
(1959) 08 KAR CK 0005
In the Karnataka High Court
Case No : Appeal No. 166 of 1959

Chatram Puttappa Sons

APPELLANT

Vs

K. Amarchand and Others

RESPONDENT

Date of Decision : 07-08-1959

Acts Referred:

Mysore Insolvency Act, 1925 — Section 6 (g), 7, 9

Citation : AIR 1960 Kar 267

Hon'ble Judges : M. Sadasivayya, J; Iqbal Husain, J

Bench : Division Bench

Judgement

Iqbal Husain, J.

(1) Though the facts of this appeal are simple, a few interesting questions of law are raised. Chatram Puttappa Sons is a joint Hindu family firm doing business as nut and Mandy merchants at Bangarpet., Kolar District. They are the appellants before this Court. The respondents are some of their creditors. The latter filed an application under the provisions of sections 7 and 9 of the Mysore Insolvency Act to adjudge the appellants as insolvents on the ground that the respondent's are unable to pay their debts and have committed acts of insolvency. Though in the petition filed by the respondents several acts of insolvency are alleged, they confine their attention to only one both before the District Judge, Bangalore, as well as before this Court, viz. that they are unable to pay their debts and have given notice of suspension of payment.

(2) The appellants sent a registered notice to several of their creditors as per Exhibit P. 4 dated 24-6-1955 that they are unable to meet their liabilities immediately and that they would like to make arrangements for the purpose of realising all their assets and discharge their liabilities. For that purpose, they called for a meeting of the creditors to be held on the 4th of July 1955. This notice is signed by C. P. Shivappa, one of the members of the joint Hindu family firm. Close on the heels of this notice comes Exhibit P. 5 which is a copy of the agreement between Chatram Puttappa Sons (appellants) and some of the

creditors in pursuance of the registered notice as per Exhibit P.4 referred to above. At this meeting, the debtors viz. Chatram Puttappa Sons pleaded their inability to pay the full amount due to the creditors owing to loss in business, and proposed to pay six annas in the rupee as full and final settlement towards their dues to the creditors.

The creditors who were present at the meeting agreed to take six annas in a rupee in full and final settlement. For this purpose, there was a further stipulation in the said agreement that if the settled amount is not paid to the creditors before the 4th of August 1955, the agreement will automatically be cancelled. Two creditors were appointed as trustees for the purpose of distribution of the amount so paid to the several creditors. This agreement is dated 24th July 1955. For some reason or the other, this agreement became a dead letter and the creditors-respondents, four in number, filed an application as stated above to declare Chatram Puttappa Sons represented by its Manager and Karta C. P. Kalappa (the correct name being C. P. Kadappa) as insolvents.

(3) The learned District Judges held that the appellants had committed an act of insolvency and therefore adjudicated the firm of Chatram Puttappa Sons insolvents. Against this decision, the said firm have preferred an appeal. It is strenuously argued by Sri Raja Iyengar, the learned Advocate appearing for the appellants that the latter have not committed any act of insolvency much less the one pressed before this Court. His next contention is that a joint Hindu family firm cannot be adjudicated as an insolvent, as it is not a "firm" in the sense in which that term is used in the Law of Partnership.

(4) The act of insolvency is defined according to section 6(g) of the Mysore insolvency Act as follows:

"6. A debtor commits an act of insolvency in each of the following cases:--

(a).....

(g) If he gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts."

Hence the first point to be considered is whether the acts of Chatram Puttappa Sons brings them within the mischief of the above section. For a consideration of this argument, a brief reference is to be made to Exhibits P-4 and P-5. Exhibit P-4 is the notice given to the several creditors. It is urged on behalf of the appellant that it does not indicate that the said firm have suspended or are about to suspend payment. Particular stress is laid on that part of the notice which states as follows:

"We desire to make satisfactory arrangement in connection with our creditors for the purpose of realising our assets and thereby discharging our liabilities."

