A

YENUMULA MALLU DORA

v.

PERURI SEETHARATNAM AND OTHERS

October 14, 1965

B

[P. B. GAJENDRAGADKAR, C.J., K. N. WANCHOO, M. HIDAYATULLAH AND V. RAMASWAMI, JJ.]

Provincial Insolvency Act, 1920, *s.* 6(*e*)—*Act of insolvency—When once committed whether purged by satisfying only some of the creditors—Therefore whether available to other creditors for the purpose of an application under s.* 7—*Section* 25—*Scope of.*

C

On the application of two creditors (respondents in this appeal) the appellant was adjudged a bankrupt by the Subordinate Judge, Kakinada, and a receiving order was passed against him. This adjudication was based on the one act of insolvency out of three alleged in the application which was accepted by the sub-judge, *i.e.*, the sale of some of his properties in execution of a money decree. Appeals against the order to the District Judge, and later to the High Court, were dismissed.

D

It was contended on behalf of the appellant that the alleged act of insolvency was not established as he had deposited, within one month of the sale, the entire decretal amount, and the sale was set aside on a petition by him under Order 21, rule 89 of the Code of Civil Procedure; that in any event he was entitled to have the application dismissed under s. 25 of the Provincial Insolvency Act, 1920, which allows a creditor's application to be dismissed on sufficient cause.

E

HELD : The adjudication of the appellant as an insolvent and the receiving order against him were properly made. [214 E]

An act of insolvency once committed cannot be explained or purged by subsequent events. The insolvent cannot claim to wipe it off by paying some of his creditors; the same act of insolvency is available to all his creditors and is not erased unless all creditors are satisfied. The act of insolvency which the appellant had committed had remained and

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was not purged by payment of the decretal amount after the sale in execution of the money decree; the respondents could therefore rely on it even though one or more creditors might have been paid in full. [212 F-H]

(ii) Although s. 25 of the Provincial Insolvency Act is in wide terms, it cannot be given effect to so as to ignore an act of insolvency in cases such as the present one, where the debtor continues to be heavily indebted

G

and there is no proof that he is able to pay his debts. [213 A-B]

Venkatakrishnayya v. *Malakondayya,* A.I.R. 1942 Mad. 306; *Pratapmall Rameshwar* v. *Chunnilal Jahurt,* A.I.R. 1933 Cal. 417 and *Lal Chand Changhuri* v. *Bogha Ram & Ors.*, A.I.R. 1938 Lah. 819, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 474 of 1964.

H

Appeal by special leave from the judgment and order dated March 14, 1963 of the Andhra Pradesh High Court in C.R.P. No. 1725 of 1959.

M. C. Setalvad, and *T. V. R. Tatachari* for the appellant. A

Kirpa Narain and *T. Satyanarayana,* for respondent Nos. 1 and 9.

The Judgment of the Court was delivered by

Hidayatullah J. On the application of two creditors the B appellant Yenumula Mallu Dora has been adjudged insolvent by the Subordinate Judge, Kakinada and a receiving order has been passed against him. The respondents before us are one of the petitioning creditors and the legal representatives of the other petitioning creditor who died during these proceedings. The first petitioning creditor held a decree for money which he had obtained C in O.S. 67 of 1949. He also held another money decree in O.S. 473 of 1948. The second petitioning creditor held a decree which she had obtained in O.S. 17 of 1955. The application was based upon three acts of insolvency which the appellant was stated to have committed and on the general facts that he was indebted to the tune of Rs. two lakhs, and was unable to pay his debts. The D three acts of insolvency alleged against him were (a) evasion of arrest in execution of the money decree in O.S. 67 of 1949; (b) sale of some of his properties on September 26, 1956 in execution arising from O.S. 73 of 1952; and (c) sale of some of his properties on September 19, 1956 in execution of money decree in O.S. 9 of 1950. It was also alleged that he was fraudulently E transferring properties in the name of his wife and brother-in-law and had suffered a collusive charge decree for maintenance in favour of his wife, to delay and defeat his creditors.

