

RAM REDDY

v.

BURNS PHILP (SOUTH SEA) CO. LTD.

[SUPREME COURT, 1963 (MacDuff C.J.), 1st, 4th March]
In Bankruptcy

Bankruptcy—petition—bankruptcy notice not served within prescribed period—petition dismissed—Bankruptcy Rules 142, 385.

Bankruptcy—bankruptcy notice—necessity for timeous service.

Where a bankruptcy notice is served after one month from the issue thereof (the time not having been extended) any petition based on the notice must fail in the same manner as if such notice had not been served. In *re Collier* (1891) 8 Morr. 80, applied.

Petition for a receiving order in bankruptcy.

Jamnadas for the petitioner.

The facts appear from the judgment.

MACDUFF C.J. [4th March, 1963]—

This is a petition by the creditor praying that a receiving order be made in respect of the debtor. It was presented on the 22nd January, 1962, and was duly served on the debtor on the 24th January, 1962. When called for hearing the debtor failed to appear.

The act of bankruptcy relied on is set out in the petition in these words—

“ that the said Burns Philp (South Sea) Company Limited having obtained a judgment against the said Ram Reddy son of Narsa Reddy in the Supreme Court at Suva on the 9th day of September, 1960, and execution thereon not having been stayed caused a bankruptcy notice regularly issued out of this Court under the Bankruptcy Ordinance (Cap. 37) to be duly served on the said Ram Reddy son of Narsa Reddy on the 21st day of November, 1962, and he has not either complied with the requirements of the said notice or satisfied the Court that he has a counter-claim, set-off or cross demand which equals or exceeds the amount of the judgment debt of the said Burns Philp (South Sea) Company Limited and which he could not set up in the action in which the judgment was obtained.”

This is not correct. The bankruptcy notice was not duly served. It was issued on the 18th October, 1962. Rule 142 of the Bankruptcy Rules provides—

“ Subject to the power of the Court to extend the time, a bankruptcy notice to be served in England shall be served within one month from the issue thereof.”

The bankruptcy notice was not served on the debtor until the 21st November, 1962, outside of the time allowed by Rule 142.

The question for decision is what is the effect of such late service on the present petition. In my view, the service was not service at all and any petition based on non-compliance with such notice must fail in the same manner as if the notice had never been served. The Court has power to extend the time for service but that was not done in this instance. To look at the matter from a different view-point the bankruptcy notice has a period of validity placed on it, that is to say that it be served within one month of its issue. After that it is not valid unless and until it is re-issued.

Counsel for the creditor prayed in aid the provisions of Rule 385 that—

“Non-compliance with any of these Rules, or with any rule of practice for the time being in force, shall not render any proceeding void unless the Court shall so direct, but such proceeding may be set aside, either wholly or in part, as irregular, or amended, or otherwise dealt with in such manner and upon such terms as the Court may think fit.”

I do not think that this rule can be applied to the present situation. In the first place I am now dealing with the petition, not the bankruptcy notice, and this is not a non-compliance with the rules in respect of the petition.

As far as the bankruptcy notice is concerned, I don't think I have any power in the present proceedings to deal with its validity or not. In any case, as far as Rule 385 is concerned, I do not think that it has application on the authority of *In re Collier* (1891) 8 Morr. 80 where Cave, J. said—

“Due service of a bankruptcy notice is necessary in order to constitute an act of bankruptcy and it is more important that the rules and regulations should be properly complied with than in the case of a petition for adjudication.”

For these reasons the petition must be dismissed.

Petition dismissed.

Solicitors for the petitioner: *Stuart and Co.*