It is argued on the basis of the above statement that instead of indicating suspension of payment, it indicates willingness to pay and discharge their

liabilities. The notice, however, should be read as a whole. It starts with a recital that the firm has suffered loss, that it is extremely difficult to recover their out standings and hence they are unable to meet their liabilities immediately. A mention of their assets and liabilities is made and they then state that unless suitable arrangements are made to realise the out standings there is a risk of a major portion becoming irrecoverable. They, therefore, want to arrive at an understanding with their creditors and are desirous of calling for a meeting. No doubt rather guarded expressions are used in this notice. But yet it is abundantly clear that the appellants are unable to meet their liabilities immediately and are anxious to come to some arrangement with the creditors.

(5) What follows further clarifies their position. In Exhibit P-5 dated 4th July 1955, definitely the appellants, after expressing their difficulties to pay in full have proposed to pay As. 6/- in the rupee to all their creditors. This cannot but be construed as inability to discharge their liabilities to their creditors and a suspension of the payment to their creditors and a suspension of the payment to their creditors. It is urged by Sri Raja Iyengar that this is an agreements between parties and therefore, not a notice. The form in which the terms, are couched is immaterial, as the Insolvency Law does not prescribe any particular form of notice.

What is of importance is whether it notifies to the creditors that the appellant's are unable to meet their liabilities in full but desire to pay only six annas in the rupee. This agreement makes reference to the notice to the creditors dated 24th June 1955 as per Exhibit P-4 and states that the creditors were called to a meeting by the former notice and this agreement is made between some of the creditors who responded to the notice and were parties to the agreement and the appellants. To us, it appears that Exhibits P-4 and P-5 are to be read together. Exhibit P-4 cannot be divorced from Exhibit P-5.

The proposal to pay annas six in the rupee is to the whole body of creditors. It indicates that they mean to pay nobody in full. Hence the cumulative effect of Exhibits P-4 and P-5 is that the appellants are unable to discharge their debts and make a proposal of composition of debts to the extent of As. 6/- in the rupee to the body of creditors. One more thing to be noticed is that there is no immediate proposal of paying the among agreed upon. It is only when money will be collected by the debtors that the two trustee-creditors are to distribute the same to the rest of the creditors pro rata. Thus, an act of insolvency can well be spelled out from each of these exhibits.

(6) It is strenuously urged by Shri Raja Iyengar for the appellants that the learned District Judges has failed to consider the interpretation put upon the self-same exhibits by this Court in C.R.P. 193 of 1956 arising from the proceedings for the appointment of a Receiver. The appellants objected to the appointment of an interim receiver in respect of their properties and their objection was overruled by the trial Court. They preferred a C.R.P. to this Court which reversed the order appointing an interim Receiver and held that in the circumstances of

the case, the order for appointment of an interim Receiver was not called for. Incidentally certain observations were made regarding the two exhibits P-4 and P-5 favourable to the appellants. Emphasis was laid on the clause in Exhibit P-5 that "satisfactory arrangement to discharge the liabilities would be made." The construction thus placed on the averments was as follows:--

"These indicate bona fides and anxiety on the part of the debtors (appellants) to be relieved of the indebtedness."

It can be straightway stated that these observations were made while considering an interim application for the appointment or otherwise of an interim Receiver. The facts and circumstances as well as the evidence in the case could not have been considered in any detail in a proceeding of that nature. Moreover, the evidence--both documentary as well as oral--was not adduced at that stage. The only materials that were placed before the Court were the pleadings, the affidavit in support of the respective contentions regarding the appointment or discharge of an interim receiver and these documents viz., notice subsequently marked as Exhibit P-4 and the agreement marked as Exhibit P-5 in the case.

Hence any interpretation put upon the said documents by the learned Judge in the Civil Revision Petition, though entitled to great respect, cannot be viewed as binding or conclusive. It is, however, significant to note that the learned Judge has advisedly refrained from stating that the documents do not connote an act of insolvency on the part of the appellants.

