

(1975) 10 RAJ CK 0034

In the Rajasthan High Court

Case No : Civil Miscellaneous First Appeal No. 60 of 1973

Mohanlal

APPELLANT

Vs

Rameshwar Dayal and Others

RESPONDENT

Date of Decision : 09-10-1975

Acts Referred:

Provincial Insolvency Act, 1920 — Section 9(1)

Citation : AIR 1976 Raj 4 : (1975) RLW 554 : (1975) WLN 542

Hon'ble Judges : V.P. Tyagi, J

Bench : Single Bench

Advocate : P.C. Bhandari, for the Appellant; S.K. Keshote, for No. 1, for the Respondent

Final Decision : Dismissed

Judgement

V.P. Tyagi, J.—This appeal raises an important question relating to the interpretation of the expression "liquidated sum" as appeared in Section 9(1)(b) of the Provincial Insolvency Act, 1920 (hereinafter referred to as "the Act").

2. Respondent No. 1 Rameshwar Dayal, who was a creditor of Messrs. Mohanlal Yadram, presented an application before the District Judge, Alwar, praying that Mohanlal and other partners of the firm be declared as insolvent. This petition was contested by the opposite parties on the ground that the credit of the petitioner was not a liquidated sum and, therefore, the petition was not maintainable u/s 9 of the Act. In order to decide the controversy raised by the opposite party Mohanlal appellant it will be necessary to set out certain relevant facts.

3. Petitioner Rameshwar Dayal carries his business in food grains and "sarsoon" at Alwar in the name and style of "Rameshwar Dayal Ashok Kumar". Opposite parties Mohanlal, Kailash Chand and Ratan Lal also carry on their business through a partnership firm known as Messrs. Mohanlal Yadram. The petitioner sold "sarsoon" to Messrs. Mohanlal Yadram on two occasions, that is on 5-4-71

and 12-4-71. A cheque of Rs. 13,000 was given to the petitioner by Mohanlal on 19-4-71 towards the payment of the "sarsoon" purchased on 5-4-71. It is said that Rs. 272.95 remained due against that transaction. As regards the sale of "sarsoon" made in favour of Messrs. Mohanlal Yadram on 12-4-71, the amount due to the petitioner from the said firm was Rs. 9,994.47. It is alleged that Mohanlal and his other partners sustained losses and therefore, they started disposing of their properties situated at Alwar. The petitioner having apprehended that respondents Mohanlal and others would defeat the claims of the petitioner, he made an application before the learned District Judge, Alwar, to declare Mohanlal and his partners as insolvent.

4. The opposite parties in their replies admitted the first transaction, but pleaded that nothing was due from them to the petitioner on account of that transaction of 5-4-71. The transaction alleged to have taken place on 12-4-71 was however, denied and inter alia raised a plea that the petition filed by the petitioner was not maintainable, as the debt was not a "liquidated sum" and hence u/s 9 of the Act the petition could not be filed.

5. The learned trial Judge decided this preliminary objection raised by the respondents and declared that the amount demanded by the petitioner from the respondents was an ascertained sum and, therefore, the petition was maintainable.

6. It is against this order deciding the preliminary objection of the respondents that Mohanlal has filed this appeal before this Court.

7. It may be mentioned here that the other partners of firm Messrs. Mohanlal Yadram did not join Mohanlal as appellants and, therefore, they were impleaded as respondents.

8. Section 9(1)(b) of the Act reads as follows:--

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

(a)

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

9. Mr. Bhandari, appearing on behalf of the appellant, argued that in face of the total denial of the opposite parties that no debt was due from Messrs. Mohanlal Yadram, the petition cannot be maintained as the debt cannot be said to be a debt of a liquidated sum. His contention is that unless it was decided by a competent court that a debt was due from the respondents to the petitioner, the claim of the petitioner cannot fall within the expression "debt is a liquidated sum", and hence the petition filed by the petitioner, was not maintainable. In support of this plea he placed reliance on P.N.V. Ratnasami Naidu and Others Vs. K.S.P.A. Subba Reddiar, Ramchandra Narayanji v. Rameshwar Bhagwandas AIR

1951 MP 115; Balak Ram v. Kaley 1966 All LJ 476 and Subramonia Iyer Sardambal v. K. R. Ramabhadra Iyer AIR 1956 TC 88.

10. Mr. Keshote, appearing on behalf of the respondent Rameshwar Dayal, on the other hand urged that the word "liquidated" appearing in Clause (b) of Sub-section (1) of Section 9 of the Act qualifies the word "sum" and not the word "debt" and, therefore, if the sum is ascertainable without making an elaborate inquiry then in that event the debt shall be a liquidated sum and as such, Clause (b) of Sub-section (1) of Section 9 of the Act would not stand in its way to get the opposite party declared as insolvent. In support of his contention he cited a case of Judicial Commissioner's Court of Sind In re Dholan AIR 1919 Sind 1.

11. In the present case the market rate at which the "sarsoon" was sold is not in dispute. What is in dispute is whether Mohanlal did at all purchase "sarsoon" from the petitioner Rameshwar Dayal on 12-4-71. The amount of "sarsoon" cannot, therefore, be in dispute. The debt has however been denied by Mohanlal and, therefore, the Court has to see whether such a denial renders the insolvency petition as non-maintainable u/s 9(1)(b) of the Act.

