
(1986) 05 RAJ CK 0051

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 89 of 1972

Dhanna Lal (Now Smt. Meera Devi and Others)

APPELLANT

Vs

Chhagan Lal and Others

RESPONDENT

Date of Decision : 07-05-1986

Acts Referred:

Provincial Insolvency Act, 1920 — Section 41, 42, 43, 53, 54

Citation : (1987) RLW 326 : (1987) WLN 697

Hon'ble Judges : Inder Sen Israni, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Inder Sen Israni, J.—This is a Misc. Appeal u/s 72(2) of the Provincial Insolvency Act, 1920 (here in after referred to as "the Act") against the order of adjudication passed by the learned Additional District Judge No 1. Jaipur City, dated December 11, 1971, on an application filed u/s 7 of the Act, 1920 in Misc. Case No. 2/70.

2. An application was filed by respondent Chhaganlal in the lower court on 21-1-1969 u/s 7 of the Act, stating that he has debts worth Rs. 10,000/- to Rs. 11,000/- over him and he has no property to pay these debts. A list of the creators along with their amount was also mentioned therein. It was prayed therein that he may be adjudged to be insolvent. Notices were issued to the creditors who also filed affidavits. Issues were framed in the matter and after hearing the parties, learned Additional District Judge came to the conclusion vide order under appeal that the applicant, prima-facie, is an insolvent and he had disclosed his assets in the application, which was maintainable and was entitled to be adjudged. The application was adjudged as a insolvent. It was further ordered that he will apply for discharge within a period of six months from the date of order. Against this order, the non-petitioner Dhanna Lal filed this appeal. During the pendency of the appeal Dhanna Lal died and his legal heirs No. 1/1 to 1/7 were brought on record During the pendency of the appeal, as per the order

of the learned District Judge dated 11-12-1971 respondent Chhagan Lal filed an application u/s 41 of the Act, 1920 praying petitioner-appellant has been in possession of an immovable property and details with regard to the movable property, which was given by him in his application were accepted to be true by the court. He further stated that the financial condition of the petitioner had not changed between the date of the order of adjudication and the date of moving of this application. The petitioner was a railway servant and has been getting Rs. 330/- as salary, out of which Rs. 150/- were deducted towards loan of Rs. 3000/- taken by the petitioner-appellant out of the provident fund. The petitioner gets Rs. 372/- as the monthly salary out of which Rs. 63/- were deducted as the petitioner had also taken up further loan for treatment of his daughter, who was suffering from tuberculosis. The petitioner had 4 sons and 3 daughters and was only earning member in the family and he is not in a position to pay off his debts. It was, therefore, prayed that unconditional discharge be granted to the petitioner. The notices of this application were issued and it was contested by appellant deceased Dhanna Lal. Both the parties produced their evidence in support of their allegation. After hearing both the parties, learned Additional District Judge came to the conclusion that in view of the evidence of the petitioner-appellant, he must be regarded to be possessing no such assets whereby he could pay off his debts, as shown in the application for being insolvent and he was, therefore, entitled to get unconditional discharge because the conditions as mentioned in Section 42 of the Act, are not obtained in his case and therefore, the application of the petitioner was allowed and he was granted an unconditional discharge, vide order of the learned Additional District Judge dated 20-12-1975.

3. Learned counsel for the respondents Shri S.M. Mehta has raised a preliminary objection that since after the order of 11-12-1971 order dated 20-12-1975, u/s 41 of the Act, has also been passed by which the petitioner has been granted an unconditional discharge in respect of the debts and in view of the fact that the appellant had been given notice of the proceedings u/s 41 of the Act and had led evidence and opposed the grant of unconditional discharge and had not filed any appeal against the said order of unconditional discharge, therefore, his appeal against the order dated 11-12-1971 by which the petitioner was held, prima-facie, to be an insolvent, has become infructuous. It was necessary for the appellant to have preferred an appeal against the order dated 20-12-1975, if he wanted to challenge the judgement, by which the petitioner was granted unconditional discharge of debts.

4. Learned counsel for the appellant Shri Arun Bhandari, on the other hand has argued that even though the order dated 20-12-1975 has not been challenged in appeal, still the appeal against the order dated 11-12-1971 can be filed and if this appeal was accepted, the order dated 20-12-1975 will automatically stand set-aside.

5. I have heard the rival contentions of the parties and perused the record. The

process regarding declaring a person to be insolvent starts with an application filed u/s 7 of the Act, 1920 and if the Court, prima facie, comes to the conclusion that prima facie the applicant is not in a position to pay the entire debts due in him, in lump sum or in substantial part, the court shall entertain the application and order that the applicant is adjudged insolvent. Thereafter, the applicant has to apply such an application is made by the applicant within the time specified by the court, for discharge of the debts. When such an application is made by the applicant within the time specified for the same notices of it are also given to all creditors, who can oppose the same and lead evidence on their behalf. If such an application is not made then u/s 43 of the Act, the adjudication made earlier can be annulled. In case the court comes to a conclusion looking to the evidence recorded in the case, that the applicant is entitled to unconditional discharge, such order shall be passed by the Court. If any of the parties to the matter are dissatisfied with this order an appeal can be filed within 30 days u/s 75 of the Act, 1920. An order granting absolute discharge, shall have no immediate effect upon any proceedings, which may be pending under either Section 53 or 54 of the Act, 1920 in the Insolvency Court itself or in Court of appeal and such proceedings can be continued unless a contrary order is passed by the Insolvency Court. But if the order passed on a petition filed u/s 7 of the Act, 1920 is concerned, has been challenged in an appeal and thereafter the order u/s 41 of the Act, 1920 granting unconditional discharge of the petitioner is passed evidently it cannot be then considered whether prima facie the petitioner was properly adjudged to be insolvent or not when the court has finally granted unconditional discharge to the petitioner.

6. Learned counsel for the respondent has drawn my attention to the case of Mool Chand Vs. Dip Chand, , in which it was held that the insolvency proceedings terminated in 1924 with an unconditional discharge and therefore, insolvency proceedings cannot be revived, thereafter. Learned counsel for the appellant has drawn my attention to the case of Ram Chand and Ors. v. Mohara Sah and Ors. AIR 1937 Mad. 182, in which it has been held that even after granting an application for discharge, the court has jurisdiction to give direction as to distribution of the assets amongst the creditors and such power is not taken away in view of the insolvency discharge Similar is the view taken in the case of K.P.SP.L. Firm v. C.A.P.C. Firm AIR 1929 Rang 168. Both these rulings quoted by learned Counsel for the appellants do not have any relevancy to the present case, in which the learned Counsel asserts that because the appeal was pending in this court against the order dated 11-12-1971 passed on the application filed u/s 7 of the Act, 1920, the order dated 20-12-1975 will stand automatically set aside, if the appeal against the order dated 11-12-1971 is accepted by this Court. I am of opinion that in view of the position of law discussed above, it was necessary for the appellants to have filed an appeal against the order dated 20-12-1975, by which absolute discharge was granted to the petitioner respondent, in which the appellants had also participated and had filed reply to the same. Therefore, it is not necessary to decide the appeal on merits.

7. In the result, the appeal has therefore, become infructuous in view of the order dated 20-12-1975 and is dismissed accordingly. In the facts and circumstances of the case, the parties are left to bear their own costs.