

1956
INCOME-TAX
OFFICER,
SANGLI
v.
CHANDANBAI
BALARAM
Shah J.

This view of the Madras High Court was approved in a judgment of this Court, *Governor-General in Council v. Chotalal Shivdas, and another.*⁽⁹⁾ It was held in that case :

“Arrears of unpaid income-tax due by an assessee is a debt due to the Crown, and as such the debt must have precedence over all other debts. Consequently in the competition between the Crown and the subject in respect of payment of their respective debts of equal degree Crown’s right must prevail. The Court can order payment of a Crown debt due by the debtor, on the application of the Crown without a formal attachment being issued, where there are funds in Court belonging to the debtor.”

Evidently, the Sales Tax Officer had submitted an application on November 8, 1954, for payment of Rs. 5,392-15-0 due as sales tax. Thereafter it was not open to the learned Judge by order, dated December 2, 1954, to direct appropriation of the amount to the claims of ordinary creditors. The Court below was, therefore, in error in rejecting the application filed by the Sales Tax Officer. It is unnecessary, in this application, to consider whether the Income-tax Officer is also entitled to make the claim for recovery of the amount due as income-tax from the debtor. Rule is made absolute with costs in this Court in the two revision application and it is directed that the amount lying in Court be paid over to the petitioners.

Rule absolute.
G. N. V.

9. (1939) 7 I. T. R. 411.

APPELLATE CIVIL

Before Mr. Justice Shah.

MOKSHAMADANLAL CHUNILAL THAKORE (ORIGINAL APPLICANT)
PETITIONER v. HARIPRASAD VISHNUPRASAD DESAIJI (ORIGINAL
OPONENT) RESPONDENT.*

Provincial Insolvency Act (V of 1920), s. 9 (1) (c)—Indian Limitation Act (IX of 1908), s. 14—Application for adjudication as an insolvent presented to a wrong Court and returned for presentation to proper Court—Application presented to proper Court more than three months after act of insolvency—Whether application could be entertained—Whether s. 9 (1) (c) of the Provincial Insolvency Act prescribes a condition precedent or period of limitation—Construction—Whether s. 14 of the Indian Limitation Act applicable.

Section 9 (1) (c) of the Provincial Insolvency Act, 1920, by enacting that the act of insolvency on which the petition is grounded must have occurred within three months before presentation of the petition, provides a condition precedent to the exercise of jurisdiction by the Insolvency Court; it does not prescribe a period of limitation. Section 14 of the Indian Limitation Act, 1908, cannot therefore be relied upon in applying the test prescribed by s. 9 (1) (c) of the Provincial Insolvency Act, 1920.

On February, 28, 1951 the respondent committed an act of insolvency and on April 23, 1951 the petitioner applied to the Court at Broach for

*Civil Revision Application No. 474 of 1955.

an order adjudicating the respondent an insolvent. The respondent's plea that the Court at Broach had no jurisdiction having been upheld, the petition was returned for presentation to the proper Court. On November 15, 1951 the petitioner presented the petition to the Court at Borivali. On the question whether the petition presented to the Court at Borivali more than three months after the act of insolvency had occurred, could be entertained.

Held, (i) that the Court at Broach having no jurisdiction to entertain the petition, the proceedings taken in the Court at Borivali could not be regarded as an extension of the proceedings in the Court at Broach, and

(ii) that the petition presented to the Borivali Court more than three months after the act of insolvency occurred did not comply with the requirements of s. 9 (1) (c) of the Provincial Insolvency Act, 1920.

Raja Pande v. Sheopujan Pande,⁽¹⁾ not followed.

Chenchuramane v. Arunachalam,⁽²⁾ and *Muradan Sardar v. The Secretary of State for India*,⁽³⁾ referred to.

Civil Revision Application against the decision of N. S. Shrikhande, Esquire, District Judge, Thana, reversing the decision of F. H. Lala, Esquire, Joint Civil Judge, Junior Division at Borivali.

The facts are sufficiently set out in the Judgment.

