

REVISIONAL CIVIL.

Before Bhide J.

CHHAIBAR SINGH (CREDITOR) Petitioner

versus

MRS. BAINES (DEBTOR) Respondent.

Civil Revision No. 330 of 1935.

Provincial Insolvency Act, V of 1920, section 9 : Petitioning creditor — whose debt was not in existence at the time of the act of insolvency — whether competent to file a petition under the section.

Held, that a creditor is not entitled to file a petition under section 9 of the Provincial Insolvency Act, if the debt, on which the petition is founded, was not in existence at the date of the alleged act of insolvency, but was incurred later.

M. R. P. R. S. Muthiar Chettiar v. Lakshminarasa Aiyar (1), *Ex Parte Hayward* (2) and *Ex Parte Sadler* (3), relied upon.

Venkatarama Aiyar v. Buran Sheriff (4), distinguished.

Petition under section 75 of the Insolvency Act, for revision of the order of Mr. D. Falshaw, District Judge, Rawalpindi, dated 7th February, 1935, affirming that of Mr. Abdul Majid, Insolvency Judge, Rawalpindi, dated 30th October, 1934, dismissing Petitioner's application.

BASANT KRISHNA, for Petitioner.

BADRI DAS, for Respondent.

BHIDE J.

BHIDE J.—The sole point for decision in this revision petition is whether a creditor who files a petition under section 9 of the Provincial Insolvency Act, is entitled to do so, if the debt on which the petition is founded was not in existence at the date of the alleged act of insolvency, but was incurred later.

(1) (1921) 61 I. C. 756.

(3) (1878) 39 L. T. 361.

(2) (1870) L. R. 6 Ch. Ap. 546.

(4) (1927) I. L. R. 50 Mad. 396.

The learned Judges of the Courts below have held that the creditor was not entitled to maintain the petition as his debt was not in existence on the date of the act of insolvency. In support of this decision reliance has been placed on *M. R. P. R. S. Muthiar Chettiar v. Lakshminarasa Aiyar* (1), a Division Bench ruling of the Madras High Court. The learned counsel for the creditor, who has preferred the present petition, urges that there is no discussion of the point in the Madras ruling and the point was apparently merely taken for granted. He contends that the language of section 9 does not require that the debt should have been in existence on the date of the alleged act of insolvency and cites *Venkatarama Aiyar v. Buran Sheriff* (2). The latter ruling, however, does not seem to be in point. All that was held therein was that a creditor petitioning under section 9 does not lose his right to maintain the petition merely because his debt is reduced to less than Rs.500 after the date of filing the petition.

The wording of section 9 does not, I think, throw light on the point at issue. But the view taken by the Madras High Court seems to receive support from *Ex Parte Hayward* (3), and *Ex Parte Sadler* (4). In the former case Sir G. Mellish L. J. observed as follows:—

“ It has always been the settled rule that the debt of the petitioning creditor must be a debt which existed at the time of the act of bankruptcy. The law was so settled, not on the ground of any express words in any of the Bankruptcy Acts, but because it would be manifestly unjust that a person who commits an act of bankruptcy and who happens to have no creditor or

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pays all his creditors in full should be liable to be made bankrupt on account of that act by some person to whom he afterwards became indebted.”

In view of the above decision I dismiss the petition but leave the parties to bear their costs.

P. S.

Petition dismissed.

MISCELLANEOUS CIVIL.

Before Young C. J. and Monroe J.

HARKISHAN LAL—Petitioner

versus

OFFICIAL LIQUIDATOR, PEOPLES BANK OF
 NORTHERN INDIA (IN LIQUIDATION)

Respondent.

In Civil Original No. 120 of 1935.

High Court — Jurisdiction of — to transfer Insolvency proceedings from the lower Court to its own file — Letters Patent, Clause 9 : “ Suit ” — meaning of — Provincial Insolvency Act, V of 1920, section 3 (1) — scope of.

Held, that the word “ Suit ” in clause 9 of the Letters Patent of the Lahore High Court should be interpreted widely, and includes a proceeding in the Insolvency Court.

And, that the Lahore High Court under that clause has power to transfer such a proceeding from the lower Court to its own file and to try and determine the same as a ‘ Court of extraordinary original jurisdiction.’

Lakshmi Narain v. Mst. Ratni (1), referred to.

Section 3 (1) of the Provincial Insolvency Act merely enacts that the ordinary jurisdiction in insolvency shall be in the District Courts. It does not exclude the extraordinary civil jurisdiction of the High Court.

Petition of Lala Harkishan Lal, praying that the order passed by the High Court, on the 19th November,