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(1968) 07 PAT CK 0019

In the Patna High Court

Case No : A.F.A.O. No. 250 of 1967

Jwala Singh and Another — APPELLANT

Vs

Laboo Ram — RESPONDENT

Date of Decision : 24-07-1968

Acts Referred:
Evidence Act, 1872 — Section 101, 102, 103, 104
Provincial Insolvency Act, 1920 — Section 42(1)

Citation : AIR 1969 Patna 28

Hon'ble Judges : R.K. Choudhary, J

Bench : Single Bench

Advocate : Jyotirmoy Ghosh and Girijapati Sanyal, for the Appellant; Deba Prasad Mukherjee and Nripendra Narayan Roy, for the Respondent

Final Decision : Allowed

Judgement

R.K. Choudhary, J.—Respondent Laboo Ram, on his own application, was adjudged insolvent on the 29th August, 1961, and he was directed to apply for discharge within four years. In the meantime, he was directed to pay Rs. 10 per month, and, from the 29th June, 1965, the amount was increased to Rs. 40 per month to be paid to the appellants, who were the two unsecured creditors of the insolvent. On the 15th September, 1965 a little over four years after, the insolvent applied for absolute discharge. The appellants objected to that application and requested to court to extend the time for absolute discharge by three or four years so that the realisation towards their debts may come to at least eight annas in a rupee. The objection was overruled by the Subordinate Judge, and an order was passed for absolute discharge of the insolvent. This order was affirmed by the Additional District Judge in appeal filed by the creditors. Being thus aggrieved, the creditors have filed this appeal.

2. A preliminary point was taken by Mr. Deba Prasad Mukherjee, appearing for the respondent, that the appeal was not maintainable, and, in support of this contention, he relied on Sub-section (3) of Section 75 of the Provincial

Insolvency Act (hereinafter referred to as "the Act"), Sub-section (1) of Section 75 makes provision for an appeal to the High Court on grounds mentioned in Sub-section (1) of Section 100 of the CPC in a case where an order has been passed by a Court subordinate to the District Court and that order has been affirmed or set aside on appeal by the District Court. u/s 75(1) of the Act, the debtor, any creditor, the receiver or any other person aggrieved by a decision come to or an order made in the exercise of insolvency jurisdiction has a right to prefer an appeal. Sub-section (3) of Section 75 lays down that any such person aggrieved by any other order made by a District Court otherwise than in appeal from an order made by a subordinate court may appeal to the High Court by leave of the District Court or of the High Court. I am surprised how the learned counsel has referred to this sub-section for an argument of the present appeal being not maintainable where the present appeal has been filed against an order of the District Court affirming in appeal a decision of a subordinate COURT.

Learned counsel has also relied on a Full Bench decision of this Court in Gopal Ram Vs. Magni Ram and Others, . That was a case where the impugned order was passed by the District Court otherwise than in an appeal. Consequently, Sub-section (3) of Section 75 was applicable to such a case. But, as already observed, it cannot apply to a case where the appeal was filed to the High Court, as in the present case, from a decision of the District Court affirming in appeal the decision of the subordinate Court. The preliminary objection is, accordingly, overruled,

3. Mr. Ghosh, appearing for the appellants, has advanced an argument that the order of the learned Additional District Judge in appeal affirming the decision of the Subordinate Judge making an order for absolute discharge of the insolvent is bad in law as it has violated the provisions of Section 42 of the Act. He has based his argument on clause (a) of Sub-section (1) of Section 42, which reads that 42(1) the court shall refuse to grant an absolute order of discharge u/s 41 on proof of any of the following facts, namely :-- (a) that the insolvent''s assets are not of a value equal to eight annas in the rupee on the amount of his unsecured liabilities, unless he satisfies the court that the fact that the assets are not of a value equal to eight annas in the rupee on the amount of his unsecured liabilities has arisen from circumstances for which he cannot justly be held responsible." In the present case, it is an admitted fact that on the date of the application for discharge the assets of the insolvent were only Rs. 490, whereas the unsecured liability of the insolvent in respect of the appellants amounted to Rs. 2,360/-.

It is thus conceded even by the learned counsel for the insolvent-respondent that the assets of the insolvent on the date of the application for discharge were less than eight annas in the rupee of the unsecured liability. Counsel for the insolvent has, however, urged that the order of discharge cannot be interfered with, unless the Court finds that the fact that the assets of the insolvent are not of a value equal to eight annas in the rupee on the amount of his unsecured liabilities has arisen from circumstances for which he cannot justly be held responsible. In my judgment, this argument is based on confusion. True it is that in his application for discharge the insolvent had practically quoted the wordings of the; section: "That the assets of your petitioner are not (of a value) equal to eight annas wrongly stated as four in the rupee on the amount of his unsecured liabilities and the same has arisen out of the circumstances for which your petitioner cannot justly be held liable." It is also true that no regular objection has been filed by the creditors to the ground made in the application for discharge. There are, however, certain petitions by which the creditors requested the Court to extend the date of discharge so that the realisation towards their dues may come to at least eight annas in the rupee.

It has been seriously urged on behalf of the insolvent that, no objection having been taken to the averment in the petition of the insolvent for discharge, it should be held that the provisions of Section 42(1) of the Act were not applicable for refusing to grant the order of absolute discharge. I am not inclined to accept this argument. There is no provision in law to file objection to a petition like the one that was filed by the insolvent. u/s 42(1)(a) of the Act, the Court is bound to refuse to grant absolute discharge if the insolvent''s assets were not of a value equal to eight annas in the rupee on the amount of his unsecured liabilities. To that, however, there is an exception if the insolvent satisfies the Court that the above fact had arisen from circumstances for which the insolvent could not justly be held responsible. Beyond mentioning in the petition itself, no material has been placed on the record of the case by the insolvent for satisfying the Court on this point. The onus was on the insolvent to prove this exception, and he having failed to prove the same, the law laid down in Section 42(1)(a) to refuse to grant an absolute order of discharge has to take its course. The Courts below therefore, have erred in law in passing an order of absolute discharge of the insolvent, on the facts and the circumstances of the case.

4. The result, therefore, is that the appeal is allowed, the judgments and orders of the courts below directing absolute discharge of the insolvent are set aside, and the application made by the insolvent for his absolute discharge is dismissed. It will be open to the insolvent to file another application for his discharge after two years. In the circumstances, there will be no order for costs of this court.

