

(1957) 10 RAJ CK 0007

In the Rajasthan High Court

Case No : Civil Miscellaneous First Appeal No. 36 of 1955

The Punjab National Bank Ltd. and Others

APPELLANT

Vs

Jethmal Danmal and Others

RESPONDENT

Date of Decision : 31-10-1957

Acts Referred:

General (Civil) Rules, 1952 — Rule 423

Provincial Insolvency Act, 1920 — Section 19(2), 53, 54, 75, 9

Citation : AIR 1958 Raj 223 : (1957) RLW 654

Hon'ble Judges : K.N. Wanchoo, C.J.; D.S. Dave, J

Bench : Division Bench

Advocate : M.M. Vyas, for the Appellant; Haraklal Manihar, for the Respondent

Judgement

K.N. Wanchoo, C.J.—This is an appeal by the Punjab National Bank Ltd. and three other banks (hereinafter called the Banks) against the order of the District Judge of Jodhpur in an insolvency matter. (2) The brief facts leading to this appeal may be mentioned at the outset. An application was made by Messrs. Jethmal Danmal and another (hereinafter called the respondents) for declaring Messrs. Sherchand Multanmal and its partners insolvent (hereinafter called the insolvent) u/s 9 of the Insolvency Act. The District Judge adjudicated Messrs. Sherchand Multanmal and its partners insolvent on 21st of July, 1954. A receiver was appointed to take possession of the property of the insolvents. One of the acts of insolvency mentioned in the petition was that the insolvents had given fraudulent preference to the Banks. After the order, of adjudication, the Banks made an application to the District Judge pointing out that no notice, as required u/s 19(2) of the Insolvency Act was issued by the Court and therefore the Banks could not appear and contest the petition and show to the Court that this was not a case of fraudulent preference to the Banks.

This application was opposed by the respondents and their case was that no notice u/s 19(2) was necessary at all in a case where the application for insolvency was made by a creditor. The District Judge accepted this contention of

the respondents and held that no notice u/s 19(2) was necessary when the application was by a creditor. It therefore dismissed the application of the Banks holding that its order of adjudication dated 31st of July, 1954 was in the circumstances perfectly legal. The present appeal is against this order of the District Judge.

3. A preliminary objection has been raised on behalf of the respondents that the appellants have no right to appeal against the order of the District Judge. Section 75 of the Insolvency Act deals with appeals and Sub-section (2) and (3) provide for appeals against orders of District Judges in the exercise of insolvency jurisdiction.

The present appeal is not covered by Sub-section (2). The appellants, however, have made an application for leave to appeal under Sub-section (3) and in view of the circumstances, we are of opinion that leave should be granted in this case and we hereby grant it. The contention of the respondents is that the appellants cannot appeal at all because they are not creditors.

It is enough to point out that the right of appeal u/s 75 of the Insolvency Act is given not only to creditors (assuming for the moment that the appellants are not creditors) but also to any person aggrieved by a decision come to or an order made in the exercise of insolvency jurisdiction. We have no doubt that the appellants are persons aggrieved by the order of adjudication.

The result of the order of adjudication is that the creditors would be able to make an application u/s 53 or 54 of the Insolvency Act & this would very prejudicially affect the rights of the appellants who are said to be creditors to whom fraudulent preference was given. They are therefore persons aggrieved by the order of the District Judge adjudicating Messrs. Sherchand Multanmal and its partners insolvent. There is therefore no force in this preliminary objection and it is hereby overruled.

4. We now turn to the main point raised in this appeal, namely whether notice u/s 19(2) is necessary in some form or other in a petition filed by creditors. A creditor presents an application for insolvency u/s 9, while a debtor's application is made u/s 11. The contents of the application in either case are prescribed in Section 13.

There is one important difference in the contents of the two kinds of applications. In the case of a debtor's application, the names and residences of all his creditors with the amount and particulars of all pecuniary claims against him, so far as known to the debtor, are to be given in the application.

In the case of a creditor's application, it is not necessary to mention the names of any other creditors besides those who are applying. Learned counsel for the respondents urges that because of this difference in the contents of the petition, we should interpret Section 19(2) in such a way as not to apply to a creditor's petition.

5. After a petition has been presented, it is admitted u/s 18. Then comes Section 19 which is in these terms:

"19. (1) Where an insolvency petition is admitted, the Court shall make an order fixing a date for hearing the petition.

(2) Notice of the order under Sub-section (1) shall be given to creditors in such manner as may be prescribed.

(3) Where the debtor is not the petitioner, notice of the order under Sub-section (1) shall be served on him in the manner provided for the service of summons."

6. It will be noticed that Sub-section (2) of Section 19 provides that notice shall be given to the creditors in such manner as may be prescribed. This Court has prescribed the manner in Rule 423, General Rules (Civil) Volume I as follows:

"Notice of an order fixing the date of the hearing of a petition u/s 19(2) shall, in addition to or in lieu of the publication thereof in the local official gazette, be 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 to the address given in the petition."

