

PRIVY COUNCIL

Maung Ba Thaw

Vs.

Ma Pin

P.C.A.No.114 of 1932

(Lords Thankerton Alness and Sir Lancelot Sanderson JJ.)

15.01.1934

JUDGMENT

LORD THANKERTON J.

1. The appellant is Receiver of the estate of Po Thit and Ma Nyein E, his wife, who were adjudicated insolvents on 11th January 1929, and he appeals from a decree of the High Court of Judicature of Rangoon, dated 18th January 1932, which reversed the order of the District Court of Henzada, dated 30th March 1931 and directed that the respondent be added in the Schedule of Debts as a creditor of the estate in respect of certain sums, amounting in all to Rs. 18,691-9-0, claimed in respect of eight promissory notes. The respondent had also claimed in respect of a mortgage debt of Rs. 4,000, but it is now admitted that it had been satisfied.

2. Prior to the application by the respondent to be added in the Schedule of Debts, which was filed on 30th January 1931, and out of which the present appeal arises, the appellant had made an application under section 54, Provincial Insolvency Act, dated 6th April 1929, against the present respondent, asking that the payment by the insolvents to her of a sum of Rs. 19,000 within three months of the petition for adjudication should be declared fraudulent and void and that the present respondent should be ordered to pay the amount to him. After an inquiry, the District Court annulled the payment, which had been made on 24th September 1928, and in fact amounted to Rs. 18,618-1-6, and directed the respondent to pay that amount to the appellant. The respondent appealed to the High Court, but her appeal was dismissed, and an application for leave to appeal to His Majesty in Council was also unsuccessful. The respondent then filed the present application.

3. In these earlier proceedings the respondent admitted that the payment had been

made to her, but she claimed that it was paid as the price of paddy which was stored in her godown and on which she claimed to have had a lien for debts due to her by the insolvent Po Thit. In support of that claim of indebtedness she produced loose counterfoils of the eight promissory notes and the mortgage for Rs. 4,000, representing the same claim of indebtedness in respect of which the present application is made by her. In the course of the inquiry in these earlier proceedings the present respondent gave evidence in support of her claim and her evidence was supported by that of the insolvent Po Thit. In her evidence the respondent admitted that the mortgage debt of Rs. 4,000 had already been satisfied. In the present application the advocates for both parties agreed that the evidence in the earlier proceedings should be evidence in the case, and that they would produce no further evidence.

4. 5. The respondent raised a preliminary objection to the competency of the present appeal, maintaining that under Section 4(2), Provincial Insolvency Act, the decision of the District Court was final, subject only to a limited right of appeal to the High Court under Section 75(2), any right of further appeal being thereby excluded. But, in their Lordships' opinion, this objection is not maintainable, in view of the decision of this Board in *Secy. of State v. Chelikani Rama Rao at p. 197 (of 43 IA)*, in which a similar objection was taken in respect of the provisions of the Madras Forest Act of 1882, and it was held that, when such a right of appeal is given to one of the ordinary Courts of the country, the procedure, orders and decrees of that Court will be governed by the ordinary rules of the Civil Procedure Code.

5. At the first hearing of the appeal their Lordships drew the attention of the parties to the fact that on the face of the record as presented, the District Judge had annulled the order for adjudication on 11th July 1929, and there was nothing to show that order had ceased to operate. The hearing was accordingly adjourned to enable the parties to clear up the matter. On the resumption of the hearing at a later date, the parties explained that an appeal had been taken by creditors against the order of annulment, and that, on 14th July 1930, the High Court had set aside the order of the District Judge and extended the time for the application for discharge : *R.M.K.R.M. Chettyar v. Ko Po Thit* It is surprising that this does not appear either in the record or in the cases on behalf of the appellants and respondent.

6. The main question in the appeal was whether the respondent had proved the indebtedness of the insolvent Po Thit to her. As already stated, the respondent admits that the mortgage debt of Rs. 4,000 has been satisfied, and she no longer claims in respect of it. The eight promissory notes were not produced, but the loose counterfoils

were. The whole matter turns on the credibility of the respondent and the insolvent Po Thit. The learned District Judge, who had not seen the witnesses, found their evidence unreliable; the High Court took the contrary view. It was for the appellant to satisfy their Lordships that the High Court had taken an erroneous view on this question, which is purely one of fact. It is unnecessary to review the evidence in detail; it is fully dealt with in the judgments of the lower Courts. It is sufficient to say that the appellant has failed to satisfy their Lordships that the High Court has come to a wrong conclusion, and it becomes unnecessary to consider the further contention of the respondent that the decision of the Courts in the earlier proceedings forms *res judicata* on the question of the particular indebtedness in respect of which the present application is made. Their Lordships will therefore humbly advise His Majesty that the appeal should be dismissed, and that the decree of the High Court dated 18th January 1932 should be affirmed, the appellant to pay the respondent her costs in this appeal.

Appeal dismissed.

Cases Referred.

AIR 1916 PC 21=43 IA 192=39 Mad 617= 35 IC 902 (PC),

AIR 1931 Rangoon 27=8 Rang 506=128 IC 841.