

(1958) 04 MP CK 0012

In the Madhya Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 28 of 1953

Kanhai Singh

APPELLANT

Vs

Harcharanlal Gopiram and Others

RESPONDENT

Date of Decision : 12-04-1958

Acts Referred:

Provincial Insolvency Act, 1920 — Section 79(2)

Citation : AIR 1958 MP 233 : (1958) ILR (MP) 889 : (1958) JLJ 776 : (1958) 3 MPLJ 493

Hon'ble Judges : H.R. Krishnan, J;A.H. Khan, J

Bench : Division Bench

Advocate : Bhagwandas, Motilal and Manoharmal Jain, for the Appellant;
Jagdamba Prasad Asthana, Swamisaran and Manikchand Jain, for the Respondent

Final Decision : Dismissed

Judgement

A.H. Khan, J.

This appeal arises out of an insolvency petition presented on 22-11-1949 by Kanhai Singh before the District Judge, Gwalior, alleging that he and his brother Ganesh Singh are members of a Joint Hindu Family, that they carry on a joint family business of farming under the name and style of "Kannai Singh Ganesh Singh". It was said that the joint family firm has incurred debts amounting to Rs. 24,000/- and that its assets were worth Rs. 2,460/-. Besides this, the joint family firm has to realise Rs. 7,992714/- as debts from, others. Both the brothers agree to the presentation of this petition. Since the firm is unable to meet its liability, it is prayed that the joint family firm be declared insolvent. Radha Ballabh and other creditors of the firm, resisted the petition.

The other brother of the petitioner, Ganesh Singh who is said to be a member of the joint family firm, presented an application on 28-8-52 before the District Judge, saying that he has nothing to do with the petition of insolvency, that it has not been filed with his consent, and, that he does not want to be declared an

insolvent. The trial Court dismissed the petition on the ground that although the members of the joint family may be adjudged insolvent individually, yet a joint Hindu family firm cannot be declared insolvent. Aggrieved by this decision, Kanhai Singh has filed this appeal.

The question for consideration in this appeal is whether a Hindu joint family firm can be adjudged insolvent or not?

Acts of insolvency are usually acts which when committed create personal liability. The reason why a joint Hindu family as such cannot be adjudged insolvent is that although the Manager of a joint Hindu family can act on behalf of the family but the liability which he can create is restricted to the extent of joint family property. He cannot impose any personal liability on any other member of the family. In this view of the matter any act of insolvency committed by the Manager is to be considered as an act of insolvency committed by him alone and not by other members of the family.

Nor can a joint Hindu family firm be I adjudged insolvent. Sir Dinshaw Mulla, in his treatise on the "Law of insolvency in India" (1958 Edition) on page 99 has observed :

"A joint Hindu family firm is not a "firm" in the sense in which that word is used in the law of partnership. Therefore, no insolvency petition can be presented against a Hindu joint family firm as such."

The obvious reason for this view is that a joint Hindu family firm is different from a firm under the Partnership Law. The main point of distinction is that in the case of a joint Hindu family firm, the relation between the parties is the result of the operation of Law; in other words a member of a joint Hindu family firm is governed by the principles of Hindu Law. But in case of a partnership firm, relations between the partners are created by contract.

The trial Court has rightly dismissed the petition and I see no reason to take a different view. The appeal is dismissed with costs.

H.R. Krishnan, J.

I agree.