not is whether the assets can be more conveniently and efficiently administered in the one Court than in the other.

I entertain some doubt as to whether it can be said with truth in this case that there were insolvency proceedings pending both in Calcutta and in Rangoon against "the same debtor." The position, as I have pointed out, is that there were nine or seven people carrying on business in Calcutta under the name of "Ramnibas Ramnarain." In Rangoon six out of these seven or nine persons were carrying on business under another name altogether, namely, that of "Motilall Premsukhdass." And I have been exercised in my mind whether, for the purpose of section 22 of the Rangoon Insolvency Act, they really constitute "the same

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debtor." Looking at it from the angle of a debt, there was a joint and several liability of nine persons in Calcutta trading under one name, while there was a joint and several liability of six persons in Rangoon trading under a different name altogether. I am not altogether sure, as I have said, that, for the purpose of section 22 of the Rangoon Insolvency Act, they constitute "the same debtor." I am bound to concede, and I do concede, that the adjudication of seven partners in Calcutta carries with it and brings about the insolvency also of the firm in Rangoon of which six of the individual Calcutta insolvents formed partners. If A, B and C are adjudicated insolvents under a firm name, then A, B and C individually become insolvents. And, if A and B are carrying on business elsewhere under another firm name, they and the firm are automatically involved in insolvency by their previous adjudication. While, therefore, it may well be that the Calcutta order of adjudication involved the adjudication of the Rangoon firm, that is not, to my mind, quite the same thing as saying that they constitute the "same debtor", which is the necessary qualification for the exercise of jurisdiction under section 22.

I do not, however, propose to decide this matter upon that ground. There is another matter with which I must deal. Prior to the separation of Burma from India, the whole of the insolvency jurisdiction in the presidency towns of both countries was governed by the Presidency-Towns Insolvency Act. That Act was an Act of the Indian Legislature. The effect of separation has been this. The Presidency-Towns Insolvency Act has remained in force in India. But in Rangoon, the insolvency jurisdiction has come to be governed by what must be

treated as a new Act altogether, namely, the Rangoon Insolvency Act, which has been made applicable to Rangoon by the Adaptation Order of British Burma. And it follows that, in the insolvency relations between India and Burma, Burma has now become a foreign country so far as India is concerned or, at all events, another part of the British Empire. And the question which arises—and it may one day form a more serious matter for debate—is whether an adjudication order in India has the effect of vesting in an Official Assignee in India immovable property in Burma. The principle underlying that question, of course, would operate both ways and would be applicable equally as to whether an adjudication order made in Rangoon would vest in the Official Assignee of Rangoon immovable property in India. The view which seems to be taken by Sir Dinshah Mulla in his work on the Presidency-Towns Insolvency Act appears to be that in the altered relations between Burma and India, an adjudication order in India will not vest in an Official Assignee in India immovable property of the insolvent in Burma. This, of course, was written before separation, but nevertheless is exactly applicable, in my view, to the position of Burma since the separation. He says in discussing this question :

" The Presidency-Towns Insolvency Act, however, is an Act of the Indian Legislature, and, consequently, it can operate only in British India."

I pause to observe that, since separation, Burma is no longer part of British India.

"Therefore though the Act provides that on the making of an order of adjudication the property of the insolvent *wherever situate* vests in the Official Assignee, the order, it is conceived,

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cannot operate as a transfer of immoveable property within the British Empire outside British India, and as to immoveable property in a foreign country it would certainly not be effective unless specially recognized by the law of that country. It is not to be supposed that the framers of the Act were not aware of this limitation to its scope. The whole question was fully considered, and the words 'wherever situate' were added in the section to give to an order of adjudication made by Courts under the Presidency-Towns Insolvency Act the widest possible effect."

If that expression of opinion be the true one,—and with the greatest respect to the learned author of this book I am inclined to agree that it is—then the effect would be that an order of adjudication made to-day in Calcutta is not sufficient to vest, under section 17 of the Presidency-Towns Insolvency Act, in the Official Assignee of Calcutta immovable property of the insolvent in Burma.

I have been referred to two cases in the Calcutta High Court. The first of it is *Sumermull Surena* v. *Rai Bahadur Bansilal Abirchand* (1). That, however, is not, in my opinion, an authority in a sense contrary to the view expressed by Sir Dinshah Mulla. What the learned Chief Justice of Calcutta, if I understand him rightly, says there is that, while an insolvent's interest in immovable property in another part of British India does not automatically vest in the Official Assignee, nevertheless, it is available for creditors in the sense that if the insolvent is amenable to the jurisdiction of the Calcutta Court, he can be made to make the property available for his creditors. That is expressed by Sir Dinshah Mulla at page 59 of his work on the Presidency-Towns Insolvency Act. The other case in the

(1) 35 C.W.N. 997.

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Calcutta High Court is that of *In re Binjraj Sagarmal* (1). That is a very recent case of a single Judge in Calcutta and it is quite true that in that case he suggests that, where the law of insolvency is identical in the two places, the immovable property in one place vests in the Official Assignee by virtue of the adjudication order made in the other. Applying that to the present case before me it is, in my view, to put it at its lowest, doubtful whether the immovable properties of the insolvents in Burma have ever vested in the Official Assignee in Calcutta.

I now pass on to deal with the application upon its facts. Affidavits have been filed on behalf of the applicant in which they concede that there was in Burma not less than a lakh and a quarter rupees worth of immovable property. It may well be that that is an understatement, because I have before me an affidavit made by one of the partners of the insolvent firm, in Civil Regular No. 8 of 1937 of this Court, in which he said on the 8th May this year, that his firm owned immovable property in Akyab and Chittagong worth to-day about three lakhs of rupees. Putting it, however, at its lowest, it can be said with truth that there is a very substantial quantity of immovable property in Burma. Moreover, it is quite clear, both from the affidavits of the petitioners and from the affidavits of the respondents, that a substantial business, if not the bulk of the business, of the trading concern in Calcutta and Rangoon was carried on at Rangoon. They were purchasers of paddy, gold and other commodities in Burma which were—some at any rate of which were—shipped to India for sale. The

(1) (1935) I.L.R. 62 Cal. 659.

