

(2004) 10 AP CK 0065
In the Andhra Pradesh High Court
Case No : CMSA No. 40 of 2001

T. Chandrasekharaiah

APPELLANT

Vs

D. Sreeramulu Chetty and Others

RESPONDENT

Date of Decision : 26-10-2004

Acts Referred:

Evidence Act, 1872 — Section 3

Provincial Insolvency Act, 1920 — Section 10, 18, 24, 24(1), 25(2)

Citation : AIR 2005 AP 195 : (2005) 1 ALD 149 : (2005) 1 ALT 407 : (2007) 2 BC 76

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : D. Raghava Reddy, for the Appellant; T. Niranjan Reddy, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—This civil miscellaneous second appeal is filed against the concurrent judgments in I.P. No. 1 of 1994 and A.S. No. 27 of 2000 rendered by the Court of Senior Civil Judge, Rayachoti, and the Principal District Judge, Kadapah, respectively.

2. The appellant filed I.P. No. 1 of 1994, u/s 10 of the Provincial Insolvency Act, 1920 (hereinafter referred to as "the Act"), to adjudge him as insolvent. He pleaded that he is indebted to Respondents 1 to 46, to the tune of Rs. 13,57,000/-, the details of which are furnished in Schedule "A". It is his case that the house in "B" schedule, was his immovable property, but was agreed to be sold in favour of the first respondent, through an agreement of sale, dated 10.2.1999, for a sum of Rs. 1,20,000/-, and that a sum of Rs. 1,00,000/- was received as advance.

3. The petition was resisted by Respondents 2 to 5, 12 and 43 only. Rest of the respondents remained ex parte. The contesting respondents pleaded that the debts pleaded towards other respondents are fictitious, and that the appellant

suppressed various items of property held by him. They contended that having regard to the income derived by him in the form of salary, and properties possessed by him, the appellant cannot be adjudged as insolvent. The Trial Court dismissed the I.P. No. 1 of 1994, through its order, dated 23.2.2000. Aggrieved thereby, the appellant filed A.S. No. 27 of 2000. Through its judgment, dated 3.9.2001, the lower Appellate Court dismissed the appeal.

4. Sri D. Raghava Reddy, learned Counsel for the appellant, submits that the appellant satisfied the ingredients of Sections 10 and 24 of the Act, and once prima facie material is placed before the Trial Court, it ought not to have proceeded further, in accordance with the provisions of the Act. He contends that a reading of Section 24 of the Act itself, discloses that, what is required for a debtor to maintain an application u/s 10 of the Act, is to place prima facie material before the Court, and it is not at all open for the creditors, to disprove the allegations made in the I.P., or for the Court to require him to prove the facts pleaded by him.

5. Sri T. Niranjan Reddy, learned Counsel for the contesting respondents, on the other hand submits that, the effort of the appellant was to evade payments to the contesting respondents, and in the process, he has included in "A" schedule, several non-existent and fictitious debts. He submits that the appellant is an employee, drawing a substantial amount of salary and holding various items of property, and as such, the I.P was properly rejected.

6. The appellant pleaded that he is indebted to respondents to a tune of Rs. 13,57,000/-, and that he does not hold necessary means to clear the debt. This claim was resisted by the Respondents 2 to 5, 12 and 43 alone. Rest of the respondents did not choose to oppose the claim, or to contradict the version presented by the contesting respondents. The appellant was examined as PW-1. He did not examine any other witness, nor did he place any documentary evidence before the Trial Court. On behalf of the contesting respondents, RWs 1 and 2 were examined and Exs.B-1 to B-7 were marked.

7. The Act provides for adjudication of an individual as an insolvent, either at the instance of himself or at the instance of his creditors. Section 9 stipulates the facts that are required to be pleaded by creditor in a petition to adjudge his debtor as an insolvent. Similarly Section 10 of the Act incorporates the ingredients of an application, that may be filed by a debtor, to adjudge him as insolvent.

8. The presentation of the petition is governed by same procedure as applicable to suits or applications under CPC (C.P.C). Once, a petition is admitted and notices are served on the respondents, the steps to be taken at the hearing are stipulated u/s 24 of the Act. Proviso to sub-section (1)(a) of Section 24 of the Act, is important in this regard. The relevant provision reads as under :

"Section 24: Procedure at hearing :-(1) on the day fixed for the hearing of the petition, or on any subsequent day to which the hearing may be adjourned, the

Court shall require proof of the following matters, namely:

(a) that the creditor or the debtor, as the case may be, is entitled to present the petition:

Provided that, where the debtor is the petitioner, he shall, for the purpose of proving his inability to pay his debts, be required to furnish only such proof as to satisfy the Court that there are prima facie grounds for believing the same and the Court, if and when so satisfied, shall not be bound to hear any further evidence thereon;"

9. A reading of the provision discloses that where a debtor figures as a petitioner, it would be sufficient if he is able to satisfy the Court that, there are prima facie grounds for believing his version. Once the Court is satisfied that such prima facie grounds exist, the debtor cannot be required to adduce further evidence to prove his case. The plea taken by the appellant is that the very fact that the application filed by him was found to be in accordance with Section 10 of the Act, and was admitted by the Court, indicates that there is prima facie ground. According to him, and it was not open or competent for the Trial Court to have assessed the evidence adduced on behalf of the parties, or to require the appellant to adduce further evidence to prove his case.