V. T. Gambhirwala, for the Petitioner.

B. G. Thakore with Desai & Co. for the Respondent.

Shah J.—One Chhotubhai obtained a decree against the respondent for Rs. 559-5-6 in Civil Suit No. 120 of 1939 of the file of the Civil Judge (Junior Division) at Broach. The decree was passed on November 17, 1939. The decree was assigned by the decree-holder Chhotubhai to the petitioner. The petitioner as assignee of the decree filed, on December 5, 1950, an application in the Court of the Civil Judge (Senior Division), Broach, exercising insolvency jurisdiction for serving a notice of insolvency upon the respondent under s. 6-A of the Provincial Insolvency Act. The respondent failed to comply with the notice within one month. The Insolvency Court at Broach passed an order on February 28, 1951, holding that an act of insolvency had been committed by the respondent. The petitioner then applied on April 23, 1951, by miscellaneous application No. 2 of 1951 to the Insolvency Court at Broach for an order adjudicating the respondent an insolvent. The respondent appeared in answer to the notice and contended that the Court at Broach had no jurisdiction to adjudicate him insolvent. The Court accepted the contention of the respondent and by order, dated November 14, 1951, ordered that the petition be returned for presentation to the proper Court. On November 15, 1951, the petitioner presented the petition to the Court of the Civil Judge (Junior Division) at Borivli, Bombay Suburban District. The respondent contended that the petition filed against him in the Borivali Court did not comply with the conditions prescribed by s. 9 of the Provincial Insolvency Act and the Court had no jurisdiction to adjudicate him insolvent.

1956

MOKSHA-
MADANLAL
CHUNILAL
v.
HARIPRASAD
VISHNU-
PRASAD

Shah J.

1. [1943] All. 84, F. B.

2. (1935) 58 Mad. 794.

3. (1939) 1 Cal. 425.

1956

MOKSHA-
MADANLAL
CHUNILAL
V.
HARIPRASAD
VISHNU-
PRASAD
Shah J.

The learned Insolvency Judge heard the objection relating to jurisdiction as a preliminary issue and by order, dated October 24, 1952, held that the Court had jurisdiction to adjudicate the respondent insolvent even though the petition was filed in the Borivli Court more than three months after the act of insolvency on which the petition was grounded had occurred. In so holding, the learned Insolvency Judge relied upon s. 14 of the Indian Limitation Act and held that the time spent in the Broach Court was liable to be excluded, in computing the period of three months, and if the time was so excluded, the petition complied with the condition prescribed by s. 9 (1) (c) of the Provincial Insolvency Act. In substance the learned Insolvency Judge held that the period prescribed by s. 9 (1) (c) was a period of limitation and s. 14 of the Indian Limitation Act applied to applications for adjudication.

The respondent preferred an appeal to the District Court at Thanā. The District Judge reversed the order passed by the Insolvency Judge. The learned District Judge held that the period prescribed by s. 9 (1) (c) was not a period of limitation and the petition not having complied strictly with the requirements of s. 9 of the Provincial Insolvency Act, was liable to be rejected. The learned District Judge accepted the contention of the respondent that institution of proceedings within the period prescribed by s. 9 (1) (c) was a condition precedent to the exercise of jurisdiction by the Insolvency Court. The learned Judge set aside the order of adjudication and dismissed the petition filed by the petitioner. The petitioner has applied to this Court in revision under s. 75 of the Provincial Insolvency Act.

Section 9 of the Provincial Insolvency Act prescribes "conditions on which a creditor may petition for adjudicating his debtor an insolvent. Sub-section (1) of s. 9 states :

"9. (1) A creditor shall not be entitled to present an insolvency petition against a debtor unless—

(a) the debt owing by the debtor to the creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to such creditors, amounts to five hundred rupees, and

(b) the debt is a liquidated sum payable either immediately or at some certain future time, and

(c) the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition."

Sub-section (1) is followed by a proviso which was added by Act III of 1950. The proviso states :

"Provided that where the said period of three months referred to in clause (c) expires on a day when the Court is closed, the insolvency petition may be presented on the day on which the Court re-opens."

