
(1925) 01 CAL CK 0009
In the Calcutta High Court

Ananta Kumar Saha and Amanda Chandra Saha	APPELLANT
Vs	
Sadhu Charan Saha Poddar Sadhu Charan Saha Poddar Vs Hem Chandra Saha Poddar	RESPONDENT

Date of Decision : 20-01-1925

Acts Referred:

Provincial Insolvency Act, 1920 — Section 24(2)

Citation : AIR 1926 Cal 234 : 87 Ind. Cas. 751

Hon'ble Judges : Mukerji, J;Ewart Greaves, J

Bench : Division Bench

Judgement

1. In M.A. Nos. 354 and 355 of 1924. These two appeals are really covered by the same state of facts. The appeal that has been argued before us is Appeal No, 354 but the judgment which I am about to deliver will apply equally to Appeal No. 355.

2. The appeal is against an order of adjudication passed by the District Judge of Faridpur on the 13th August 1924. A petition was presented by the respondent in respect of two debts, first of all, a decree for Rs. 5,700 which was a consent-decree passed on the 11th January 1923 and secondly, an instalment bond for Rs. 6,400 dated the 24th January 1923. The acts of insolvency alleged in the petition were the removal of articles from the debtor's house so as to protect them from the creditors and secondly, the transfer of Immovable properties by the debtors to sortie other person who was. a relative of the debtor's wife within two or three days of the presentation of the petition. The Court has found the debts established and the acts of insolvency proved and has made the adjudication order.

3. The first point urged before us in this appeal was with regard to the decree for Rs. 5,700. This was passed in favour of the present petitioner and other persona and accordingly it is said that as the petitioner is only entitled along with others to the benefit of the decree he alone cannot present an insolvency petition in respect of this decree. Secondly, it is urged that so far as the instalment bond is

concerned the "debtor is only a partner with a very small share in the Firm of Guru Charan Judhistir and that he really cannot be taken to be liable for the whole of the instalment bond and it is further urged that portions of the instalment bond, if not the whole, have already been paid and that a suit has been commenced to enforce the instalment bond. For these reasons, it is urged that there is no proper debt which would support the petition and that even if this is not so the petition was not presented bona fide but for ulterior purposes. So far as the decree for Rs. 5,700 is concerned I am inclined to think that the point is a good one and that " as the respondent AS not the only person entitled to the benefit of that decree he is not entitled to utilize this debt upon which to found a petition for adjudication. But this is not a question of any importance "because it seems to me that the bond for Rs. 6,400 is amply sufficient to support the petition. It is a bond executed by the debtors and others in favour of the petitioning creditor. It is a bond upon which the defendant is jointly and severally liable with the other persons by whom it was given and consequently, in my opinion, it is sufficient to support the petition for adjudication. It does not matter that the respondent may not be absolutely entitled to all the money secured by the bond, it is enough that the bond is in his favour. It is no answer to say that the debtor's share in the firm is a small one. He elected to give this bond upon which he is liable and he must bear the consequence and I am not prepared to say upon the evidence that the petition was presented with an ulterior motive. It is true that some of the persons who gave the bond are relatives of the petitioning creditor and that he is not proceeding against them but I do not think that this is sufficient by itself to establish a lack of bona fides on the part of the petitioning creditor.

4. As regards the suit this was not commenced until after the petition and need not, therefore, be taken into account. Even if it is necessary to consider it, if the debt of Rs. 6,400 is sufficiently established, I do not think that the fact that a suit had been commenced to enforce the bond is necessarily a bar to the petition for adjudication based on that debt. So much, therefore, for the bond.

5. So far as the acts of insolvency are concerned, we were referred to the evidence and were asked to say that we should not" accept the evidence with regard to the removal of the articles. The learned Judge has accepted this evidence and the evidence read to us does not cause to doubt the correctness of the conclusion at which the Judge has arrived.

6. As to the transfer of the immoveables it is suggested that the transfer was made in favour of the person to whom the property was transferred not with a view to protect the property from the creditors but with a view to the transferee paying off the debts to the creditor on the debtor's account and holding the property as security. The learned Judge has disbelieved this story. The result is that there is a debt sufficient to support the petition and the acts of insolvency are to my mind established.

7. Various other minor points were urged, and amongst them is the fact that the

debtor was not examined under the provisions of Section 24, Sub-section (2) of the Provincial Insolvency Act. The provisions of Sub-section (2) are mandatory but that depends upon the debtor being present and in this case there is no evidence before us to show that he was present in Court at the time of the hearing of the petition. The burden was on the debtor to show that he was there and as he has failed to discharge this burden there is nothing in this point, and I reserve my opinion as to whether even if the debtor was present the failure to examine him will necessarily vitiate the order for adjudication.

8. Then it is said that the debtor could pay his debts and we were referred to the valuation made by the Receiver of his property. The short answer to this is that the debtor has not paid his debts or made any attempt to do so and we do not think that it has been established that the debtor is in a position to pay his debts.

9. Then it is said that the amount which the debtor has to pay has not been established and that he has been placed in a difficulty thereby. I am not satisfied that this is so. I think that at any rate he is bound to pay the amount of the instalment bond or at any rate such amount as remains due thereon and I have no doubt that there will be no practical difficulty if the debtor were really willing to pay this amount. This I think disposes of all the points, that were raised and we see no reason to alter or set aside the order for adjudication which has been passed by the District Judge.

10. The result is that the appeal fails and is" dismissed with costs. Hearing-fee" two gold mohurs, to be realized in the Court of Insolvency at Faridpur out of the debtor's assets.

In M.A. No. 361 of 1924.

11. We think that the learned Judge was right in the order that he made and this appeal is accordingly dismissed.

12. We make no order as to costs.