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petitioners say that practically the whole was shipped to India for sale but the petitioning creditors in Rangoon deny that and they say that, in truth, as much as 95 per cent of the produce purchased in Burma was disposed of in Rangoon itself. I am satisfied on the evidence that it is certainly not possible at this stage to predict that there are not in Burma assets of a very substantial nature or that the liabilities in Burma are less than the liabilities in India. None of the insolvents has, as yet, filed his schedule and, accordingly, their statements of what the assets are that will have to be administered are not yet available to the Court.

Before closing this judgment, I want to refer very briefly to a case in the Bombay High Court to which I have been referred by Mr. Chatterjee as correctly setting out the principles upon which the Court has to exercise its jurisdiction in matters of this kind. The case is the case of *Re Aranvayal Sabhapathy Moodliar* (1). There was there an adjudication first in Madras and then in Bombay and, in due course, an application was made in Bombay to annul the adjudication upon the ground of previous adjudication in Madras. That the Court refused to do. It pointed out that, on the authority, among other cases, of the well-known case of *In re Artola Hermanos* (2), an adjudication order ought to be made where the necessary qualifications exist notwithstanding that there is at the time another adjudication in another place and not the less so, because there are or may be no assets for it to act upon. It is pointed out that the question of the Court in which the assets ought ultimately to be administered is one for future determination. As a

(1) (1897) I.L.R. 21 Bom. 297. (2) 24 Q.B.D. 640.

result of that case, the Bombay High Court refused also to stay its own adjudication, holding that it was not sufficient to show that the assets had already vested in the Madras Court. But it was carefully recognized that the Madras Court by virtue of its prior order, had the right to control proceedings and that care had to be taken that nothing was done which would interfere with the exercise of that order. On the facts of the present case, it would seem to me, acting in my discretion under section 22, that I ought not to stay the proceedings under the Rangoon adjudication order, at any rate as yet. In the first place, as I have pointed out, there are admittedly very substantial assets in Burma and it is not established to my satisfaction either that the bulk of the business lay in India or that there are not considerable liabilities in Burma. Again, there remains the question upon which I have expressed a view, but not decided, whether the immovable property in Burma ever has vested in the Calcutta Official Assignee. The view I take is that, before this Court is asked to commit itself to stay its own adjudication, this insolvency should have advanced considerably further than it has at present. If, when the assets and liabilities have been ascertained in the usual way and when the assets have been collected or are in process of collection, it is then ascertained that the interests of creditors would be better served by continuing the administration in Calcutta, then it can be done ; but, on the materials before me now, I should not feel justified in saying that the administration of the Burma assets should be taken away from the Burma Official Assignee and handed over to the Calcutta Official Assignee.

Accordingly, in my view, this is not a proper case for me to exercise my discretion under section 22

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and I propose to dismiss both the petitions. The petitions are, therefore, dismissed with costs against the petitioners, advocate's fee five gold mohurs on each petition.

FULL BENCH (CIVIL).

Before Sir Ernest H. Goodman Roberts, Kt., Chief Justice, Mr. Justice Mya Bu, and Mr. Justice Dunkley.

1938

Jan. 14.

R.M.K.A.R. ARUNACHALLAM CHETTYAR

v.

R.M.K.A.R.V. VALLIAPPA CHETTYAR. *

Stay of suit—"Foreign Court"—Earlier suit in British India, later suit in British Burma—Application for stay filed before 1st April 1937—Change of procedural law during litigation—No vested interest in course of procedure—No power to stay later suit in Burma—Civil Procedure Code, a "Burman law"—Privilege and right—Retroactive effect of procedural law—Civil Procedure Code, ss. 2 (5), 10—Adaptation of Laws Order, cl. 10.

By s. 2 (5) of the Civil Procedure Code, as amended by the Adaptation of Laws Order, "foreign Court" means a Court situate beyond the limits of British Burma which has no authority in British Burma and is not established by the Governor. After April 1st, 1937, therefore, under s. 10 of the Civil Procedure Code as amended, the Courts in British Burma ceased to have power to stay suits in British Burma by reason of the pendency of suits founded on the same cause of action in British India.

No suitor has any vested interest in the course of procedure, nor any right to complain if during the litigation the procedure is changed. By filing his application for stay of proceedings before 1st April 1937 the suitor cannot claim, after such date, to have his application decided under the earlier law.

Gangaram v. *Punamchand*, I.L.R. 21 Bom. 822; *Gardner* v. *Lucas*, 3 A.C. 582; *Joseph Suche & Co., Ltd., Re*, (1875) 1 Ch.D. 48; *Papa Sastrial* v. *Anantarama*, I.L.R. 3 Mad. 98; *Republic of Costa Rica* v. *Erlanger*, (1876) 3 Ch.D. 62; *Rex* v. *Chandra*, (1905) 2 K.B. 335; *Vendavalli* v. *Mangamma*, I.L.R. 27 Mad. 538; *Welby* v. *Parker*, (1916) 2 Ch. 1; *Wright* v. *Hale*, 30 L.J. Ex. 40, referred to.

The Civil Procedure Code is a "Burman law", but in clause 10 of the Adaptation of Laws Order the word "privilege" is coupled with "right", and it does not mean some advantage or boon which by reason of existing

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* Civil Revision No. 136 of 1937 from the order of the Subdivisional Court of Henzada in Civil Regular Suit No. 5 of 1936.