(7) Whether the acts of the appellants relief upon by the creditors in support of their petition constitute an act of insolvency within the meaning of section 6 of the Insolvency Act or not, is to be decided in the light of certain principles laid down by some of the leading cases on the point. They are generally as follows:--

1. That a mere statement of the debtors that they are unable to pay their debts, however, insolvent they may be, is not necessarily a notice within the meaning of the Act, that they are suspending or about to suspend payment:
2. Whether the effect of the words used by the debtors would reasonably and ordinarily mean to the creditors that the former intend suspending payment or about to suspend payment as they are unable to discharge their liabilities immediately;
3. Construing the statement of the debtors it has to be seen whether they intend to deal with their creditors collectively.

Applying there tests to the facts of the present case we find that a notice suspending payment or about to suspend payment could be gathered from the documents Exhibits P-4 and P-5. it is also evident that the appellants do not like to deal with individual creditors but all the creditors as a body and for that purpose, they propose a composition arrangement by payment of As. 6/- in the rupee as embodied in Exhibit P-5. It is further evident that they are unable to discharge their liabilities immediately.

(8) The next point is whether there was an apprehension as stated above in the minds of the creditors. Though one of the creditors who has been examined as P.W. 1 does not say so in specific words that he or the other creditors apprehended the suspension of payments of all debts by the appellants, still the facts and circumstances indicate such apprehension. The relevant clause in Exhibit P-5 is to the following effect:

"As the debtors were in financial difficulties they cannot pay in full to the creditors owing to loss in business. So they have proposed to pay annas six in the rupee as full and final settlement towards their dues to the creditors."

This is a pointer to that effect. So also the statement in Exhibit P-4 that the appellants find themselves "unable to meet out liabilities immediately" would show such an apprehension. Hence in view of the above, the argument of Sri Raja Iyengar that the only creditor who has been examined in the case on behalf of the respondents has failed to state the same, loses much of its force.

(9) In a leading decision of the House of Lords *John Crook v. Morely* 1891 AC 316, a debtor sent a letter to his creditor to the following effect:

"Being unable to meet my engagements as they fall due I invite your attendance at the Guildhall Tavern, Gresham Street, city, on Wednesday next at 3 P.M. when I will submit a statement of my position for your consideration and decision." This letter was held by their Lordships Earl of Selborne and Lord Watson as an act of insolvency which induced in the minds of the creditors a belief that a debtor intended to suspend payment of his debts. Just as in this case, the notice was to all the creditors as a body, and not to any single individual creditor. Just as in this case, the notice invited the creditors to meet for a settlement. A composition arrangement was proposed to pay 2s. 6d. in the £ which was not accepted. It was held by their Lordships that.

"The creditors receiving such a letter must have understood that the debtor would not meet any of his engagements as they fell due. The object of writing to all the creditors was to agree to a composition of the debts. Every creditor receiving that communication must have felt that it was a notice to him that he must not expect to get payment if he asked for it, but that he was desired to come to a meeting and consider what could be or ought to be done in those circumstances."

Their Lordships therefore held that it was a notice of suspension of payment within the meaning of the Act. The provision of the English Bankruptcy Act is not different from the corresponding provision of the Provincial Insolvency Act. In fact, the Provincial Insolvency Act is largely based on the Bankruptcy Act of England regarding notice of suspension of payment. Section 4(1) of the Bankruptcy Act runs as follows:

"If the debtor gives notice to any of his creditors that he has suspended or that he is about to suspend payment of his debts."

he commits an act of insolvency. Similar is the provision of section 6(g) of the Provincial Insolvency Act.

(10) This leading case of 1891 AC 316 has been referred to and followed in a number of English and Indian decisions and is recognised as laying down the principle to determine an act of insolvency by the debtors.

(11) In the case of *In re Simonson; Ex Parte, Ball* (1894) 1 Q.B. 433 the debtor wrote to the creditor as follows:

"We regret to inform you that the recent fall in the Ivory Market and other matters have placed us in financial difficulties which makes it desirable for us to consult with our creditors as to our position."

And then follows the statement that they are getting their books of accounts examined by a Chartered Accountant and ask the creditors to meet at a definite place to consider the matter. Following the decision of 1891 AC 316 referred to above his Lordship Vaughan Williams J. held as follows.