The primary question which falls to be determined is whether by enacting that the condition that the act of insolvency on which the petition is grounded must have occurred within three months before presentation of the petition, the Legislature intended to prescribe a period of limitation for

petitions by creditors or to provide a condition precedent to the exercise of jurisdiction by the Insolvency Court. Mr. Gambhirwala who appears on behalf of the petitioner contends that even though in form cl. (c) provides one of the three conditions on the performance of which the Insolvency Court may exercise jurisdiction to adjudicate the debtor an insolvent, in substance the Legislature has only prescribed a period of limitation within which a petition for adjudication must be filed. In support of that contention, Mr. Gambhirwala relies upon the judgment of full bench of the Allahabad High Court, in *Raja Pande v. Sheopujan Pande*⁽⁴⁾. Mr. Gambhirwala also contends that in any event, the petition having been originally filed in the Broach Court on April 23, 1951, and that Court having returned the petition for presentation to the proper Court and the same petition having been presented in the Insolvency Court at Borivli on the next day after the petition was returned for presentation to the proper Court, the petition in the Borivli Court must be regarded as a continuation of the proceeding instituted in the Broach Court and must be regarded as lodged within three months from the date on which the act of insolvency was committed.

Now, from the marginal note to s. 9 of the Provincial Insolvency Act it appears that the legislature intended to prescribe "conditions on which creditor may petition" for an order of adjudication. Clauses (a) and (b) of sub-s. (1) indisputably prescribe conditions on the fulfilment of which a creditor may petition for adjudicating his debtor an insolvent. If the debt relied upon does not amount to five hundred rupees, the creditor cannot present an insolvency petition against the debtor. Similarly if the claim is not a liquidated sum, payable either immediately or at some certain future time, the creditor cannot present the insolvency petition. The opening words of s. 9 also make the fulfilment of the requirement contained in cls. (a), (b) and (c) a condition precedent to the exercise of jurisdiction by the Insolvency Court. The Legislature in terms has provided that the creditor shall not be entitled to present an insolvency petition against a debtor unless conditions specified therein are fulfilled. It is difficult to accept the contention of Mr. Gambhirwala that even though the Legislature has, in form, prescribed that certain conditions must be fulfilled before the creditor can present an insolvency petition and cls. (a) and (b) prescribe such conditions, what is prescribed by cl. (c) is not a condition but is merely a period of limitation which in certain eventualities is capable of being extended. The language used in cl. (c) in form prescribes a condition and not a period of limitation. It appears clear from the expression used that it was the intention of the Legislature that the act of insolvency must have occurred within three months before the presentation of the petition and except as expressly provided the fulfil-

1956

MOKSHA-
MADANLAL
CHUNILALv.
HARIPRASAD
VISHNU-
PRASAD

Shah J.

1956

MOKSHA-
MADANLAL
CHUNILALHARIPRASAD
VISHNU-
PRASAD

Shah J.

ment of that condition cannot be dispensed with. That view is supported by the proviso enacted by the Parliament by Act III of 1950 which provides that if the three months expire on a day on which the court is closed, the insolvency petition may be presented on the day on which the Court re-opens. If by s. 9 (1) (c) the Legislature intended to prescribe a period of limitation within which a petition for adjudication may be filed by a creditor, it was plainly unnecessary for the Legislature to have prescribed that the three months may be extended if on the day they expire the Court is closed. By s. 4 of the Limitation Act, it is expressly provided that where the period of limitation for an application expires on a day when the Court is closed, the application may be instituted on the day on which the court re-opens. If the condition that the petition must be presented within a period of three months were, in substance, intended to prescribe a period of limitation, then by virtue of s. 29 (2) of the Indian Limitation Act, s. 4 thereof will apply to the petition, and that it was not necessary for the Legislature to enact the proviso.