12. It is clear from a bare perusal of Section 9 of the Act that the creditor cannot present an insolvency petition against a debtor unless the debt, which he claims, is a liquidated sum payable either immediately or at some certain future time. The requirement of Clause (b) of Sub-section (1) of Section 9 of the Act, therefore, is that the debt must be of such a sum which can easily be ascertained. It is not the requirement of this provision of the law that the debt must be admitted by the debtor himself. If the credit of the petitioner is prima facie established then Section 9 of the Act cannot be invoked to summarily reject the insolvency petition. In the present case there is no difficulty to ascertain the exact amount of debt in respect of both the aforesaid transactions, the only point raised by Mohanlal is that debt is not recoverable by the petitioner-creditor. This question whether the debt is or is not recoverable, does not, in my opinion, fall within the expression "debt is a liquidated sum payable either immediately or at some certain future time" as used in Clause (b) of Sub-section (1) of Section 9 of the Act.

This contention of Mr. Bhandari that if the debt is denied by the debtor then no petition would be maintainable u/s 9 of the Act, cannot be accepted, because if the expression "debt is a liquidated sum" is interpreted in the manner in which Mr. Bhandari wants this Court to interpret it, then it would provide an easy handle to every debtor to escape the consequences under the provisions of the Act by simply raising a plea of denial about the existence of the debt. In order to debar a creditor from presenting an insolvency petition against a debtor u/s 9 it is necessary for the debtor to show that the debt is of such a nature which is not capable of being easily ascertained within the mischief of Section 9 of the Act. In P.N.V. Ratnasami Naidu and Others Vs. K.S.P.A. Subba Reddiar, the learned Judge while defining the expression "debt is a liquidated sum" observed as follows:--

"It is not always easy in a claim on an account to say definitely whether it is for a liquidated sum or for an unliquidated sum. It does not cease to be a, liquidated sum, because it can be arrived at only after making some simple calculation; but if it is not readily ascertainable without enquiry, then it is an unliquidated claim."

13. In Madhya Bharat case Ramchandra Narayanji v. Rameshwar Bhagwandas AIR 1951 MP 115 there was a claim for damages for breach of contract of sale and it was in that context that the learned Judge observed that,--

"An essential condition for the foundation of a creditor's petition is that the debt must "be a liquidated sum. There must, therefore, be a certain sum admittedly due and payable to the person who presents the petition. A claim for damages for non-performance of a contract of a sale cannot ordinarily be within the meaning of a liquidated sum, especially where the alleged contract and its validity or the need of its performance are in question."

This authority, in my opinion, cannot be of any avail to the appellant, because the facts of that case showed that the claim for damages for the non-performance of the contract of a sale could not be accepted as a "debt" of the creditor, unless such a claim was determined by a competent authority. In my opinion this ruling cannot help the court to find out the correct interpretation of the expression "the debt is a liquidated sum", as used by the Legislature in Clause (b) of Sub-section (1) of Section 9 of the Act.

14. In Allahabad case Balak Ram v. Kaley 1966 All LJ 476, the learned Judge held that a claim for damages before passing of the decree could not be termed as a liquidated sum. but in his opinion once a decree is passed, it becomes a liquidated sum payable immediately. This authority is distinguishable on : the point that in that suit the debt claimed depended upon " the adjudication about the quantum of damages and unless it was done that debt could not be said to be of a liquidated sum. In my opinion this authority of Allahabad High Court hardly throws any light on the question that has been posed for this court to answer.

15. In Subramonia Iyer Saradam-bal v. K. R. Ramchandra Iyer AIR 1956 TC 88, the learned Judges, while examining the scope of Section 9 of the Act, observed that.-

"A debt on which the insolvency petition can be based must be one provable in insolvency or in other words it must be a subsisting debt due from the debtor on the date of the presentation of the petition. It must also be a liquidated sum payable either immediately or at some future time."

According to these observations of the learned Judges, if the debt, even though denied by the party, can be proved easily in the insolvency court, then it can act as a base or foundation for submitting a petition under the provisions of the Act.

16. There is a Bench decision of the Rangoon High Court U Ba Thwin v. U Tun Than AIR 1935 Rang 435 wherein the learned Judges, after taking into

consideration English authorities and going through Robson's Law of Bankruptcy, Edn. 7, held,

"(1) that a sum is "liquidated" if it can be computed with certainty, and.

(2) that a debt is "liquidated" if it can be readily ascertained on inquiry."

17. On going through these authorities cited before me I can say that it is not necessary for the purposes of Section 9(1)(b) of the Act that the debt that has been made the foundation for presenting the insolvency petition, must be accepted by the debtor before taking further proceedings under the provisions of the Act. If it was so, then no insolvency petition can ever lie. The only requirement of this section is that the "debt" that has been made the foundation for the petition must be of a liquidated sum, which would mean that the sum was ascertainable after simple arithmetical calculations by the parties or the court. In the present case the claim of the petitioner is very simple and based on two transactions of sale. One of them was, however admitted by Mohanlal.

Therefore, the debt to the extent of Rs. 272.95 is not in dispute. The amount of the second transaction is also not in dispute. The only thing which is in dispute is whether the sale on 12-4-71 was made in favour of the opposite party or not. This question whether such a sale did or did not take place, could easily be gone into in an insolvency proceeding and the amount of the debt, which was made the foundation for preferring insolvency petition, could be ascertained without undergoing an elaborate procedure to find the exact amount. In such circumstances Mohanlal could hardly take resort to the provisions of Section 9(1) (b) of the Act to get a declaration that the insolvency petition was not maintainable. In my opinion the law laid down by Sind Judicial Commissioner in re Dholan AIR 1919 Sind 1 lends support to the arguments advanced by Mr. Keshote that if the sum claimed as a debt by the petitioner can easily be ascertained, then such a debt would fall within the expression "the debt is a liquidated sum."

18. For the reasons mentioned above the appeal of the appellant fails and is hereby dismissed with costs.