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(1954) 07 BOM CK 0021

In the Bombay High Court

Case No : Civil Revision Application No. 192 of 1953

Honnappa Parameshwarappa Karki APPELLANT

Vs

Annapurnabai Anantrao Bilgi RESPONDENT

Date of Decision : 23-07-1954

Acts Referred:

Provincial Insolvency Act, 1920 — Section 22, 27, 31, 32, 38

Citation : (1954) 56 BOMLR 1111

Hon'ble Judges : M.C. Chagla, C.J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.C. Chagla, C.J.—This is an application by a debtor who has been adjudicated insolvent u/s 47(1) of the Bombay Agricultural Debtors Belief Act. He made an application to the Bombay Agricultural Debtors Relief Act Court that the order of insolvency passed against him be set aside and his debt may be made payable by six annual installments by giving him a remission of annas 8 in the said debt. The trial Court held that such an application was not maintainable under the Bombay Agricultural Debtors Belief Act and dismissed it. In my opinion, the learned Judge was right.

2. Now, in this case, the debtor has only one creditor. He is a secured creditor and the debt has been reduced and adjusted to Rs. 607-8-0. The Court then found that the income of the debtor and his moveable property were not sufficient to allow this debt to be liquidated by annual installments not exceeding twelve in number and thereupon the Court made on order of adjudication, Mr. Vaidya''s contention is that u/s 48 it is provided that the order of adjudication made u/s 47 shall have the force of an order made by a competent Court in the exercise of the powers u/s 27 of the Provincial Insolvency Act, 1920, and Mr. Vaidya wants me to construe this section as meaning that all the benefits of the Provincial Insolvency Act are open to a debtor who has been adjudicated insolvent, and therefore he contends that it is open to him to propose a

composition scheme to the Court u/s 38 of the Provincial Insolvency Act. Now, Chap. III of the Bombay Agricultural Debtors Relief Act deals with insolvency proceedings and there are provisions in this chapter which are very different from the provisions of the Provincial Insolvency Act. Under Sub-section (2) of Section 47 of the Bombay Agricultural Debtors Belief Act, as soon as the order of insolvency is made, the property of the debtor has to be sold to liquidate his debts; but all his property is not to be sold : part of it he can retain which is necessary for his own maintenance and that of his dependents. Then the proceeds realised by the sale of the property are to be distributed in the order of priority specified in Clause (iii) of Sub-section (2) of Section 32. This priority also is different from the priority laid down in the Insolvency Act. Finally, Section 50 provider that no application or proceeding in regard to the insolvency of a debtor shall lie in or shall be dealt with by any other Court. Therefore, it seems clear that Chap. III contains a self-sufficient code as far as the insolvency of a debtor is concerned. The broad scheme is that the debts of the insolvent are to be adjusted and scaled down. The secured debts are to be adjusted as laid down in Section 22; the unsecured debts are to be further scaled down in the manner laid down in Section 31. When these debts are ascertained, the Court has to consider whether the income of the debtor is such as to enable him to pay off these debts by not more than twelve annual installments If he cannot do so, then he is adjudicated insolvent, and immediately on his being adjudicated insolvent part of his property is to be sold to liquidate his debts. The whole scheme is that debts which are adjustable under the Bombay Agricultural Debtors Relief Act should be finally adjusted and the liability of the debtor should be finally discharged. In discharging his liability, he may do so without being adjudicated insolvent if he is in a position to discharge his debts; if he is not in a position to discharge his debts, he must be adjudicated insolvent, and after he is adjudicated insolvent, his debts are to be immediately liquidated or such part as is necessary. Now, if Mr. Vaidya''s application were acceded to, a very extraordinary result would follow. As I said before, the debtor has only one creditor, who is a secured creditor. His secured debt has already been reduced on the taking of accounts u/s 22 by 40 per cent. The debtor now wants to reduce his secured debt further by 50 percent, and for that purpose he wants to rely on the provisions of the Provincial Insolvency Act. But Mr. Vaidya forgets that, if the Provincial Insolvency Act were applicable, the secured creditor would have been in a much better position. He could have ignored the insolvency and could have enforced his security against the property of the insolvent; he could have realised such amount as he could from the property and then proved as an ordinary creditor for the balance. But under the Bombay Agricultural Debtors Relief Act he is not given that option; he must come in and get his debt adjusted and he can only recover from the property of the insolvent to the extent of the adjusted debt. Further, it would be impossible to read Section 48 as meaning that the provisions of the Provincial Insolvency Act shall apply to an order of adjudication made u/s 47(1). .Not only has the Legislature not so stated, but the whole scheme of Chap. III seems to be that the only orders that can be made in insolvency are

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those mentioned in Chap. III, and the only applications that can be made are those mentioned in Chap. III. Mr. Vaidya emphasizes the fact that Section 48 makes the order u/s 47(1) have the same force as the order made by a competent Court in the exercise of its powers u/s 27(7) of the Provincial Insolvency Act. It is difficult to understand why the Legislature made this provision. But it seems to me that the reason was that the order of insolvency being an order affecting the status of the insolvent, the Legislature, for greater caution, wanted to provide that it will have the same force as if it had been made by an insolvency Court. But that does not mean that the Legislature provided that all the provisions of the Provincial Insolvency Act shall apply to an insolvency under the Bombay Agricultural Debtors Belief Act. One must bear this important position in mind, that an insolvency under the Bombay Agricultural Debtors Belief Act is an entirely different insolvency from an insolvency under the Provincial Insolvency Act. Even on merits, I do not see any hardship being caused to the debtor by being denied the right of a composition scheme. He is adjudicated an insolvent only if he cannot pay his adjusted debts by twelve installments. There is no further scope for scaling down or adjusting those debts and Sub-section (2) of Section 47 provides for an immediate sale of the property of the debtor on his being adjudicated insolvent. It is difficult to understand how a situation can arise where the insolvent may ask for relief similar to the one u/s 38. Mr. Vaidya says that he is in a position now to offer to pay off the whole debt in twelve installments or even in less installments. But if the debtor is in a position to do so, it is difficult to understand why he was not in that position when the order of adjudication was made u/s 47(1). If he is in that position to-day, it is clear that he kept back from the Bombay Agricultural Debtors Relief Court some of his income, because if he had disclosed the whole of his income and if he had satisfied the Court that he was in a position to discharge the adjusted debt by twelve installments or less, no order of insolvency would have been made against him. In my opinion, the learned Judge was quite right when he took the view that such an application was not maintainable.

3. The result is, the revisional application fails and the rule is discharged with costs.

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