

(1972) 09 OHC CK 0022
In the Orissa High Court
Case No : Civil Revision No. 262 of 1971

Gangadhar Patnaik

APPELLANT

Vs

Baladev Das and Others

RESPONDENT

Date of Decision : 18-09-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100(1)
Provincial Insolvency Act, 1920 — Section 75(1)
Provincial Small Cause Courts Act, 1887 — Section 25

Citation : (1972) 38 CLT 1130

Hon'ble Judges : B.K. Ray, Acting C.J.

Bench : Single Bench

Advocate : R.N. Sinha and S.N. Sinha, for the Appellant; A.G. and R.K. Mohapatra, for the Respondent

Judgement

S.K. Ray, A.C.J.

1. This revision application has been made under the 1st proviso to Section 75(1) of Provincial Insolvency Act from the orders of thus Courts below by which his application for an absolute discharge has been rejected.

2. The Petitioner was declared an insolvent by order dated 16-9-1967. By that order he was directed to apply for discharge within one year thereafter. His case is that he is indebted in an amount of Rs. 30.000/- and that he has no means or ability to repay, and has accordingly prayed for an absolute discharge. This application was contested by two of three opposite parties to this application. The case of the contesting opposite parties is that he has 9 acres of land which he transferred fraudulently in the name of his wife to avoid payment of debt. That apart a sum of Rs. 4000/- has been concealed by him somewhere. The Sub-Judge before whom this application was filed held an enquiry. He came to a finding that the alleged sale of 9 acres in the name of his wife was a benami transaction and it has been entered into to avoid the dues of the creditor opposite parties. From that finding an appeal was taken to the District Judge,

who also came to the same conclusion and upheld the finding of the Sub Judge. The Petitioner has come to this Court in revision, under the let proviso to Section 75(1) of the Provincial Insolvency Act. The scope of the powers of the High Court has been laid down by the Supreme Court in the case of *Malini Ayyappa Naicker v. Seth Manghraj Udhavdas firm by Managing Partner Chathurbhuj Chhabildas* 1969 S.C.D. 483. It has been held as follows:

Quite clearly the legislature did not confer on the High Court under the 1st Proviso to Section 75(1) of the Act an Appellate power nor did it confer on it a jurisdiction to re-appreciate the evidence on record. If the legislature intended to confer power on it to re-examine both questions of law and fact it would have conveyed its intention by appropriate words as has been done under various other statutes. A wrong decision on facts by a competent Court is also a decision according to law.

At the same time the power conferred under the let proviso to Section 75(1) of the Act is not co-extensive with that given to the High Court u/s 100(1)(a) of the Code of Civil Procedure. A decision being "contrary to law" as provided in Section 100(1)(a) of the CPC is not the same thing as a decision being not "according to law" as prescribed in the 1st proviso of Section 75(1) of the Act. The latter expression is wider in ambit than the former. The power given to the High Court under the 1st proviso to Section 75(1) of the Act is similar to that given to it u/s 25 of the Provincial Small Cause Courts Act.

Though it may not be possible to give an exhaustive definition of the expression "according to law" instances in which the High Court may interfere under the provision can be given. They are cases in which the Court which made the order had no jurisdiction or in which the Court has based its decision on evidence which should not have been admitted, or cases where the unsuccessful party has not been given a proper opportunity of being heard, or the burden of proof has been placed on the wrong shoulders. Wherever the Court comes to the conclusion that the unsuccessful party has not had a proper trial according to law, then the Court can interfere. But, the Court ought not to interfere merely because it thinks that possibly the Judge who heard the case may have arrived at a conclusion which the High Court would not have arrived at.

3. In view of the aforesaid decision, concurrent findings of fact cannot be reversed, and there being no questions of the nature enumerated in the aforesaid Supreme Court decision involved, the decision of the Courts below must be upheld. Accordingly, there is no merit in this revision, which is dismissed. But there will be no order for costs.