
(1937) 08 PAT CK 0013
In the Patna High Court

Mahabir Prasad Poddar and Others

APPELLANT

Vs

Ram Tahal Mandar and Others

RESPONDENT

Date of Decision : 17-08-1937

Acts Referred:

Provincial Insolvency Act, 1920 — Section 6, 75

Citation : AIR 1937 Patna 665 : 172 Ind. Cas. 737

Hon'ble Judges : Courtney-Terrell, C.J; Manohar Lall, J

Bench : Division Bench

Judgement

Manohar Lall, J.—This is an appeal by the creditors against an order of the District Judge of Darbhanga dated April 9, 1936, refusing on a preliminary ground their petition for an adjudication of the five respondents under the Provincial Insolvency Act. The learned District Judge was apparently under the impression that the applicants had asked that the respondents' joint Hindu family may be adjudged insolvent, and upon that view, called upon the applicants to state specifically whom they wanted to be declared insolvent. The applicants on being called upon made it perfectly clear by a petition dated March 26, 1936, that

the adjudication prayed for on the allegation in the petition of insolvency is in respect of the five adult persons described therein as opposite party.... The debt is a joint debt of the family of the opposite party,

but still the Court was not satisfied and under the impression that the application was made in order to harass and coerce the debtors, rejected the application for adjudication. In my opinion the order of the learned District Judge was wholly erroneous. The Court was bound to adjudicate upon the facts stated in the application and on the facts, if established, grant the proper relief to the applicants. The application could not be rejected in limine on the ground stated by the District Judge. It is only necessary to draw attention to the decision in *Boliseti Mamayya Vs. Buragadda Venkateswaralu and Another and Kolla Kotayya Kummuri Ramayya Rice Mill Company*, , which decides that the members of a

joint Hindu family can be adjudicated insolvents on a single petition by a creditor, if they are liable on a joint debt and have been guilty of a joint act or acts of insolvency. The test to be applied is whether, if the application was treated as a suit, the suit would be bad for multifariousness, that is for mis-joinder of different causes of action against different defendants; if no such objection can be successfully advanced, a single application for adjudication is maintainable. This case was followed in *Alamuri Punniiah Vs. Sagarajee Kasarmal Firm Tenal and Others*, , and to the similar effect is the case in *Maung Kyi Ch v. Arunachallam Chetty* 2 R 309 : 84 Ind. Cas. 968 : AIR 1925 Rang. 36. The Calcutta High Court has taken a similar view in *Brojendra Nandan Saha and Another Vs. Nekunja Behari Das and Others*, .

2. There seems to be some misapprehension as to the legal status of a joint Hindu family in regard to insolvency proceedings. A joint Hindu family as understood by the Mitakshara and Dayabhag Schools of Hindu Law is a perfectly well-known institution. It connotes that the ownership of the family property in case where the family has a property) belongs to the individual members who are existing at the time, either in undefined shares (under the Mitakshara School) or in defined shares (under the Dayabhag School). If a creditor wants to enforce his claim against a joint family, it is necessary to implead all the members of the family as defendants. As a rule, the father or in his absence ordinarily the next senior male relation is entitled to manage the affairs of the family on behalf of the entire co-parcenary inclusive of adult or minor members. The manager has power to affect or dispose of joint family property in respect of purposes denominated "necessary purposes". Where estate or family necessity exists, that necessity rests upon the co-parceners as a whole and in suits relating to such transactions the manager can represent the whole co-parcenary, though there is no objection to joining the rest of the coparcenary with him. The manager cannot, however, by any act of his impose a personal liability upon the other co-parceners. Adult members may incur such liability by actually joining him in transactions giving rise to such liability and this, whether there be any legal necessity or not, but minors cannot be thus made liable--as an instance, see the case in *Sanyasi Charan Mandal v. Krishnadhan Banerji* 49 C 560 : 67 Ind. Cas. 124 : AIR 1922 PC 237 : 49 IA 108 : 30 MLT 228 : 20 ALJ 409 : 24 Bom.LR 700 : 35 CLJ 498 : 43 MLJ 41 : (1922) WMN 364 : 26 CWN 954 : 16 LW 536 (PC).

3. Acts of insolvency as defined in Section 6, Provincial Insolvency Act, 1920, or in Section 6 of the earlier Act of 1907 under which the case in *Bolisetti Mamayya Vs. Buragadda Venkateswaralu and Another and Kolla Kotayya Kummuri Ramayya Rice Mill Company*, , was decided are acts--things done or suffered to be done creating personal liability. The Explanation to the section provides that the act of an agent may be the act of the principal. Although the manager of a joint Hindu family can act on behalf of the family, the recognized restrictions on his power so to act in his representative capacity as to impose any personal liability on other members of the family render it impossible to treat any act of

insolvency committed by him in relation to the affairs of the family, speaking generally, as an act committed by other members of the family also. It follows that the joint Hindu family, as such, cannot be adjudicated insolvent but that two or more members of such a family who have incurred a joint personal liability may present a joint petition in insolvency (itself an act of insolvency) or may be proceeded against on One creditor's petition in case the joint act of insolvency can be brought home to them. Minors must, however, be excluded in any case from insolvency proceedings started at the instance whether of debtors or of creditors. Some confusion has sometimes arisen on account of the powers of a Receiver to sell the interest of the sons in the joint family estate where the karta being the father has been declared insolvent. This matter has now been clearly decided authoritatively by their Lordships of the Privy Council in AIR 1936 277 (Privy Council) , where it has been pointed out that in cases where the father is adjudicated insolvent in a joint Hindu family, the shares of the sons can be seized by the Receiver in insolvency on the ground of the son's pious obligation to pay the debts of the father.

4. The respondents raised a, preliminary objection that this appeal is incompetent inasmuch as the leave of the High Court was not obtained u/s 75(3) Provincial Insolvency Act. There is no merit in this objection, because the very fact that this appeal was admitted by this Court amounts to an indication that if leave had been asked for, it would have been granted. To cure this irregularity, it is enough to state that we think that this is a case in which leave ought to be granted and the same is granted at this stage as was done in Gopal Ram Vs. Magni Ram and Others, . The result is that the appeal is allowed with costs. The District Judge will now take the case back on his file and proceed to determine whether the opposite party (or which of them) should or should not be declared insolvent as prayed for by the applicants in their application of March 23, 1936.

Courtney-Terrell, C.J.

5. I agree.