

INSOLVENCY JURISDICTION.

Before Mr. Justice Starling.

IN RE AHMED ISMAIL MUNSHI.

1902.

June 25.

Insolvency—Adjudication of insolvency—Insolvent Act (Stat. 11 & 12 Vic., c. 21), section 8—Who is entitled to apply for order of adjudication—Condition necessary for adjudication under section—Practice—Procedure.

The only person who can obtain an order adjudicating another person insolvent under section 8 of the Indian Insolvent Act (Stat. 11 & 12 Vic., c. 21) on the ground of his lying in prison for twenty-one days in execution of a decree is the creditor in execution of whose decree he has been in prison.

A debtor cannot be adjudicated an insolvent under section 8 of the Indian Insolvent Act (Stat. 11 & 12 Vic., c. 21) on the ground of his lying in prison for twenty-one days unless he is in prison at the time the petition for adjudication is presented or at the time it is heard.

MOTION by petitioner to set aside the order adjudicating him an insolvent.

The order of adjudication had been made under section 8 of the Insolvent Act (Stat. 11 & 12 Vic., c. 21) on the ground that the petitioner had been in prison for twenty-one days in execution of a decree obtained against him by one Panachand Jiva. The order of adjudication, however, had been applied for, not by Panachand Jiva (the execution creditor), but by another creditor, one Husenbhai Ahmedbhai, who had obtained a decree against the petitioner, but who had not executed it.

The order of adjudication having been made on the 4th June, 1902, the petitioner (insolvent) now applied to have it revoked on the ground that it had been made on the application of one who was not the execution creditor.

Mankar and Young for applicant:—The order of adjudication must be revoked. It was made on the application of a creditor (Husenbhai Ahmedbhai) who under section 8 had no right to apply for it. He, no doubt, holds a decree against the insolvent, but he has not obtained an order for execution or even applied for it. The order of adjudication can only be obtained under the section by the creditor in execution of whose decree the debtor has been in prison. Panachand Jiva, who arrested the insolvent

1902.

 IN RE
 AHMED
 ISMAIL.

in execution, might have applied for the order of adjudication, but he did not join with Husenbhai Ahmedbhai in his petition.

Davar for the petitioning creditor *contra*:—This application ought not to have been made on notice. A rule should have been taken out by the insolvent to set aside the order and this rule should have been served on all the creditors of the insolvent. It is important that all the creditors should have an opportunity of showing cause against the revocation of the order of adjudication.

[STARLING, J.:—The proviso to section 8 of the Insolvent Act seems to contemplate service on the petitioning creditor only.]

The practice is to serve a rule for revocation on all creditors, and until they can be heard the order should not be revoked.

STARLING, J.:—The order of adjudication must be revoked. The order was made under section 8 of the Insolvent Act, but the only person who can apply for an order under that section on the ground alleged in the petition in this case is the creditor in execution of whose decree the debtor has been in prison for twenty-one days. In this case the debtor was in prison for twenty-one days at the instance of Panachand Jiva and not at the instance of Husenbhai Ahmedbhai, who applied for the order of adjudication. I think the order made on his application was illegal under the section and must be revoked.

Order of adjudication revoked.

The order of adjudication granted on the 4th June, 1902, having been revoked as above stated, an application was thereupon at once made on behalf of the execution creditor, Panachand Jiva, for an order adjudicating the debtor an insolvent under section 8 of the Insolvent Act. It appeared, however, that two days previously the amount of Panachand Jiva's decree, in execution of which he (the debtor) had been in jail, had been paid to the jailor, who had thereupon forthwith released the debtor.

Davar for the creditor:—I now apply on behalf of the execution creditor (Panachand Jiva) for an order of adjudication against the debtor under section 8 of the Insolvent Act on the ground

that he has lain in prison for twenty-one days in execution of our decree. The debtor, without our knowledge, has been released from jail. It is said that he has satisfied the decree in execution of which he was in prison by paying the amount to the jailor. The money has not reached us and we are still his creditors and are entitled to apply for adjudication under the section: *In the matter of Ragubhai Ramchandra.*⁽¹⁾

1862.

 IN RE
 ARMED
 ISMAIL.

Mankar for the debtor *contra*:—The debtor is no longer liable to be adjudged an insolvent. The decree against him has been satisfied by payment to the jailor, who is the agent of the execution creditor (Panachand Jiva) to receive payment. Panachand Jiva is therefore no longer a creditor and cannot apply for an order of adjudication under section 8.

STARLING, J.:—Three things are necessary to enable the Court to adjudicate a debtor under section 8:

(1) that the debtor should have been in jail for twenty-one days without satisfying the debt for non-payment of which he was imprisoned;

(2) that the petitioning creditor should be the detaining creditor; and

(3) that the debtor shall be in prison (not shall have been), and by that I understand that the debtor shall be in prison at the time the petition is presented, or possibly at the time it is heard.

For some reason or other the Superintendent of the Jail had been ordered to bring up the debtor to this Court, probably because there was a motion to be heard to revoke an adjudication which had been made against him on the 4th June and which has now been revoked. In answer to that order the Superintendent has made a return that the debt for which the debtor was in jail has been paid and that the debtor was released on the 23rd June. The third condition, therefore, has not been fulfilled and I must refuse to adjudicate.

My attention has been called to the case of *Ragubhai Ramchandra*⁽¹⁾ in which Couch, C.J., seems to have adjudicated a debtor under somewhat similar circumstances. I have looked at the record of that case and I find that the petition was sworn on

(1) (1869) 6 B. H. C. R. 86 (O. C. J.).

1902.

IN RE
AHMED
ISMAIL.

6th July, 1869, while the debtor was in prison, that he was discharged on 15th July as having been in prison for two years, the petition was lodged on 7th August and filed on 14th August and the adjudication was on 13th September, 1869, and the only point argued before the Chief Justice was whether the imprisonment was a satisfaction of the decree, which it was held it was not. In the present case the decree has been satisfied by the payment to the jailor of the amount for which the debtor was held in custody. The question whether "shall be" ought to be read "shall have been" was not discussed, and the case is, therefore, no authority on the point I have now decided.

Order of adjudication refused.

Attorneys for the applicant (insolvent)—*Messrs. Khanderao and Shripad.*

Attorneys for the petitioning creditors—*Messrs. Framji and Dinshaw.*

ORIGINAL CIVIL.

Before Sir L. H. Jenkins, Chief Justice, and Mr. Justice Crowe.

1902.

July 4 & 11.

SHAMJI DEOKARAN (ORIGINAL DEFENDANT), APPELLANT, v. POONJA JAIRAM AND ANOTHER (ORIGINAL PLAINTIFFS). RESPONDENTS.*

Decree—Execution—Arrest of debtor in execution—Release of debtor from such arrest under interim protection order granted under section 13 of Indian Insolvent Act (Stat. 11 & 12 Vic., c. 21)—Re-arrest of debtor in execution of same decree—Civil Procedure Code (XIV of 1882), section 341.

A judgment-debtor who has been arrested and imprisoned in execution of a decree and has obtained an *interim* protection order under section 13 of the Indian Insolvent Act (Stat. 11 & 12 Vic., c. 21) is liable to be re-arrested in execution of the same decree.

Secretary of State v. Judah (1) distinguished.

In re Bolye Chund (2) not followed.

APPEAL from an order of Starling, J., in Chambers.

* Suit No. 682 of 1900; Appeal No. 1176.

(1) (1886) 12 Cud. 658.

(2) (1893) 20 Cal. 874.