"The case of 1891 AC 316 says that one must construe a circular letter of this sort in the way in which it would be understood by the commercial men who receive it. It is a circular issued to creditors, and I cannot doubt but that it must have conveyed to every creditor who received it the intention of the debtors to suspend payment..... I think that any creditor receiving that would understand that these gentlemen were unable to meet their engagements, just as if that thing had been expressed in the identical words of the circular in 1891 AC 316.

(12) In a Bench decision of the Madras High Court, in *Lakshmi Ammal and Others Vs. Ratna Naicker*, his Lordship Cornish J. relying upon the case of *Crook v. Morley* held that "the true test as stated in (1891) AC 316 is what the effect would the notice produce on the mind of the creditor receiving it as to the intention of the debtor with regard to his creditors? Would it convey to the creditor that the debtor was about to stop payment or had stopped payment? The debtor in that case informed the creditors that they could pay no more than 3 As. 9 Ps. in the rupee to their creditors. It was held that they in fact gave notice that they were about to suspend the payment of their debts and that was an act of insolvency.

(13) In a Bench decision of the Allahabad High Courts in *L. Piarey Lal Vs. Mohammad Salamat Ullah Khan and Others*, the debtor sent a registered post card to one of his creditors to the following effect:

"Be it known to you that your dunning me over and over for your money is entirely useless. I am now so much indebted that I cannot pay off my debts. You do what you like. But do not please worry me."

Following the decision of 1891 AC 316 it was held that it amounted to an act of insolvency within the meaning of section 6(g) of the Act.

(14) In a fairly recent decision of the Punjab High Court in *Kaushal Kishore and*

Others Vs. Ram Dev and Others, , his Lordship Kapur J. after reviewing the leading cases both English and Indian on the point held: that in order to decide the question whether a communication of his inability to pay his debts made in a debtor to his creditors amounts to an act of insolvency is what effect would the statement produce on the minds of the creditors amounts to an act of insolvency is what effect would the statement produce on the minds of the creditors receiving it as to the intention of the debtor. Whether it means that he has suspended or about to suspend payment.

If so, will be an act of insolvency. In that case a Hindu joint family firm consisted of father, sons and grandsons. When the creditors of the firm demanded payment of their dues at the firm's shop, one of the sons in the presence of the father stated that they had no money and the creditors could do what they liked. Following the case of 1891 AC 316 and other cases it was held that such a statement constituted an act of insolvency.

(15) Sri Raja Iyengar strongly relies on a decision of the Lahore High Court in Har Kishan Lal v. People Bank of Northern India AIR 1932 Lah 643 where it is held that "mere intimation of inability to pay by itself does not ordinarily amount to notice of suspension of the payment of the debts. A revision petition against the appointment of an interim receiver pending disposal of an application for adjudication of the petitioner Lala Harikishan Lal as insolvent was filed.

A letter was written by the petitioner in reply to the demand made by the People Bank of Lahore. In that letter Harikishan Lal expressed his inability to meet the demand of the Bank. He suggested to the Bank to raise money on some of his shares which were pledged with the Bank. Their Lordships of the Lahore High Court construed that letter as not amounting to a notice that the petitioner has suspended or about to suspend payment. In their Lordships opinion:

"The letter therefore could not be construed to amount to a notice that the petitioner had suspended or was about to suspend the payment of his debts. It merely intimated to the creditor his inability to meet with the latter's demand and suggested an alternative by which the Bank could realise some money."

Hence the conclusion that the letter by itself cannot be held to amount to an act of insolvency. To us it appears that that decision is based on the facts of that particular case which are different from those of the present case. Their Lordships, however, have quoted with approval the principles laid down in the leading case of 1891 AC 316.

(16) Another decision relied upon by Sri Raja Iyengar is of Lakhi Prasad Singhania and Another Vs. Ugrah Misra and Others, . Certain creditors of the appellant Lakhi Prasad Singhania filed an application for declaring him as an insolvent on the ground that he had given notice of suspension of payment within the meaning of section 6(g) of the Provincial Insolvency Act. When some of the creditors asked him for payment of their money, he told them that they should take all the money he had, but they asked for payment in full.

