

(1976) 11 DEL CK 0004

In the Delhi High Court

Case No : Civil Revision No. 476 of 1972

Shadi Ram Ram Sarap Dass and Others

APPELLANT

Vs

Ravi Chander Xazigla and Others

RESPONDENT

Date of Decision : 26-11-1976

Acts Referred:

Citation : AIR 1977 Delhi 187

Hon'ble Judges : B.C. Misra, J

Bench : Single Bench

Advocate : S.K. Khanna, for the Appellant; K.C. Mittal, for the Respondent

Judgement

1. This revision petition has been headed as under S. 115 of the Civil P. C. but it is really under S. 75 of the Provincial Insolvency Act 5, 1920, (here referred to as "the Act"), against the appellate order of Mr. M. K. Chawla, Additional District judge, dated 5th Oct, 1972, by which he has dismissed the appeal and affirmed the order of the Insolvency Judge. dated 10th February, 1972, refusing to dismiss the insolvency petition filed by the creditors, respondents I and 2, against the petitioners.

2. The material facts of the case lie in a narrow compass. The creditors, who are contesting respondents before me, deposited some amounts with the petitioners, the details of which it is not necessary to state at this stage. They had received part of the payment, but had not received the balance in spite of repeated demands. The respondents filed an application under S. 9 of the Act for adjudication of the petitioners as insolvent and claiming that the petitioners before me had committed various acts of insolvency mentioned in the petition. They also alleged that the petitioners owed a sum of Rs. 12 lakhs to the various creditors. Upon the issue of the notice of the same the petitioners filed a written statement contesting the material allegations and raising various disputes. Eventually, the petitioners deposited the amount claimed by the respondents in court and they filed an application under S. 25 of the Act alleging that they were not insolvent and had means to pay the debts. And so the insolvency petition be

dismissed. In the meantime, another firm by name Janina Dass Balkishan Dass (which is not represented before me) filed a petition for adjudication of the petitioners a-, insolvents and they claimed that a sum of Rs. 5,000 was due to them and the petitioners had committed various acts of insolvency and that their petition be consolidated with the petition giving rise to this revision- The petitioners have disputed the claim of the aforesaid second petitioning creditor and the same is still to be investigated.

3. The insolvency Court held that the respondent's 1 and 2 had alleged that the petitioners owed debts to the tune of Rs. 12 lakhs to the various creditors and that the second petitioning creditors' claim was yet to be investigated. So it may be safely contended that the debt due to the first petitioning creditors had -been or could be deemed to be satisfied, but it had not been established that the petitioners were able to pay their debts. As a result the insolvency petition could not be dismissed. The court consequently dismissed the petition of the petitioners filed under S. 25 of the Act. Feeling aggrieved, the petitioners filed an appeal before the District Court and the Additional District Judge affirmed the findings of the Insolvency Judge and dismissed the appeal.

4. For purposes of this appeal, it may be assumed that debt due to the first petitioning creditors has, been discharge while the liability to pay the debt of the second petitioning creditor is disputed Under these circumstances, the question that arises for determination is whether the expression "able to pay his debts" includes the debts other than those of the petitioning creditor.

5. Under the Act, a creditor is entitled to present an insolvency petition. If he fulfills the conditions laid down in S. 9 of the Act besides particulars prescribed by sub-s. (2) of S. 13 of the Act. Section 14 prohibits the withdrawal of an insolvency petition without the leave of the court. Section 15 provides for consolidation of two or more insolvency petitions. Section 16 prescribes that if a petitioner does not proceed with the insolvency petition with due diligence , the court may substitute as petitioner any other creditor to whom the debtor may be indebted in the amount not less then required by the Act in the case of a petition by a creditor. Section 17 prescribes that in the event of the death of the debtor the proceedings shall not abate, but shall continue as prescribed.

Section 25 of the Act reads as follows:

"(1) In the case. of a petition presented by a creditor, where the court is not satisfied with 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."

6. The scheme of the Act shows that the proceedings in the insolvency are really in rem and ensure for the benefit of all the creditors of the insolvent. The petition cannot be withdrawn without the leave of the court, nor does it abate on the death of the debtor and provision has been made for consolidation of two or more petitions of various creditors and also for substitution of the petitioner . Section 25 prescribes the available defences and one of the defenses is that if the debtor satisfies the court that he is able to pay his debts,, then the court shall dismiss the petition. Nevertheless if he is unable to pay his debts and commit some act of insolvency, the insolvency petition must continue notwithstanding the wishes or conduct of the particular petitioning creditor. The contention of the counsel for the petitioners is that if the debtor has satisfied the debts of the petitioning creditor. Then he has established his defense of ability to pay his debts within the meaning of Section 25 -and it is not material whether any other debts survive.

7. In *Kalu Ram v. Gitwar Singh* Air 1930 Lah 592 the learned single Judge held that under S. 25 on a petition presented by the creditor for adjudicating a debtor as insolvent. it lies on the debtor to satisfy the court that he is able to pay his debts. In *Bhagwan Das v. Mohammad Nawas Shah* Air 1939 Lah 349 the facts before the Division Bench were that the debt due to the petitioning creditors, (who were four in number), was only Rs. 10,537. While it had been established that besides committing an act of insolvency the amount owed by the debtor was Rs. 18,691 which had been outstanding for years. The contention of the debtor was that he possessed unliquidated assets. The High Court on appeal came to the conclusion that the debtor did not possess any liquid assets to pay the debts and he had not made any attempts to voluntarily raise money to pay his creditors. The controversy raised before the court related to the meaning of the expression "able to pay his debts". The Division Bench held that it would be idle to contend that the mere fact that the debtor owned valuable properties was per se sufficient to justify a finding that he was "able to pay his debts". The court, Therefore, held that the debtor had failed to prove that he was able to pay his debts. On the finding that the creditors had fulfilled the conditions laid down in S. 9, and the respondent had failed to make out a case for dismissal of the petition. The division bench allowed the appeal and reversed the order of the Insolvency judge and the debtor was adjudged insolvent.

8. This authority does show that in construing the expression occurring in S. 25 of the Act, the court took into consideration the debts owed to other persons in arriving at the finding. Similarly, in *Gadi Bhikaji Dhangar v. Govindrao Bapuji Puranik*. Air 1937 Nag. 127 the learned single Judge took the view. That the burden of proof lay upon the debtor to show that he was able to pay his debts within the meaning of S. 25 of the Act. In that case also that debt due to the petitioning creditors was only Rs. 850 while there were two other debts of Rs. 330 and Rs. 525 standing due against the debtor which he had failed to pay and the court came to the conclusion that the debtor was unable to pay all the three debts and so it affirmed the finding of the court below that the debtor had failed

to prove that he was able to Pay his debts; hence the insolvency petition could not be dismissed.

9. The expression "able to pay his debts" occurring in S. 25 is to be used in normal commercial sense. The debtor must Therefore, satisfy the court that he has the ability to discharge his debts presently; hence he is not insolvent. 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 S. 25 of the Act. One of the debts clearly alleged is the one relating to the second petitioning creditor, who. if the first petitioning creditor does not proceed with the petition, is likely to be substituted as the petitioner in the instant insolvency petition. It is true the debt due sto him is under investigation and will have to "be verified. But that does not show that the petitioners before me did not have any other debt to pay. The order of the lower appellate court by which it has affirmed the order of the trial court does not call for interference and the same is affirmed.

10. As a result, the revision petition is dismissed but under the circumstances, the parties are left to bear their respective costs.

11. Revision dismissed