

Maung Ba Thaw, Receiver of the estate of Po Thit and another,
insolvents - - - - - *Appellants*

v.

Ma Pin - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT RANGOON.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 15TH JANUARY, 1934.

Present at the Hearing :

LORD THANKERTON.

LORD ALNESS.

SIR LANCELOT SANDERSON.

[*Delivered by* LORD THANKERTON.]

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The appellant is Receiver of the estate of Po Thit and Ma Nyeing, his wife, who were adjudicated insolvents on the 11th January, 1929, and he appeals from a decree of the High Court of Judicature at Rangoon, dated the 18th January, 1932, which reversed the order of the District Court of Henzada, dated the 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.

Prior to the application by the respondent to be added in the Schedule of Debts, which was filed on the 30th January, 1931, and out of which the present appeal arises, the appellant had made an application under Section 54 of the Provincial Insolvency Act, dated the 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 enquiry, the District Court annulled the payment, which had been made on the 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.

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 enquiry 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.

The respondent raised a preliminary objection to the competency of the present appeal, maintaining that under Section 4 (2) of the 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 *Secretary of State for India v. Chelikani Rama Rao* (1916), 43 Ind. App. 192, at p. 197, 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.

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 the 11th July, 1929, and there was nothing to show that 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 the 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*, I.L.R. 8 Rangoon 506). It is surprising that this does not appear either in the record or in the cases on behalf of the appellant and respondent.

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 of 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 the 18th January, 1932, should be affirmed, the appellant to pay the respondent her costs in this appeal.

In the Privy Council.

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OF PO THIT AND ANOTHER, INSOLVENTS

v.
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DELIVERED BY LORD THANKERTON.

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