Then he is supposed to have said "I said they could take all the money I had and for the rest, they could take mortgage of my dues or properties which they like." This statement was construed by their Lordships of the Patna High Court as not amounting to a notice of suspension of payment to creditors. In the words of their Lordships.

"It was not a mere refusal to pay or a refusal to treat with the creditors under any circumstances. In fact the statement which has been accepted by the District Judge is to the effect that the appellants offered such cash as was in their possession and security for the remainder of their debt."

The facts and circumstances of the present case, however, are different from those stated above. This again follows the principles laid down in the leading case of *Crook v. Morely* 1891 AC 316.

(17) Judged by the tests laid down in the above cases, there cannot be any doubt that Exhibits P-4 and P-5 amount to notices of suspension of payment of the debts of the firm. Each of these constitute an act of insolvency.

(18) It is next contended by Sri Raja Iyengar that the joint Hindu family firm cannot be adjudged an insolvent. According to him, it is not a firm in the sense in which that word is used in the law of Partnership. The partnership firm is a creature of contract, but the joint Hindu family firm is not so. It owes its existence to the operation of law. By birth its members become partners of the firm. The death of any member does not dissolve the firm. Each member is not an agent of the other as is the case in a partnership firm. Hence it is urged that in rather a loose way the term "firm" is applied to it.

There are conflicting decision as to whether a joint Hindu family firm could be adjudged an insolvent or not. However, authority is not wanting for the proposition that it can be adjudged insolvent. In a Bench decision of the Sind High Court of *Chaturbhuj v. Keval Ram* AIR 1931 Sind 179, it is held that a joint family firm is a peculiar kind of partnership, but yet it can be adjudged an insolvent. In a decision of the former Mysore High Court in *Bhagavanji v. Raja Sampangirama Shetty* 9 Mys LJ 1 the creditor filed an application to adjudge the respondent as insolvents on the ground that they committed various acts of insolvency.

The respondents were members of a firm who were carrying on business as merchants at Bowringpet under the name and style of Raja Sampangirama Setty." One of the contentions on behalf of the firm was that the Insolvency Regulation did not contemplate orders of adjudication being passed against firms. That contention was repelled. It was held that application to adjudge the firm as insolvent is maintainable. Some decisions have gone to the extent of designating such firm as a "person" in the eye of law. Vide the case of *Sirikant Lal and Another Vs. Sidheswari Prasad Narain Singh and Another*, where his Lordship Fazl Ali J. states that a joint Hindu family firm acting as a managing member or head thereof is included ordinarily in the term "person".

Similar is the view of his Lordship in a later decision of the Patna High Court of Alekh Chandra and Others Vs. Krishna Chandra Gajapat Narayan Deo, . It is unnecessary for the decision of the present case to go to that extent. An order adjudicating a joint Hindu family firm as insolvent, is in effect an order adjudicating as insolvents those adult members of the family who had participated in the business of the firm. We are not convinced that there is any legal impediment to the adjudication of a joint family firm, provided that no minor member is adjudged an insolvent and the other members as are alleged to have participated in the business of the firm had an opportunity to put forward their objections.

(19) So far as the karta or manager C. P. Kadappa is concerned, there is not much difficulty. He is not in the same position as an unnamed member of the joint family firm. He has been specifically described as the manager of the said firm and had ample opportunity to meet all the allegations in the petition filed by the creditors. In the objection statement filed by him, he does not deny Exhibits P-4 and P-5, nor does he disown his responsibility for the same. All that he has stated is that they do not constitute acts of insolvency. We have already found that each of these exhibits constitute an act of insolvency.

