
(1987) 03 AHC CK 0054
In the Allahabad High Court
Case No : Civil Revision No. 104 of 1987

Radha Kishan Ram Saran

APPELLANT

Vs

Beni Ram Fakir Chand and Others

RESPONDENT

Date of Decision : 06-03-1987

Acts Referred:

Provincial Insolvency Act, 1920 — Section 19, 25

Citation : AIR 1988 All 5 : (1987) 2 AWC 1416

Hon'ble Judges : B.N. Sapru, J

Bench : Single Bench

Advocate : A.N. Bhargava, for the Appellant; Sudhir Narain Agrawal and R.A. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Sapru, J.—This is a revision u/s 75(1) of the Provincial Insolvency Act.

2. The applicant filed an insolvency petition in the court of Insolvency Judge for adjudging the respondents as insolvents on the ground that the respondents did not pay a sum of Rs. 48,522/- which became due and also had committed various acts of insolvency including, making fictitious entries in their account.

3. The petition was presented on 28-7-1986 before notice could be issued on the petition, the respondents put in appearance and opposed the application for appointment of interim receiver. The said application was rejected on 12-8-1986 by the Insolvency Judge with the consent of the parties. The respondents also deposited in court fixed deposit receipts of Rs. 50,000/- in order to show that they possessed sufficient assets and money to pay off the debt of the applicant and did not commit any act of insolvency.

4. Thereafter, an application was presented by the respondents, being application No. 45C for dismissing the insolvency petition and requested the court to exercise the powers u/s 25 of the Act. This application has been allowed by the court. An appeal preferred by the applicant was dismissed by the District Judge,

Etah, by his judgment dated 27-10-1986.

5. Aggrieved by the orders of the court below the applicant has filed this revision.

6. It is necessary to state here that the concurrent findings of the two courts below are that the respondents admitted that a sum of Rs. 48 thousand and odd is due from them to applicant, However, the case of the respondents is that certain documents executed by the respondents are with the applicant and they are ready and willing to pay the money if the said documents are returned to them. There is a dispute between the parties as to whether such documents exist. The applicant's case is that no such documents exist. The matter has yet to be examined. The further finding of the courts below is that the applicant's case that the respondents' business was closed for some time before the presentation of the insolvency petition is incorrect. It has been found that from April, 1986 to July 1986, the respondents firm transacted the business of over Rs. 84,39,794.32 and during the same period, the respondents paid purchase tax to the tune of Rs. 68963.34 and Mandi Shulk in the amount of Rs. 29,782-77. The courts below have also taken note of the fact that the respondents had huge business assets and in any case the respondents' case in this regard has not been disbelieved by the courts below.

7. As far as the finding in regard to the ability of the respondents to pay off the debts, there is a positive finding of fact in favour of the respondents.

8. Sri G.P. Bhargava, learned counsel for the applicant has contended that in an insolvency petition it is not only the debt amounts claimed by the applicant that has to be taken into account but what has to be taken into account is that the insolvent had enough money to pay off his other debts also. The names of other creditors apparently were not given in the insolvency petition. Under the law it is not necessary to do so although that can be done.

9. Learned counsel for the applicant urged that on the presentation of the petition, notices u/s 19(2) of the Provincial Insolvency Act has to be given to the creditors in the manner prescribed under the Rules. The manner has been prescribed by the Allahabad High Court under the Provincial Insolvency Rules. Relevant rules are Rules 4 and 5, which are quoted hereunder : --

"4. Whenever publication of any notice or other matter is required by the Act to be made in an official gazette, or is required by the rules framed under the Act to be made in a local newspaper, a memorandum referring to and giving the date of such advertisement shall be filed with the record and noted in the order sheet.

5. Notice of an order fixing the date of the hearing of a petition u/s 19(2) shall, in addition to the publication thereof in the local official gazette as required by the Act, be also advertised in such newspaper or newspapers as the Court may direct.

A copy of the notice shall also be forwarded by registered letter to each creditor on the address given in the petition. The same procedure shall be followed in

respect to notices of the date for consideration of a proposal for composition or schemes of arrangement u/s 38(1)."

10. He submits that the creditors can have no information in the absence of publication as prescribed under the Rules and as required by the Act. Mr. Bhargava's argument is that the order u/s 25 of the Act dismissing a petition cannot be made before the procedures prescribed u/s 19 has been complied with. He submits that the court committed a manifest error of jurisdiction in dismissing the petition u/s 25 without publishing notices to the respondents as prescribed. In this regard, the learned counsel for the applicant has referred to a number of decisions, which I now deal with.