7. Now it is clear that Section 19(1) applies to all kinds of insolvency petitions -- whether made by a debtor or by a creditor. Section 19(2) then provides notice of the order made u/s 19(1) fixing a date to be given to the creditors. It should be borne in mind that the notice provided u/s 19(2) must refer to the insolvency petition in which the date is fixed u/s 19(1).

Now the date that is fixed u/s 19(1) is in both kinds of petitions -- whether by a creditor or by a debtor. Therefore the notice that is prescribed in Sub-section (2) must also refer to both kinds of petitions. We are of opinion that the fact that in a creditor's petition, there is, generally speaking, no mention of other creditors as opposite parties in addition to the debtor makes no difference to the issue of notice under Sub-section (2) in all petitions whether made by creditors or by debtors. Further, Rule 423 provides two modes of issue of notice u/s 19(2).

There is first a general notice and this can be issued whether there is any other creditor mentioned in the application filed by a creditor or not. In addition to this, there is also provision for specific notice to be issued to creditors whose names and addresses are given in the petition.

This provision will of course apply to debtor's petition and will also apply to creditors' petition in case the petitioning creditor has chosen to implead other creditors known to him in his application. In any case, this specific notice to be given to a creditor is only where their names and addresses are disclosed in the petition. If names and addresses are not disclosed, only the general notice provided by Rule 423 will be issued.

But we have no doubt that, whether in a particular case only general notice is

issued because no names of creditors other than the creditor applying are available or whether both a general notice and a special notice are issued, Section 19(2) contemplates issue of notice in both kinds of petitions whether by the creditor or by the debtor.

8. It is urged on behalf of the respondents that Sub-section 19 (3) makes it clear that Sub-section (2) applies only to a debtor's petition. Sub-section (3) lays down that where the petitioner is not the debtor, a notice has to be given to the debtor also in the manner provided for the service of summons. It does not follow from this provision however that Sub-section (2) applies only to a debtor's petition.

Sub-section (3) was necessary inasmuch as if it were not there, there would be no provision in the Insolvency Act for notice to the debtor where the petition has been made by a creditor. But it does not follow from this special provision relating to debtors that Section 19(2) does not apply to the two kinds of applications presented in an insolvency court, namely one by the creditor and the other by the debtor. As we read Section 19(2), we have no doubt that Sub-sections (1) and (2) apply to applications both of creditors and debtors, while Sub-section (3) applies to the application of a creditor.

9. Our attention is drawn to Section 25 and it is urged on behalf of the respondents that that section makes it clear that Sub-section (2) of Section 19 would not apply to a creditor's petition. It is enough to say that there is nothing in Section 25 which helps us to come to a conclusion one way or the other as to the interpretation of Section 19(2).

10. On general principles, we may point out that a decision in an insolvency matter being a decision in rem, affects not only the parties before the court, but all those who are creditors of the insolvent and who meddle with his property. That seems to be the reason why, even where the petition for insolvency is by a debtor, a general notice is prescribed by the Rules of the High Court in addition to specific notice to creditors named in the application.

The idea seems to be that if for some reason -- whether deliberately or by inadvertence -- some creditor is left out, there should be general notice to all that a certain person has applied for insolvency, so that if anyone is interested, he may appear in court and contest it.

It seems to us that in the case of an application by a creditor, where the law does not make it incumbent upon him to give a list of all other creditors, it is all the more necessary that a general notice should be issued so that all the creditors, who may be interested in the debtor against whom an application for insolvency is made, may, if they so desire, appear in court and submit their objections, if any, to the person being declared insolvent.

We are therefore of opinion that the learned District Judge was wrong in holding that Section 19(2) did not apply to petitions by creditors. It applies to petitions

both by creditors and by debtors and the notice has to be made in the manner prescribed in Rule 423. This means that whether the petition is by a creditor or by a debtor, general notice as prescribed by that rule must always be given.

Specific notice to individual creditors will only be given where the names and addresses of the individual creditors are known from any part of the petition. It is not in dispute that in this case not even the general notice provided by Rule 423 was issued. In these circumstances, the learned District Judge could not proceed to hear the petition without giving a notice as required u/s 19(2).

11. If any authority is needed in support of the view we have expressed, it is enough to refer to Muthukaruppan Chettiar v. Muthura-man Chettiar AIR 1915 Mad 589 and S. R. Darrah v. Fazal Ahmad AIR 1926 Lah) which have taken a view similar to our own.

12. We, therefore, allow the appeal and set aside the order of the District judge dismissing the application filed by the Banks for setting aside the order of adjudication. We hereby allow that application and set aside the order of adjudication made on 31-7-1954. The district Judge will now proceed to give notice u/s 19(2) as indicated by us above and then proceed to dispose of the application for insolvency filed by the respondents. The appellants will get their costs of this Court from Messrs. Jethmal Danmal, respondent No. 1.