The manager C. P. Kadappa cannot escape the consequences of these acts. It was urged by Sri Raja Iyengar, the learned Advocate for the appellants that in any case the petition is not maintainable as the act of insolvency alleged to have been committed as per Exhibit P-4(dated 24-6-1955) was more than 3 months prior to the filing of the petition. There is a fallacy in this argument. Though it makes a reference to Exhibit P-4. Exhibit P-5 by itself contains all the elements necessary to constitute an act of insolvency, as already explained.

Exhibit P-5 is dated the 4th of July 1955. The petition is filed on the 30th of September 1955. Therefore, the petition has been filed within 3 months from the date on which act of insolvency as per Ex. P-5 was committed. In these circumstances, the order of adjudication in so far as it relates to the manager C. P. Kadappa is justified and has to be upheld.

(20) As regards, the other members of this joint family firm who have not been specifically named as respondents, the position is not free from difficulty. Sri Vedanthaiengar contends that by virtue of the provisions of O. 30, R. 10 of the C.P.C. it was unnecessary to include in the petition the names of the other members of this firm. But, the applicability of the provisions of O. 30, R. 10 of the C.P.C. to Hindu joint family firms is by no means free from doubt and the decisions are conflicting. (Vide Munshilal and Sons v. Modi Brothers 51 CWN 563 and Harishankar Lath and Others Vs. General Merchants Ltd., .

It appears to us that in cases like the present one which involve the adjudication of persons as insolvents. It is proper that the creditor should specifically name as respondents all those members of the joint family who have participated in the business of the firm and are connected with the act of insolvency. In the case of

9 Mys. LJ 1, already referred to, all the members of the joint family firm had been made respondents in the petition. In the petition in the present case mention has been made in para 3 of C. P. Shivappa, C. M. Puttappa and C. P. Phalakshappa as being members of the joint family.

No notices seem to have been issued to them, presumably because they had not been named as respondents in the cause title of the petition. Sri Vedantaiengar sought to make out that the other members of the family are not prejudiced, as they can show even after the adjudication of the firm that they have not participated in the business of the firm and are not liable for the debts. But, we consider that, ordinarily, it would be more appropriate that the Court before making an order of adjudication against the joint family firm should be in a position to know as to who are all the members of the family that have participated in the business of the firm and are connected with the act of insolvency.

It also seems to be proper that such member should have opportunity to put forward their objections, before the adjudication order is made. District Judge in so far as it affects the other members of the firm, has to be set aside. In this connection, Sri Vedanthaiengar brought to our notice an application (I.A. No. III) filed by the petitioning creditors in February 1956, praying for permission to amend the petition by setting out the names of the members who were doing business under the name and style of Chatram Puttappa Sons.

For some reason or other, no order was passed by the lower Court on this application. Sri Vedantaiengar submitted that we should grant the permission for amendment as prayed for in that application. Sri Raja Iyengar objected on the ground that as this application had been made more than three months after the alleged act of insolvency, the amendment sought for ought not to be allowed. By way of answer to that objection. Sri Vedantaiengar has argued that the trading name of the joint family business is only a compendious mode of describing the members of the family and that therefore what is now sought for in the application is merely a permission to make an amendment which is really in the nature of an application by setting out the names of the members, (Vide 51 CWN 563 ; Ramprasad Shivilal Vs. Shrinivas Balmukund, and Amulakchand Mewaram Vs. Babulal Kanlal Taliwala, .

We do not think that we should decide at this stage as to whether the prayer made in this application should be granted. This is a matter which the trial Court ought to decide after giving an opportunity to the person named in that application to put forward their objections, if any, to their being shown in the application as the members of this firm. The petitioning creditors, if they so desire, may press this application before the trial Court.

(21) In the result, the order of adjudication passed by the learned District Judge is upheld to the extent to which it relates to the manager C. P. Kadappa. To the extent to which it affects the other members of the joint family firm, it is set

aside, and with liberty to the petitioning creditors to press (if they so desire) before the trial Court, their application for amendment. In the event of the amendment being allowed, the trial Court will give the persons named in the amendment as members of the firm, an opportunity to put forward whatever objections they may have to an order of adjudication being made as affecting them. No order as to costs in this appeal.

(22) Order accordingly.