(2002) 01 KL CK 0026

In the High Court Of Kerala

Case No : C.R.P. No. 2615 of 1992

Sulthan Pillai APPELLANT

Vs

Municipal Commissioner RESPONDENT

Date of Decision : 25-01-2002

Acts Referred:
Insolvency Act, 1956 — Section 7, 8

Citation : AIR 2002 Ker 230 : (2002) 1 ILR (Ker) 490

Hon'ble Judges : K.S. Radhakrishnan, J;K.A. Mohamed Shafi, J

Bench : Division Bench

Advocate : B. Radhakrishnan Thottathil and G. Unnikrishnan, for the Appellant; Pirappancode V. Sreedharan Nair, for the Respondent

Final Decision : Allowed

Judgement

K.S. Radhakrishnan, J.—This revision is filed u/s 79(1) of the Insolvency Act against the order passed in I.P. 1/90. Petitioner herein was judgment debtor in O.S. 472 of 1982 of Munsiff''s Court, Kuzhithurai in Kanyakumari District, Tamil Nadu. Decree holder was Kuzhithurai Municipality. When the decree was sought to be executed a petition was filed by revision petitioner herein u/s 7 of the Insolvency Act before Principal Munsiff''s Court, Nedumangad for declaring him as insolvent. Contention was raised before the Court below that no application is maintainable as against the Municipality u/s 8 of the Act. Learned Munsiff dismissed the application stating that no insolvency proceeding be initiated against the Municipality. Matter was taken up in appeal before the District Court, Ernakulam. Appeal was dismissed. Aggrieved by the same this revision petition has been preferred. When the matter came up for hearing we heard counsel on either side.

2. Counsel appearing for the petitioner submitted that the court below has completely misdirected in taking the view that no petition under the Insolvency Act is maintainable for declaring the petitioner as insolvent. Counsel submitted Section 8 of the Act deals with an entirely different situation which says that no

insolvency petition shall be presented against any Corporation or against any association or company registered under any enactment for the time being in force. Counsel also placed reliance on the judgment of a learned Single Judge in Pierce Leslie India Ltd. Vs. A. Romachandran and others., . Counsel appearing for the Municipality submitted that there is ample evidence to show that the petitioner is solvent. Consequently matter may be remitted back to the Munsiff''s Court for adducing evidence.

3. The object of insolvency law is to make all the property of the insolvent divisible amongst all the creditors. The Act provides the machinery by which the insolvent can be given relief and also the machinery by which the creditors, who are not secured in the payment of their debts, are to be satisfied. The insolvency Act provides for the particular protection of the insolvent and general protection of creditors and the trading public. It is an administrative or adjective law. The policy and object underlying it is to secure the distribution of a debtors estate among his creditors and to prevent the more active creditors from getting an undue advantage over those who may be less active. Section 6 of the Act deals with acts of insolvency. The insolvency jurisdiction of courts can be exercised for adjudging a person as insolvent only if he is a debtor under the Act and has committed any one of the acts of insolvency as enumerated in Section 6.

4. Section 7 deals with filing of petition and adjudication. It is profitable to refer the said provision for the purpose.

7. Petition and adjudication:- Subject to the conditions specified in this Act, if a debtor commits an act of insolvency, an insolvency petition may be presented either by a creditor or by the debtor, and the court may on such petition make an order (hereinafter called an order of adjudication) adjudicating him an insolvent.

Explanation:- The presentation of a petition by the debtor shall be deemed an act of insolvency within the meaning of this section, and on such petition the Court may make an order of adjudication.

Such a petition can be presented either by a creditor or by the debtor, if the debtor commits an act of insolvency. At the time of institution of the proceedings the Court has only to satisfy the essential conditions for filing petition under the Act are present. Adjudication must necessarily follow on the essential conditions being satisfied. Section 8 deals with exemption of Corporation etc., from insolvency proceedings. We may extract the said provision for our purpose.

"No insolvency petition shall be presented against any corporation or against any association or company registered under any enactment for the time being in force."

This section makes an embargo in presenting petition against any corporation or any association or company registered under any enactment. However, the section as such does not prohibit corporation or company or association registered under any enactment from approaching the court as a petitioning creditor so as to maintain a petition u/s 7.

5. We may examine the question raised in this case in the light of the above mentioned legal provision. This is a case where petition was filed for declaring the petitioner as insolvent u/s 7 of the Act. He has not presented any petition against the Municipality so as to adjudicate the Municipality as insolvent. Courts below have completely misdirected in taking a view that petition filed by the petition u/s 7 cannot be entertained in the light of Section 8. Section 8 deals with a different situation. if petition is filed against the Municipality for declaring the Municipality as insolvent Municipality could set up Section 8 as a defence. Learned Single Judge of this Court in Pierce Leslie India Ltd. Vs. A. Romachandran and others., took the view that a combined reading of Sections 7 and 8 of the Act go to show that what is interdicted is a petition to declare any corporation or any association or company as an insolvent.

6. We are in complete agreement with the said reasoning of the learned single Judge. In view of the above circumstance we are inclined to set aside the judgment of the courts below. Let the Munsiff''s Court, Nedumangad consider the petition u/s 7 in accordance with law and pass appropriate orders within a period of 3 months from the date of receipt of the receipt of the copy of this judgment. We make it clear we are not expressing any opinion on the merits of the case.

7. Revision is allowed as above and the orders of the Courts below are set aside.