(1923) 01 CAL CK 0039

In the Calcutta High Court

Satish Chandra Addya APPELLANT

Vs

Firm Raj Narain Pakhira and Others RESPONDENT

Date of Decision : 16-01-1923

Acts Referred:

Provincial Insolvency Act, 1920 — Section 79

Citation : AIR 1924 Cal 436

Judgement

1. These two appeals arise out of proceedings under the Provincial Insolvency Act

2. An application was made by one of the creditors for declaring the debtors (who are four out of five members of a firm the fifth being a minor), insolvent. Some of the other creditors opposed the application on various grounds the learned District Judge dismissed the application on several grounds. After the application had been disposed of, four of the debtors made an application for being declared insolvents. This also was rejected by the Court below on the ground, among others, that they had not proved their inability to pay their debts. These two appeals are against these two orders. We propose to deal first of all with Miscellaneous Appeal No. 378 of 1922 which deals with applications of the four debtors to be declared insolvents.

3. It appears that one of the debtors, Rasik La, was examlined and he stated that the debts amounted to over Bs. 1,06,600 and that they were unable to pay their debts; and there is a report of the Receiver which states that the value of the Rice Mill would be about Rs. 30,000 only.

4. The learned District Judge, however, in arriving at the conclusion that the debtors were not unable to pay the debts, relied upon a statement in an affidavit sworn to by one of the debtors in 1920 in some other suit to the effect that the Mill was worth Rs. 95,000.

5. It is contended on behalf of the appellants that the Court below has not enquired into the present value of the Mill and other properties; that the Receiver was not authorized to go into the question of the value of the Mill; and that the

learned Judge has not considered the fact that one-fifth share of the properties belong to the minor brother of the debtors who is not an applicant for insolvency.

6. The affidavit stated the value of the Mill as it was two years ago. What the Court below ought to have considered was the present value of the Mill and the other properties which are available for meeting the liabilities of the debtors, and no inquiry has been directed to that point.

7. We are of opinion that the Court below should inquire into the present value of the properties and decide whether, having regard to the proviso (a) to Section 24 of the Act, the debtors have proved inability to pay their debts.

8. A question, however, has been raised before us on behalf of the respondents, viz., that a joint application could not be made by four of the debtors for being adjudicated insolvents.

9. It is unnecessary to refer to the cases decided under the former Insolvency Act (III of 1907). Section 79 of the present Provincial Insolvency Act (V of 1920) provides that the High Court may make rules for carrying into effect the provisions of this Act.

10. Sub-section (2) lays down that such rules may provide (among others) for the procedure to be followed where the debtor is a firm.

11. The High Court has framed rules u/s 79 of the Act.

12. Rule 19 provides, "where any notice, declaration, petition or other document requiring attestation is signed by a firm of creditors or debtors in the firm name, the partner signing for the firm shall also add his signature, e.g., Brown & Co., by James Green, a partner in the said firm."

13. Rule 22 says Where a firm of debtors file an insolvency petition, the same shall contain the names in fall of the individual partners, and if such petition is signed in the firm name, the petition shall be accompanied by an affidavit by the partner who signs the petition showing that all ths partners concur in the filing of the same." Rule 24 lays down, "In cases of partnership the debtors shall submit a schedule of their partnership affairs, and each debtor shall submit a schedule of his separate affairs."

14. It appears, therefore, that, where the debtor is a firm, the application must be in the name of the firm and the manner in which such an application is to be signed is laid down in the rules quoted above.

15. In the present case the application for insolvency was made by Rasik Lal, Janaki Nath, Surendra Nath and Satis Chandra, and although it was stated that they were jointly carrying on business under the name and style of Raj Narayan Rasik Lal Pakhira, the prayer was to the following effect : "Your petitioners humbly pray that your Honour may be pleased to adjudge your petitioners insolvents, &c," and it was signed by the four persons without the name of the firm.

16. We have gone through the statements made in the petition, and it seems that in substance it was an application by the four persons as representing the firm; but, as stated above, it was signed not in the firm name but by the four persons, not even describing themselves as representing the firm. Whatever the intention was, in form, it was not in compliance with the provisions of the rules made u/s 79 of the Provincial Insolvency Act.

17. It is contended on behalf of the appellant that, if the application is defective in form, they may be allowed to amend it.

18. We think that this may be done. We accordingly direct that the case (Miscellaneous Appeal No. 378 of 1922) be sent back to the lower Court in order that the appellants may apply for amendment of the petition so as to comply with the requirements of the rules framed u/s 79 of the Act. The respondent will be allowed an opportunity of taking such objections as he may be advised to take with respect to the amended application. The application for amendment must be made within ten days of the arrival of this order in the-lower Court. The Courb will then proceed to dispose of the case according to law.

19. Costs - three gold mohurs-ho abide the result.

20. Miscellaneous Appeal No. 291 of 1922 arises out of the application made by one of the creditors. The firm appears to have been described as the debtor in that application, and the objection of the respondent as to the form of the application, therefore, does not apply to it, though other objections have been raised in that case. If, however, the question of the inability of the debtors to pay their debts in decided in their favour in the case in which they are the applicants it would not be necessary to consider those objections. The Miscellaneous Appeal No. 291 of 1922 will, therefore, stand over until the disposal of the proceedings in the lower Court in connection with M.A. No. 378 of 1922. The parties will mention the matter after the disposal of the latter case in the lower Court.

RULE No. 604 - M. OP 1922,

21. The stay order granted on the 15th December, 1922, in connection with Miscellaneous Appeal Nos. 291 and 378 of 1922 will be discharged on expiry of 10 days from the arrival of this order in the Court below. It, however, will be open to the debtor or any of the creditors at any time to apply to the Court below for the continuance of the services of the Receiver pending the inquiry directed by us, and the Court below will then consider the matter and pass such orders as it thinks fit.

22. Let the record be sent down as soon as the order and decree are signed.

