(2017) 01 MAD CK 0272

In the Madras High Court

Case No : 1 of 2013 and M P No 1 of 2013

A.Kuppuraj APPELLANT

Vs

Venkatapathy RESPONDENT

Date of Decision : 10-01-2017

Acts Referred:

Provincial Insolvency Act, 1920, Section 10, Section 13 - Conditions on which debtor may petition - Contents of petition

Citation : (2017) 01 MAD CK 0272

Hon'ble Judges : Pushpa Sathyanarayana

Bench : SINGLE BENCH

Advocate : Pushpa Sathyanarayana

Final Decision : Disposed Off

Judgement

1. The above Civil Miscellaneous Second Appeal has been filed against the fair and decreetal order dated 31.10.2012 passed by the leanred III Additional District and Sessions Judge, Coimbatore in CMA No.39 of 2011 confirming the order dated 21.02.2011 passed by the learned I Additional Subordinate Judge, Coimbatore in I.P.No.34 of 2007 in an application filed under Sections 10 and 13 of the Provincial Insolvency Act.

2. The case of the appellant is as follows: (i) The respondent herein had filed a suit for recovery of the amount against him and his wife before the Sub Court, Coimbatore in O.S.No.33 of 2000. The suit was decreed ex parte on 06.10.2004. On the basis of the exparte decree, E.P.No.177 of 2006 was filed by the respondent for recovery of the amount by seeking civil arrest of the appellant. The said application was contested by the judgment debtors taking various pleas including that of ''no means''. The Execution Court, by holding that in the year 1996, the appellant had sold one of the properties and the daughters of the appellant is well settled had allowed the Execution Petition vide order dated 24.07.2007. Thereafter, the E.P.No.177 of 2006 was posted for payment of the

decree amount. Further, according to the appellant, he was possessed only with the B schedule property and he has no other means to pay the decree debt. Therefore, an application was filed to adjudicate him as insolvent.

(ii) The respondent/decree holder, had resisted the application contending that the appellant was originally running a business in the name and style of Muthu Water Suppliers. His wife also has a share in one of the theatres and all the three of his daughters are employed in various establishments. The family of the appellant is affluent and well placed in life. The appellant was holding a property in Big Bazaar Street in Coimbatore and the same was sold by him and he has substantial cash in hand, which he deposited in Syndicate Bank and also invested in one of the business run by his daughter. As the appellant had borrowed money from the respondent, the suit was filed and a decree was obtained. Even though the appellant was capable of discharging the decree amount, with a mala fide intention not to pay the amount to the respondent, he has filed an application to adjudicate him as an insolvent. Therefore, there are no bona fide in the case of the appellant.

(iii) The appellant marked the Execution Petition in E.P.No.177 of 2006 filed before the II Additional Subordinate Judge, Coimbatore and the order passed by the said Court, wherein it is stated that the appellant has got means to honour the decree as Exs.P1 and P2. The learned I Additional Subordinate Judge, Coimbatore, which is the trial court, after considering the decisions and documents, in this regard, dismissed the application.

(iv) Aggrieved by the same, the appellant preferred CMA before the learned III Additional District and Sessions Judge, Coimbatore in CMA No.39 of 2011 and the appellate Court confirmed the order passed by the trial court. Challenging the same, the present Civil Miscellaneous Second Appeal has been filed.

3. Heard both sides and perused the records.

4. A perusal of the cross examination of PW1/appellant shows that he has got three daughters. The elder one is employed in Jagannatha Textiles and that she owns a house in Vinayaga Nagar; the second daughter is running an Engineering Works, who has also possessed of a own house and the third daughter is running a school. It is also found that as on the date of sale of his one of the properties, i.e.,on 19.01.1996, under Exs.R1 to R4 there was no constraint on the appellant to marry his daughters as they all had already been given in marriage earlier. The sale consideration in a sum of Rs.18,50,000/- as mentioned in the sale deed was with the appellant and no details were furnished by the appellant as to what had happened to the said amount. When a person comes to Court to declare himself as insolvent he has to come with clean hands. Whereas the appellant has not stated anything about, the said amount received as sale consideration or about the fact that he had suffered loss in his business.

5. When the matter came up for admission, this Court had only ordered notice of motion and no question of law was framed for consideration.

6. The learned trial Judge, while considering the application of the appellant seeking adjudication as insolvent, by holding that the appellant had suppressed the material facts, had dismissed the application. The appeal before the learned III Additional District and Sessions Judge, Coimbatore also met with the same result. The learned Appellate Judge, while dismissing the appeal, had held that if the appellant had received the sum of Rs.18,50,000/- as sale consideration on 19.01.1996, he was fairly possessed of sufficient money. The borrowings from the respondent were only on 02.01.1997, 04.01.1997 and 06.01.1997, which is immediately one year after the sale. It is further held by the learned Appellate Judge that unless the appellant was confident of repaying the amount, he would not have borrowed the money. Even any lender, without ascertaining the wherewithal of the borrower would not have lent the money. Further, as found by the learned Trial Judge, even the position of the appellant''s children are also affluent and therefore, he may not be considered to be an insolvent.

7. If the material on record point out fraudulent suppression and lack of bonafides, the Court will have to discountenance the application. The mere fact that the assets undisclosed are of no value or of such value that even if disclosed would not enable the applicant to pay, is immaterial. Utmost good faith is expected on the part of the applicant who seeks declaration of insolvency.

8. In the above factual scenario, it appears that only to circumvent the decree obtained by the respondent, the above application has been filed by the appellant. It is also not the case of the appellant that other than the respondent, there were several other creditors also that he is unable to pay the debts to several people and that he should be declared as an insolvent. Admittedly, the respondent is the only creditor and the amount due is also not very huge. The appellant has used the provisions to declare himself as insolvent only as a ruse to avoid payment of the decree amount. Moreover, the appellant has not challenged the finding of the Executing Court that he is a man of means.

9. In such circumstances, there is no question of law, much less substantial question of law, arise for consideration in this Civil Miscellaneous Second Appeal. Accordingly, it is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.