10. Learned Counsel for the appellant places reliance upon the judgment of the Privy Council in *Chhatrapat v. Kharaj*, AIR 1916 PC 64. That case arose under an enactment, which preceded the present Act. An application filed by the appellant therein was rejected by the Trial Court as constituting an abuse of process of Court. The same was upheld by Calcutta High Court. The Privy Council took the view that the appellant therein complied with the provisions of the Act, and as such he was entitled to be adjudged as insolvent. Two aspects which differentiate the case on hand from the one referred to above, are that the provisions are different, and that the Privy Council was satisfied as to the compliance with the provisions of the Act.

11. The nature of enquiry to be undertaken u/s 24 of the Act, with particular reference to the proviso, was dealt with by a Full Bench of the Patna High Court in *Haridayal Sah Vs. Motilal Sarawagi*, . As in the present case, there also, it was pleaded that once an application is found to be in accordance with Section 10 of the Act, the Court cannot embark upon further enquiry as to the bona fides of the debtor in filing the application. In this context, it was held as under:

"The meaning of the proviso is merely that the Court is enabled to deal summarily with the opposition by the creditor, that is to say the Court must listen to such evidence as the debtor may care to adduce and the debtor may be cross-examined, and if the Judge is satisfied after such hearing, he may refuse to hear any further evidence and may grant the adjudication, but this is very far from saying that the Judge, if he shall be inclined to hear any evidence presented by the creditor, is not entitled to hear such evidence. He may, if he likes, hear the evidence and may hear as much evidence as he may think fit in the

circumstances which will vary of course according to the difficulty of the case".

12. This was followed by a Division Bench of that Court in *Satdeo Narain and Others Vs. Union of India (UOI) and Others*, . The expression "prima facie grounds" occurring in the proviso, was interpreted as under:

"The expression "prima facie grounds" would indicate that if on the records of the proceedings it appears to the Court that there are properties in possession of the debtor, which would disprove his claim that he is unable to pay his debt, in that case alone, his application shall be dismissed. If, however, there is no such clear evidence on the record, the debtor must be adjudged an insolvent in terms of Section 24(1)(a)".

13. Recently, a Division Bench of this Court in *Dasari Srihari Rao Vs. Talluri Harinadha Babu*, reviewed the case law on the subject, and held that the debtor, who files an application to adjudge him as insolvent is under an obligation to satisfy the Court, by furnishing necessary information and any failure in that regard would entail in rejection of the application u/s 25(2) of the Act.

14. From a perusal of the provision and reading of the judgments referred to above, it is evident that, at the hearing of the application u/s 24 of the Act, the Court is under an obligation to consider the versions put forward by the debtor on the one hand, and his creditors on the other. The Court has to verify as to whether there exists a prima facie ground for believing the version of the debtor. The section does not confine the consideration of this aspect to the plea put forward, or evidence adduced, by the debtor alone. If that were to be the case, the satisfaction as to the existence of such prima facie grounds could not have been relegated to a stage, at which the application is presented u/s 10 or admitted u/s 18 of the Act, by the Court. The fact that a hearing is required to take place u/s 24, after service of notice on the creditors, implies that the facts pleaded and evidence adduced by the creditors are also required to be taken into account, before the Court records its satisfaction.

15. One precaution, which however, needs to be taken in this regard, is that a debtor can be required only to make out a case, as to existence of "prima facie grounds"; in contradiction to proving the facts pleaded by him to the extent required u/s 3 of the Evidence Act. Once the Court is satisfied about the existence of such prima facie grounds, it cannot require the debtor to prove his case further or permit the creditors to disprove the facts pleaded by the debtor. At the same time, the declaration or observation by the Court that it is not satisfied as to the existence of prima facie case, cannot be treated as a failure of the debtor to prove his contention, or the ability of the creditors to disprove the contents of the petition. The proviso to Section 24 of the Act, does not prohibit the consideration of the evidence adduced on behalf of the creditors, but such consideration is limited to the context of recording a finding as to the existence of a prima facie case in favour of the debtor, and not beyond that.

16. Reverting to the facts of this case, it is evident that except his own self

serving statement as PW-1, the appellant has not chosen to place any material before the Trial Court. It is true that he cannot be required to prove the contents of his petition beyond any reasonable doubt or to the extent of probablizing his contention. Even to satisfy the Court as to the existence of prima facie case, something more than mere repetition of the contents of the petition was needed. Further, much would depend on the nature of resistance offered by the respondents. The Trial Court would have been under an obligation to take further steps under the Act, to adjudge the appellant as insolvent had there not been any denial by the respondents, as to the contents of the petition. There was vociferous resistance by the contesting respondents. They pleaded that the alleged debt towards the other respondents is fictitious and that the appellant held various items of property. The appellant himself admitted in his application that he is drawing a monthly salary of Rs. 7,000/-.

17. Declaration of a debtor as an insolvent, has its own adverse effect on the creditors. A measure which used to be taken as a last resort, resulting in stigmatization of the person declared as insolvent, is unfortunately turning out to be a first resort or a ruse to evade payment of money borrowed through one means or the other. It is not as if a person is entitled to be declared as insolvent, just for the asking of it.

18. The requirement u/s 10 of the Act that the debtor is unable to pay his debts, has to be proved, at least prima facie, to the satisfaction of the Court, and this in turn is different from mere assertion, by the debtor himself. The liability towards the contesting respondents was about Rs. 1,25,000/-. The appellant did not deny the plea of the contesting respondents that he holds some other items of property. He did not place any material before the Trial Court to show that he was indebted towards other respondents. Further, the appellant is drawing salary from month to month.

19. Under these circumstances, it cannot be said that the appellant satisfied the Court that there exists a prima facie ground to accept his plea. Therefore, this Court does not find any basis, to interfere with the concurrent judgments of Courts below.

20. The civil miscellaneous second appeal is accordingly dismissed. There shall no, order as to costs.