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(1954) 12 AP CK 0008

In the Andhra Pradesh High Court

Case No : Civil Revision Fetn. No. 1487 of 1952

Dirisena Venkata Janakamma and Others — APPELLANT

Vs

Dirisena Venkateswara liao and Another — RESPONDENT

Date of Decision : 23-12-1954

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 40
Provincial Insolvency Act, 1920 — Section 10, 74

Citation : (1954) 12 AP CK 0008

Hon'ble Judges : Umamaheshwaram, J

Bench : Single Bench

Advocate : D.P. Narayana Rao, for the Appellant; M.S. Ramachandra Rao and M. Krishna Rao, for the Respondent

Judgement

Umamaheshwaram, J.—This Civil Revision Petition arises out of an application; filed by the 1st Respondent herein to adjudicate him as an insolvent on the ground that he was unable to pay his debts which amounted to Rs. 2799-3-0. In B schedule attached to the petition, he disclosed that he had only assets of the value of Rs. 8/-. The creditors are mainly his 1st wife and daughter who obtained decrees against him. The 3rd creditor shown in A Schedule of Creditors is the State of Madras to whom a sum of Rs. 398-7-0 is due by way of court-fee.

2. The District Munsif of Vijayawada dismissed the application on the ground that it was not a bona fide application, but was made with the ulterior motive of evading the maintenance of Respondents 1 and 2 and the debt due to the Government. On appeal, the District Judge of Masulipatam set aside the order of the Distant Munsif and adjudicated him an insolvent. The Civil Revision Petition is filed by the wife and daughter challenging the correctness of the Order of the District Judge.

3. The facts disclose that the 1st Respondent is unable to pay his debts amounting to more than Rs. 500/-. He therefore satisfies the requirements of Section 10 of the Provincial Insolvency Act. The view taken by the District Munsif

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that an application might be dismissed on the ground that it is not a bona fide one is opposed to the decision of the Privy Council in Ohatrapat Singh Dugar v. Kha-rag Singh Lachmiram ILK 44 Cal 735: (AIR 3916 PC 64) (A). Sir Lawrence Jenkins in delivering the judgment of the Judicial Committer expressed himself in very clear and forcible terms as follows:

It is to be regretted that Courts in India allowed themselves to toe influenced by this plea instead of being guided to their decision by the provisions of the Act. In clear and distinct terms the Act entitles a debtor to an order of adjudication when its conditions arc satisfied. This does not depend on the Court''s discretion but is a statutory right; and a debtor who bring himself properly within the terms of the Act is not to be deprived of that right on so treacherous a ground of decision as an "abuse of the process of the court". This case illustrates the peril of this doctrine in India for what has been treated by the courts to-low as such an abuse appears to their Lordships in no way to merit the censure.

Lower down in the Judgment, it is pointed out that their conclusion was in agreement with the current authority in India where it had been rightly held that the stage at which to visit with its due consequences any misconduct of a debtor is when his application for discharge comes before the court, and not in the initial proceeding. It is unfortunate that the District Munsif committed the same error which was condemned by the Privy Council in such strong language.

There is. therefore, no force in the argument Of the learned Advocate for the Petitioner that the application should have been dismissed on the ground that it was not a bona fide one. The passage referred to at p. 599 (of MLJ): (at p. 1194 of AIR,) by the learned Advocate for ''the Petitioner in Perianambi Srirangachariar Vs. Narasimha Aiyar and Others, has really no bearing. What the learned Judge stated was that the court should enquire into and decide whether the debtor is unable to pay his debts. The nature of the application may have a bearing in deciding whether the debts are fictitious or are'' true.

4. The learned Advocate for the Petitioner contended that the application should be dismissed on the ground that the debtor did not disclose the salary he was earning. There is no provision in the Provincial Insolvency Act directing that he should so disclose his salary or possession of any assets.

This point is directly concluded by authority In Duraiswami Chettiar Vs. Abdul Suban Sahib and Abdul Sukur Sahib Company and Others, . The head-note correctly sets out the legal position and is in the following terms:

A debtor has a statutory right to get himself adjudicated an insolvent if he complies with the provisions of Section 10, Provincial Insolvency Act and the court cannot refuse to adjudicate him merely because the petition does not disclose possession of assets by him.

I follow the above decision and over-rule the second contention of the Petitioner.

5. The next contention of the learned Advocate for the Petitioner was that the

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debtor was possessed only of assets valued at Rs. 8/- and that in such a case the provisions of the Insolvency Act ought not to be applied. The learned Advocate has not been able to cite any authority for the proposition that unless the debtor is possessed of substantial assets he is not entitled to avail himself of the provisions of the Insolvency Act, or to be adjudicated an insolvent.

Section 74 of the Act provides that if the property of the debtor is not likely to exceed in value of Rs. 500/- the court may make an order that the debtor''s estate be administered in a summary manner. There is no provision in the Act that the Petitioner is- not entitled to present an Insolvency petition unless lie possesses assets of a particular value.

The reason given by the debtor in paragraph 5 for seeking aid of the Insolvency Court, namely,1 that he was being harassed by his wife and daughter may, by itself, not warrant his being adjudicated as an insolvent. But if he satisfies the provisions of Section 10 the Court is bound to adjudicate him as an insolvent. The decision in Ponriuswami Chetty v. Narayanaswami Chetty 25 Mad LJ 545 (D), cited by the learned Advocate for the Petitioner has really no bearing. What it states is that under Order 21 Rule 40 CPC a person may not be arrested when he proves that he is possessed of any property.

6. In the result, the Revision Petition fails and. is dismissed with costs.

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