

(1988) 07 AP CK 0004
In the Andhra Pradesh High Court
Case No : C.R.P. No. 1511 of 1987

Vemulla Rosaiah and Another

APPELLANT

Vs

P. Subramanyam and Another

RESPONDENT

Date of Decision : 08-07-1988

Acts Referred:

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

Citation : AIR 1989 AP 204 : (1989) 1 APLJ 291

Hon'ble Judges : Jayachandra Reddy, J

Bench : Single Bench

Advocate : K. Somakonda Reddy, for the Appellant; C.V. Kanvaka Prasad, for the Respondent

Final Decision : Dismissed

Judgement

Jayachandra Reddy, J.—The question of law that arises in this revision petition in whether a petition presented by a creditor under the provisions of the Provincial Insolvency Act, 1920, hereinafter referred to as "the Act" can be dismissed under S. 25 of the Act on the basis of the plea of the debtor's transferee that the debtor has means to discharge the debt.

2. To appreciate the question involved, the necessary facts may be stated. For the purpose of better appreciation and convenience, the parties are referred to as they are arrayed in the Insolvency Petition. The petitioner is the creditor and the 1st respondent is the debtor who is said to have borrowed from the petitioner Rs. 3600/- for his family necessary and did not discharge the debt. The other two respondents are the alienees. The insolvency petition was contested by the alienees, but the debtor (viz., the 1st respondent) remained ex parte. The learned Subordinate Judge dismissed the I.P. holding that where on the facts proved and assets established, it is clear that the debtor is in a position to pay his debts, the Court is bound to dismiss the insolvency petition of the creditor u/s 25(1) of the Act.

3. As against the said order, the creditor filed an appeal. In the appeal also the debtor remained ex parte. The alienees however contested and both the parties put forward the same pleas. One of the important pleas put forward is that the debtor's ability to discharge the debts can be considered on the plea of the debtor himself and not on the basis of the plea raised by the transferees. The learned Additional District Judge, after examining the scope of Section 25(1) of the Act, mainly relied on a judgment of the Lahore High Court in *Harnam Singh v. Gopal Das*, AIR 1929 Lahore 79 and held that it is not open to the transferees, viz., alienees, to submit that the debtor is able to discharge his debts and ask for dismissal of the petition. The learned appellate Judge also held on other points that the lower Court was not right in holding that the debtor was in a position to pay off his debts. He also rejected the contention that there was a collusion between the creditor and the debtor. Accordingly be allowed the appeal. Hence the revision by the alienees.

4. Sri Somakonda Reddy, the learned counsel for the petitioners, submits that Section 25 of the Act is comprehensive and wide and enables the transferees also to put forward the plea that the debtor is in a position to discharge the debts. Section 25(1) reads thus :--

25. Dismissal of petition :-- (1) In the case of a petition presented by a creditor, where the Court is not satisfied with the 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."

The learned counsel submits that the Court has been given a discretion to dismiss the petition, if it is satisfied that there is other sufficient cause for dismissing the I.P. and the fact that the transferees have put forward the plea that the debtor is in a position to discharge his debts and substantiate the same, amounts to sufficient cause and the Court in its discretion may dismiss the I.P. accepting the same. I find it extremely difficult to interpret the expression "that for any other sufficient cause" in the manner in which the learned counsel submits. An analysis of Section 25(1) shows that there are three circumstances in which the petition made by the creditor must be dismissed, viz., (1) absence of right of creditor to make application; (2) failure to serve debtor with notice of admission of petition, and (3) ability of debtor to pay his debts. In addition to these circumstances, the Court has been given a discretion to dismiss the petition if it is satisfied that there is other sufficient cause for not making the order against the debtor. But one important aspect that has to be noted is, whether such a plea can be taken only by the debtor. In *Harnam Singh v. Gopal Das*, AIR 1929 Lahore 79 (supra) it was held that the ground that the debtors are not unable to pay the debts is not open to the debtor's transferee, but only to the debtor. Likewise, in *Gadi Bhikaji v. Govindrao Bapuji*, AIR 1937 Nagpur 127 it is pointed out that ability of debtor to pay the debt being one of the

grounds for dismissal of the petition, the onus of proving the same is on the debtor. Not a single case has been cited where the petition has been dismissed u/s 25(1) on the basis of such a plea, viz., that the debtor is in a position to discharge the debts, set up by the transferee and not by the debtor. In the instant case, one conspicuous feature is that the debtor remained ex parte. That itself shows that he has been evasive and indicative of his inability to discharge the debt.

5. Further, the expression "sufficient cause" is to be understood in the context in which it is used. In *Yenumula Mallu Dora Vs. Peruri Seetharatnam and Others*, the scope of Section 25(1) is considered and it is observed thus (at Pp. 920-21) :--

"In addition, the Court has been given a discretion to dismiss the petition if it is satisfied that there is other sufficient cause for not making the order against the debtor. The last clause of the section need not necessarily be read ejusdem generis with the previous ones, but even so there can be no sufficient cause if after an act of insolvency is established, the debtor is unable to pay his debts. The discretion to dismiss the petition can only be exercised under very different circumstances. What those cases would be, if is neither easy nor necessary to specify, but examples of sufficient cause are to be found when the petition is malicious and has been made for some collateral or inequitable purpose such as putting pressure upon the debtor or for extorting money from him, or where the petitioning creditor having refused lender of money, fraudulently and maliciously filed the application. An order is sometimes not made wheaby the receiving order the only asset of the debtor would be destroyed such as a life interest which would cease on his bankruptcy. Cases have also occurred where a receiving order was not made because there were no assets and it would have been a waste of time and money to make a receiving order against the debtor. These examples merely illustrate the grounds on which orders are generally made in the exercise of the discretion conferred by the last clause of Section 25."

The Supreme Court has only indicated some of the circumstances under which the Court can exercise its discretion to dismiss the petition on the basis that there is sufficient cause. But it is not indicated that the transferees of the debtor can set up a plea that the debtor is able to discharge the debts and that can be sufficient cause to exercise the discretion by the Court. As a matter of fact, a reference to Section 24 also clarifies the position. This section deals with the procedure of hearing the petitions. Sub-section (2) to Section 24 lays down that the Court shall also examine the debtor, if he is present, as to his conduct, dealings and property in the presence of such creditors as appear at the hearing, and the creditors shall have the right to question the debtor thereon. It can, therefore, be seen that the debtor can plead about his ability to pay his debt as that is one of the grounds for dismissal of the petition. In the instant case, as already mentioned, the debtor remained ex parte and therefore the transferees cannot substitute themselves for the debtor and raise a plea on his behalf.

6. The learned counsel for the petitioner submits that the debotr and the creditor have colluded. But on appreciation of the evidence it is found that no such collusion is made out In any event, there is counter-allegation that the transferees and the debtor have colluded. Therefore, these questions cannot be gone into in this revision petition.

7. For all the above reasons, I see no reason to interfere with the order of the Court below. The revision petition is accordingly dismissed. No costs.