
(2000) 02 MP CK 0031
In the Madhya Pradesh High Court
Case No : Miscellaneous Appeal No. 11/83

K.C. Bhargava

APPELLANT

Vs

Suryakant

RESPONDENT

Date of Decision : 29-02-2000

Acts Referred:

Provincial Insolvency Act, 1920 — Section 6, 75, 9

Citation : (2000) 4 MPHT 395 : (2001) 1 MPLJ 139

Hon'ble Judges : A.M. Sapre, J

Bench : Single Bench

Advocate : S.S. Bhargava, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

A.M. Sapre, J.

Feeling aggrieved by an Order passed by the learned VI Additional Judge to the Court of District Judge, Indore, dated 31-8-82 in Insolvency Case No. 1/80, the non-applicant No. 3 have preferred this appeal u/s 75 of the Provincial Insolvency Act, 1920 (for short Act). Facts in short to appreciate the issue involved in the application out of which this appeal eminets need mention infra.

Respondent is the applicant in the trial Court. He filed an application before the trial Judge u/s 9 of the Act, inter alia on the allegations that the non-applicant No. 1 is the firm, whereas other non-applicants i.e. 2 to 6 are its partners. It is alleged that the applicant (respondent herein) had done certain construction work for the non-applicant firm and for the work that he did, he has to recover a sum of Rs. 28163.88 paisa from the non-applicants. It was alleged that, despite sending notices and reminders the non-applicants did not pay any need to the request made, nor made the payment. It was alleged that one of the partner of the non-applicant firm had admitted the liability of the dues. It was further stated that several suits are filed by creditor against the non-applicant firm and hence a clear case u/s 9 of the Act is made out declaring the non-applicants,

insolvent for the non-payment of dues.

The application was contested by the present appellant, who was non-applicant No. 3 in the trial Court, while denying the allegations of the application, it was alleged that neither there are any dues pending nor payable by the firm to the applicant. As regards the admission of liability so far as one of the partner (N.A. 4) was concerned, it was alleged that he (N.A. 4) is colluding with the applicant. The non-applicant then also stated the reasons of collusion as also the reasons why the suit was filed by the Bank and what the firm had to deal with No. 4 and his wife. In substance, the contesting non-applicant No. 4 (appellant herein) denied the claim of the applicant and prayed for the dismissal of application.

By impugned order, the learned trial Judge allowed the application and held the case of insolvency to be made out u/s 9 of the Act. The learned trial Judge therefore proceeded to give consequential direction necessary for declaring all the non-applicants insolvent under the Act. It is this order, the non-applicant No. 3, is challenging in this appeal filed u/s 75 of the Act.

Heard Shri S.R. Bhargava learned counsel for the appellant (N.A. 3). None appeared for the respondent No. 1 (applicant) though served.

Having heard the learned counsel for the appellant and perused the impugned order, I am of the view that this appeal must be allowed.

In my opinion, the application made u/s 9 of the Act itself was misconceived. It did not contain even the necessary ingredients, which are required to be pleaded as per Section 9 (a), (b) and (c) read with Section 6 of the Act. Neither the application contained in the requisite pleadings nor the trial Judge, who proceeded to allow the application returned any finding on these mandatory pleadings. As a matter of fact, in the absence of any pleadings, the question of recording any findings did not even arise nor the learned trial Judge as observed supra returned any finding.

Section 9 of the Act, set out the conditions on which creditor may petition for claiming a relief of insolvency against his debtor :

"9. Conditions on which creditor may petition.-- (1) A creditor shall not be entitled to present as insolvency petition against a debtor unless--

(a) the debt owing by the debtor to the creditor join the petition, the aggregate amount of debts owing to such creditors, amounts to five hundred rupees, and,

(b) the debt is a liquidated sum payable either immediately or at some certain future time and,

(c) the act of insolvency on which the petition is grounded has occurred within 3 months before the presentation of the petition.

(Proved that where the said period of three months referred to in Clause (c) expires on a day when the Court is closed, the insolvency petition may be

presented on the day on which the Court reopens).

(2) If the petitioners creditor is a secured creditor, he shall in his petition either state that he is willing to relinquish his security for the benefit of the creditor in the event of the debtor being adjudged insolvent, or give an estimate of the value of the security. In the latter case, he may be admitted as petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated in the same way as if he was an unsecured creditor."

Perusal of Section 9 would show that all the three grounds mentioned in sub-clauses (a), (b) and (c) must not only be pleaded but a finding has to be returned on facts by the trial Judge that these three grounds exist. The word, act of insolvency mentioned in Sub-clause (c) of Section 9 is defined in Section 6 *ibid*. In Order to therefore get the relief u/s 9 of the Act, the applicant has to make out a case satisfying the requirements of Sub-clauses (a), (b) and (c) i.e. the grounds stated in any of the sub-section of Section 6, then only the application u/s 9 *ibid* can be allowed. Needless to observe, the requirements of Section 9 are mandatory and failure to plead and prove renders that application bad in law and deserves dismissal.

In the present case, I find that there is no findings as required u/s 9(c) *ibid*. The application too does not mention the requirements of Section 9(c) *ibid*. Mere saying that certain amount is due and not paid by itself does not constitute an act of insolvency as defined in Section 6 read with Section 9(c) *ibid*. The act of insolvency and its declaration is a stigma on the person. The legislature has therefore provided several strict statutory requirements to be proved satisfactorily before any such declaration is given in favour of creditor against the debtor.

In the present case, I do not find any such exercise was done by the learned trial Judge when he proceeded to allow the application.

In view of aforesaid, the appeal is allowed, impugned order is set-aside. As a consequence, the application filed by the respondent u/s 9 of the Act is dismissed. Since none has appeared for the respondent.

No cost