

ORIGINAL CIVIL.

Before Mr. Justice Davar.

In re DWARKADAS TEJBHANDAS.

1915.

September
27.

The Presidency Towns Insolvency Act (III of 1909), section 17—Suit by creditors against an adjudicated insolvent—Suit commenced without the leave of the Court—Application for leave after the institution of the suit—Application refused.

The leave contemplated under section 17 of the Presidency Towns Insolvency Act (III of 1909) is leave which ought to be obtained before the commencement of a suit, and cannot be granted after the same is filed.

APPLICATION for leave under section 17 of the Presidency Towns Insolvency Act (III of 1909).

Dwarkadas Tejbhandas, Khusberam Tejbhandas and Girdhardas Tejbhandas trading in the name of Tejbhandas Dwarkadas were adjudicated insolvents by an order of the High Court at Bombay on the 11th of April 1912. The firm of Nursoomal Gokaldas claiming to be the insolvents' creditors for Rs. 7,100 filed three suits in the Shikarpore Court in 1915, in ignorance of the fact that their debtors had been adjudicated insolvents and that all the property of the debtors had vested in the Official Assignee. From the date of their adjudication up to the filing of the suit nothing was done to proceed with the insolvency. The adjudicated insolvents were not even called upon to file their schedule. At the hearing of the suits, the insolvents objected to the trial proceeding, on the ground that the plaintiffs had not obtained the leave of the Court under section 17 of the Presidency Towns Insolvency Act before filing suits against them. The Trial Judge was of opinion that the defect could be cured by the plaintiffs obtaining the necessary leave even after the institution of the suit. He accordingly adjourned the hearing of the suits to enable the plaintiffs to apply for leave under section 17 to the High Court at

1915.

In re
 DWARKADAS
 TEJBHANDAS.

Bombay. The said plaintiffs thereupon applied for leave to the High Court in its insolvency jurisdiction.

Strangman for the applicants, cited *Lang v. Heptullabhai Ismailji*⁽¹⁾; *In re Wanzer, Limited*⁽²⁾; *Brownscombe v. Fair*⁽³⁾; and referred to the Indian Companies Act, section 171.

C. A. V.

DAVAR, J.:—Dwarkadas Tejbhandas, Khusberam Tejbhandas and Girdhardas Tejbhandas, who were then trading in the name of Tejbhandas Dwarkadas, were on the 11th of April 1912, on the application of some of their creditors adjudicated insolvents in this Court and by an order made on such adjudication all their property vested in the Official Assignee. From the date of the adjudication up to the present time nothing seems to have been done. The adjudicated insolvents have not even been called upon to file their schedule.

It appears that the firm of Nursoomal Gokaldas, who claim to be the insolvents' creditors for Rs. 7,100, in entire ignorance of the fact that their debtors had been adjudicated insolvents, filed three suits in the Shikarpore Court in 1915 to recover the sums of moneys which they alleged were due to them. When the suits came on the Judge's Board for hearing the insolvents objected to the suits going on, on the ground that the plaintiffs therein had not obtained the leave of the Court under section 17 of the Presidency Towns Insolvency Act before filing suits against them. The learned Subordinate Judge while recognising the force of the objection seems to have been of opinion that the defect could be cured by the plaintiffs therein obtaining the necessary leave even after the institution of the

(1) (1913) 38 Bom. 359.

(2) [1891] 1 Ch. 305.

(3) (1887) 58 L. T. 85.

suits and he adjourned the hearing of the suits to enable the plaintiffs therein to apply for leave under section 17 to this Court.

Mr. Strangman on behalf of the plaintiffs in these Shikarpur suits now applies for leave to continue the suits. The question for decision is "have I power as Judge dealing with insolvency proceedings under the Presidency Towns Insolvency Act to grant leave under section 17 *after* the suits have been instituted?"

The question has been fully argued before me by the learned counsel for the applicants and I regret to say I feel more than ever convinced that the view I expressed on a previous occasion is the only possible view to take of the provisions of this section. I use the word *regret* advisedly because I feel that my decision if correct will entail much hardship on the applicants. They filed the suits without any knowledge that their debtors had been adjudicated insolvents and if the suits now fail not only would they be prejudiced in costs but it is possible that it may be argued that their claims are barred by the law of Limitation. This is undoubtedly a case of great hardship.

The words of the section are so clear and unambiguous that there is no possibility of construing them in any way other than that leave must be obtained before the commencement of the action.

Omitting words that do not apply to this case the section runs as follows :—

"No creditor to whom the insolvent is indebted in respect of any debt provable in insolvency shall, during the pendency of the insolvency proceedings...commence any suit...except with the leave of the Court."

The words of the section are so clear and explicit that they leave no room for any construction other than the one I have placed upon them. No creditor shall *commence* a suit except with leave. This provision clearly negatives the suggestion that a suit commenced

1915.

In re
DWARAKADAS
TEJBHANDAS.

1915.

In re
DWARKADAS
TEJBHANDAS.

without leave can be continued by obtaining leave at any stage thereof.

Mr. Strangman has cited two English cases on the analogy of which he asked me to give him leave now. These cases have no bearing on the question before me. I have to construe a section of an Indian Act. The language of that section is so clear and emphatic that it can bear only one construction and it seems to me futile to invoke the assistance of cases decided under the provisions of other laws of another country.

The learned counsel for the applicants has stated to me that Brother Macleod gave leave under section 171 of the Indian Companies Act after a suit had been filed without leave and he has relied on the fact that the phraseology of the two sections is the same. I have, however, nothing before me to show under what circumstances such leave was granted and what were the facts of that case. If the matter had been argued before the learned Judge and he had decided the point after considering the section there would be some judgment showing the reasons for a decision which obviously would appear to be in conflict with the language of the section and I would have considered the judgment with great respect, but there is nothing before me which affects my judgment in the present case.

It is quite clear to my mind that the leave contemplated under section 17 of the Presidency Towns Insolvency Act is leave which ought to be obtained before commencement of a suit and cannot be granted after the same is filed.

I must, therefore, refuse the application.

Attorneys for the applicants : Messrs. *Mulla & Mulla*.

Application rejected.

G. G. N.