The Subordinate Judge, Kakinada did not accept the first two acts of insolvency. The evidence regarding evasion of arrest was F not found convincing and the second act of insolvency was rejected because the sale of the property was in execution of a mortgage decree. In respect of the third act of insolvency the Subordinate Judge held that it satisfied s. 6(e) of the Provincial Insolvency Act and an adjudication and a receiving order were justified in the case. An appeal was taken to the District Court at Rajahmundry G (C.A. 41 of 1958) which was dismissed on October 15, 1959. A Revision Application filed under s. 75 of the Provincial Insolvency Act was dismissed by the High Court of Andhra Pradesh on March 14, 1963. The appellant, however, obtained special leave of this Court and has filed the present appeal against the order of the High Court. H

The contention of the appellant was, and still is, that the third act of insolvency was not established as he had deposited, within

A one month of the sale, the entire decretal amount together with poundage and commission and the sale was set aside on his petition under Or. 21 r. 89 of the Code of Civil Procedure. He contended, therefore, that as none of the acts of insolvency remained, the petition ought to have been dismissed as incompetent or he was entitled to have the petition dismissed in any event, under s. 25
B of the Provincial Insolvency Act which allows a creditor's petition to be dismissed on sufficient cause. He submitted that as the sale was set aside before the order of adjudication was made there existed sufficient cause for the dismissal of the creditors' petition. The Subordinate Judge relying upon *Venkatakrishnayya* v. *Malakondayya*(1) and on decisions of the Lahore and the Calcutta
C High Courts rejected the submission and made the order against the appellant. The District Judge, Rajahmundry agreed with the conclusion of the Subordinate Judge and the High Court rejected the petition for revision. In this appeal the same points are urged again for our acceptance. In our judgment the view of the law taken in this case by the Subordinate Judge and approved by the
D District Court is right and does not warrant any interference.

The object of the law of insolvency is to seize the property of an insolvent before he can squander it and to distribute it amongst his creditors. It is, however, not every debtor, who has borrowed beyond his assets or even one whose property is attached in execu-
E tion of his debts, who can be subjected to such control. The jurisdiction of the court commences when certain acts take place which are known as acts of insolvency and which give a right to his creditors to apply to the Court for his adjudication as an insolvent. The Provincial Insolvency Act lays down in s. 6 what acts are to be regarded as acts of insolvency. It is a long list. Some
F are voluntary acts of the insolvent and some others are involuntary. The involuntary acts are of a kind by which a creditor is able to compel a debtor to disclose his insolvent condition even if the insolvent is careful enough not to commit a voluntary act of insolvency. One such act is that the insolvent has been imprisoned in execution of a decree of any court for payment of money, and
G another is that any of his property has been sold in execution of a decree of any court for payment of money. In this case the property of the appellant was sold on September 19, 1956 in execution of a money decree against him and therefore there is no question that he was guilty of an act of insolvency described in s. 6(e)
H of the Provincial Insolvency Act.

(1) A.I.R. 1942 Mad, 306.

Under s. 7, a creditor is entitled to present a petition in the Insolvency Court against a debtor if he has committed an act of insolvency provided [as laid down in s. 9(i)(c)] the petition is made within three months of the act of insolvency on which the petition is grounded. In this case both these conditions are fulfilled. There is thus no doubt that the petitioning creditors' application under s. 7 complied with s. 6(e) and s. 9(1)(c) of the Provincial Insolvency Act. The petitioning creditors alleged that the appellant was indebted to the extent of Rs. two lakhs and this was not denied by the appellant. In the trial of one of the execution petitions filed against him by a decree-holder the appellant admitted that he had "no means to pay the decree debt" because "all his properties" were "under attachment and were being brought to sale". He also stated that he was not "in a position to discharge the debts". It is, therefore, clear that the appellant who was in more than embarrassed pecuniary circumstances was unable to pay his debts. It was also clear from the evidence, which the District Court and the Subordinate Judge have concurrently accepted, that he had made some transfers to screen his properties from his creditors and had suffered a decree for maintenance in a suit by his wife. In view of these facts, which the appellant cannot now deny, he is driven to support his case by argument on law. The argument, as we have seen, is two-fold. We are not inclined to accept either leg of the argument.