In *Raja Pande v. Sheopujan Pande*,⁽⁵⁾ the period of three months from the date of the act of insolvency expired on a day on which the Insolvency Court was closed, and the petition for adjudication was presented on the next day on which the Court re-opened. The Court held that the application complied with the requirements of s. 9 (1) (c). The learned Judges who constituted the full bench arrived at their decision on different grounds. Iqbal Ahmed C. J. and Plowden J. expressed the opinion that the period of three months in s. 9 (1) (c) was a 'period of limitation' but they observed that even if it were not, s. 10 of the General Clauses Act applied to petitions for insolvency. They observed that a petition for adjudicating a debtor an insolvent was not a 'suit, appeal or application' for which a period of limitation was prescribed by any special or local law and, therefore, the sections referred to in s. 29 (2) of the Limitation Act did not apply thereto. Dar J. held that s. 9 (1) (c) prescribed a period of limitation for an application under a special law and by the operation of s. 29 (2), s. 4 of the Limitation Act applied to a petition for adjudication. The Court in that case refused to accept the view that s. 9 (1) (c) of the Provincial Insolvency Act did not prescribe a period of limitation taken by the Madras High Court in *Chenchuramana v. Arunachalam*,⁽⁶⁾ and the Calcutta High Court in *Muradan Sardar v. The Secretary of State for India*.⁽⁷⁾ It is difficult to appreciate the distinction between 'a petition' and 'an application' within the meaning of s. 29 (2) of the Limitation Act. However in view of the proviso enacted by the Parliament by Act III of 1950, the question whether in the circumstances the petition for adjudication in *Raja Pande's* case may be regarded as maintainable is academic. But for reasons hereinbefore

5. [1943] All. 84.

6. (1935) 58 Mad. 794.
7. (1939) 1 Cal. 425.

mentioned, I am unable to agree with the view that s. 9 (1) (c) prescribes a period of limitation and is not in form and substance a condition on the strict compliance of which alone a petition for adjudication can be maintained. In my view, s. 9 (1) (c) does not prescribe a period of limitation for presentation of a petition by a creditor but sets out a condition precedent, and by applying the rule contained in s. 14 of the Limitation Act a petition filed after the expiry of three months cannot be made to conform to the strict requirement of s. (1) (c) of the Provincial Insolvency Act.

It is true that the petition for adjudicating the respondent an insolvent was lodged in the Insolvency Court at Broach on April 23, 1951, but that Court had no jurisdiction to entertain the petition. The Broach Court having no jurisdiction to entertain the proceedings, the proceeding taken in the Insolvency Court at Borivali cannot be regarded as a continuation of the proceeding filed in the former Court, and the petition must be regarded as presented on November 15, 1951. The petition having been presented more than three months after the date on which the act of insolvency is grounded occurred, it must be regarded as not complying with the requirement of s. 9 of the Provincial Insolvency Act. The learned District Judge, therefore, was in my view, right in dismissing the petition.

The rule is, therefore, discharged with costs.

Rule discharged.

K. B. S.

APPELLATE CRIMINAL

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Dixit.

BAPURAO DHONDIBA JAGTAP (ORIGINAL ACCUSED) PETITIONER v.
THE STATE OF BOMBAY.*

Bombay Police Act (Bom. XXII of 1951), s. 37 (3)—Constitution of India, art. 19 (1) (b) & (d), (3), (5)—Whether s. 37 (3) ultra vires of the Constitution—Whether it imposes unreasonable restrictions on fundamental rights—Commissioner of Police issuing order under s. 37 (3) and extending its duration by another order before expiration of original order—Whether extension of order valid—Whether principles of natural justice could be imported in considering validity of administrative order.

Section 37 (3) of the Bombay Police Act, 1951, is not *ultra vires* of the Constitution of India inasmuch as the restriction imposed by s. 37 (3) upon the freedom guaranteed to the citizen under art. 19 (b) and (d) is in the interests of the general public and the restriction is a reasonable one.

The Commissioner of Police, Greater Bombay, issued an order under s. 37 (3) of the Bombay Police Act, 1951, prohibiting for a period of fifteen days any procession of five or more persons in Greater Bombay.

*Criminal Application No. 55 of 1956.

1956

MOKSHA-
MADANLAL
CHUNILAL

v.

HARIPRASAD
VISHNU-
PRASAD

Shah J.

1956
Jan. 31