11. The first case relied upon by the learned counsel for the applicant is The Punjab National Bank Ltd. and Others Vs. Jethmal Danmal and Others, . In this case an application was made by Messrs. Jethmal Danmal and another for declaring Messrs. Sherchand Multanmal and its partners insolvent. One of the acts of insolvency mentioned in the petition was that the insolvents had given fraudulent preference to the Bank and an adjudication was made without notice of the petition having been served on the Banks. The Banks applied for setting aside the adjudication order. The application of the Bank was rejected as the District Judge held that no notice u/s 19(2) was necessary when the application for declaring a person as insolvent had been filed. The Court held that provisions of Section 19(2) applied to petitions both by creditors and by debtors. Nothing further has been decided in this case. This case cannot be of any assistance to the learned counsel for the applicant in meeting the argument advanced by him.

12. Another decision relied upon by Sri G.P. Bhargava is the decision in the case of Shadi Ram Ram Sarap Dass and Others Vs. Ravi Chander Xazigla and Others, . What the Delhi High Court has held is that an insolvency petition presented by a creditor cannot be dismissed merely because the alleged insolvent has deposited the amount claimed by the creditor or presented to the petitioner as the expression "able to pay his debts" occurring in Section 25 is to be used in normal commercial sense. The Court has held that the debtor must satisfy the court that he has the ability to discharge his debts presently; hence he is not insolvent. The Court has further observed that "the expression "debts" refers to all the debts that he is legally bound to discharge at once and which he has failed to discharge. In this view of the matter, the mere fact that the petitioners have deposited the amount due to the petitioning creditor in the court does not discharge the burden placed upon the debtor to show that he is able to pay his debts within the meaning of Section 25 of the Act."

13. There can be no quarrel of the proposition laid down by the Delhi High Court when it interprets S. 25. This case helps Mr. G.P. Bhargava to this extent that the respondents cannot get an order u/s 25 of the Act in their favour merely by depositing the amount claimed in the petition as due to the applicant but it does not go further than this.

14. The next case relied upon by Sri G.P. Bhargava is *Nathoo v. Ghulam Dastgir* AIR 1926 Lah 638(2). In that case it was held that a person cannot be declared as an insolvent unless the procedure laid down in Section 25 of the Act had been followed, which, inter alia, requires that an insolvency petition against a debtor unless the debts owing to him amount to Rs. 500/-. This case is of no assistance in deciding the controversy involved in the present case.

15. Another decision relied upon by Sri G.P. Bhargava is *Mansa Ram and Sons (Bankers) and Others Vs. Janki Dass Om Prakash and Others*, . This case also does not deal with the problem which has arisen in the present case.

16. Sri R.A. Misra, appearing on behalf of the respondents has invited my attention to the decision of the Gujarat High Court in the case of *Mohanlal Premjibhai Thakkar Vs. Shah Atulkumar Kantilal*, which held that it is not incumbent on the Insolvency Judge to issue notice u/s 25 of the Act but if on the facts and circumstances of the case the Judge thought that the debtor should be heard, he should postpone the issue of notice u/s 19 and consider the matter at the preliminary stage, the learned single Judge has cited the case of a Division Bench of the Gujarat High Court in the case of *Hasmukh Engineering Works and Another Vs. Babubhai Chhotalal Amin and Another*, , where it was held as follows ;

"We are not in agreement with the observation of the learned trial Judge that these provisions specifically negative the Courts" power to hear the debtor before issuing a public notice, as has been thought by the learned Judge, However, for want of anything contrary, express or implied, in the language of Section 19 of the Act, we say that the concerned Court of insolvency may, in its discretion, issue a notice to the concerned debtor and hear him and if the Court finds that the application prima facie does not make out any act of insolvency, it may not proceed with the matter further and in such cases it would not be necessary for the Court to issue a public notice contemplated."

17. I am in entire agreement with the views expressed by the Division Bench of the Gujarat High Court that before the issue of notice u/s 19 of the Act to the respondents in the insolvency petition, the Court should apply its mind to the facts and circumstances of each case.

Section 25 of the Act runs as follows :

"25.(1) In the case of a petition presented by a creditor, where the Court is not satisfied with the proof of his right to present the petition or of the service on the debtor of notice of the order admitting the petition, or of the alleged act of insolvency, or is satisfied by the debtor that he is able to pay his debts, or that for any other sufficient cause no order ought to be made, the Court shall dismiss the petition.

(2) In the case of a petition presented by a debtor, the Court shall dismiss the petition if it is not satisfied of his right to present the petition."

18. There is no limitation in regard to the point of time when the power to dismiss the petition is to be exercised by the court. Before the issue of notice u/s 19 of the Act, the court has power to dismiss the petition if it was satisfied that the respondents committed no act of insolvency and were able to pay the debts. The argument of Sri Bhargava is that there would be other debts owed by the respondents and therefore notice had to be issued u/s 19(2) of the Insolvency Act, cannot be accepted. I am satisfied that the court was right in issuing notice u/s 25 of the Act.

19. In the circumstances, the revision is dismissed with costs.