An act of insolvency once committed cannot be explained or purged by subsequent events. The insolvent cannot claim to wipe it off by paying some of his creditors. This is because the same act of insolvency is available to all his creditors. By satisfying one of the creditors the act of insolvency is not erased unless all creditors are satisfied because till all creditors are paid the debtor must prove his ability to meet his liabilities. In this case the petitioning creditors had their own decrees. It was in the decree of another creditor that the payment was made but only after the act of insolvency was committed. Besides the petitioning creditors there were several other creditors to whom the appellant owed large sum of money and his total debts aggregated to Rs. two lakhs. It is plain that any of the remaining creditors, including the petitioning creditors, could rely upon the act of insolvency even though one or more creditors might have been paid in full. The act of insolvency which the appellant had committed thus remained and was not purged by payment of decretal amount after the sale in execution of the money decree.

A The next question is whether the Subordinate Judge should have exercised his discretion under s. 25 to dismiss the petition of the creditors treating the deposit of the money as sufficient cause. Section 25 of the Provincial Insolvency Act is in wide terms but it is impossible to give effect to those wide terms so as to confer a jurisdiction to ignore an act of insolvency at least B in cases where the debtor continues to be heavily indebted and there is no proof that he is able to pay his debts. The section reads as follows :—

"25. Dismissal of petition.

C (1) In the case of a petition presented by a creditor, where the Court is not satisfied with the proof of his right to present the petition or of the service on the debtor of notice of the order admitting the petition, or of the alleged act of insolvency, or is satisfied by the debtor that he is able to pay his debts, or that for any other sufficient cause no order ought to be D made, the Court shall dismiss the petition.

(2) . . . . . .

. . . . . ."

The section expressly mentions three circumstances in which the E petition made by a creditor must be dismissed, namely, (i) the absence of the right of the creditor to make the application (ii) failure to serve the debtor with the notice of the admission of the petition; and (iii) the ability of the debtor to pay his debts. In addition, the Court has been given a discretion to dismiss the petition if it is satisfied that there is other sufficient cause for F not making the order against the debtor. The last clause of the section need not necessarily be read *ejusdem generis* with the previous ones but even so there can be no sufficient cause if, after an act of insolvency is established, the debtor is unable to pay his debts. The discretion to dismiss the petition can only be exercised under very different circumstances. What those cases G would be, it is neither easy nor necessary to specify, but examples of sufficient cause are to be found when the petition is malicious and has been made for some collateral or inequitable purpose such as putting pressure upon the debtor or for extorting money from him, or where the petitioning creditor having refused tender of money, fraudulently and maliciously files the application. An H order is sometimes not made when by the receiving order the only asset of the debtor would be destroyed such as a life interest which would cease on his bankruptcy. Cases have also occurred

where a receiving order was not made because there were no assets and it would have been a waste of time and money to make a receiving order against the debtor. These examples merely illustrate the grounds on which orders are generally made in the exercise of the discretion conferred by the last clause of s. 25. This case is clearly one which cannot be treated under that clause. There are huge debts and no means to pay even though there are properties which, if realised, may satisfy at least in part the creditors of the appellant. The appellant was clearly guilty of an act of insolvency and an act of insolvency cannot be purged by anything he may have done subsequently. There is no proof of malicious or inequitable dealing on the part of the petitioning creditors. They have proved the necessary facts and have established both the act of insolvency and the inability of the appellant to pay his debts. The appellant has not been able to prove that he is able to pay. In fact, he has admitted that he is unable to pay his debts.

The High Courts have taken a similar and uniform view of such cases. These rulings are quite numerous but the following may be seen : *Pratapmall Rameshwar* v. *Chunnilal Jahuri,*(1) *Lal Chand Chaughuri* v. *Bogha Ram and others*(2) and *Venkatakrishnayya* v. *Malakondayya*(3). We do not consider it necessary to examine the facts in those cases because they apply correctly the principles, which we have set out above to the facts in the cases then present. It is, therefore, quite clear that the adjudication of the appellant and the receiving order against him were properly made. In the result the appeal fails and is dismissed. There will be no order as to costs.

Appeal dismissed.

(1) A.I.R. (1933) Cal. 417. (2) A.I.R. (1938) Lah. 819.
(3) A.I.R.(1942) Mad. 306.