HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.M.S.A. No.5 OF 2015

JUDGMENT:

This appeal is preferred against the concurrent findings recorded by the learned Additional Senior Civil Judge, Eluru in Insolvency Petition and the learned II Additional District Judge, West Godavari District at Eluru in A.S. No.15 of 2013.

2. The appellants herein filed the Insolvency Petition under Section 7 read with Section 10 of the Provincial Insolvency Act, 1920 (for short, 'the Act') to adjudge them as insolvents on the ground that their liabilities are far exceeding than the value of the property they possessed, but the trial Court and the appellate Court disbelieved their contention and concluded that the petitioners/appellants possessed sufficient means to discharge the debt due to the creditors-respondents 1 and 2.

3. The only contention which give rise to substantial question of law before this Court by the appellants is that the trial Court has totally ignored the certificate issued by the Mandal Revenue Officer, marked as Ex.A.3, which shows that the appellants did not possess any property. However, both the trial Court and the appellate Court concurrently held that in view of the Exs.B.1 to B.5 the positive photographs with negatives disclose that the petitioners are carrying on kirana business and eking out their livelihood. Ex.B.6 is the relevant portion of deposition in O.S. No.186 of 2006, which also disclose that the appellants are carrying on business. On the strength of Exs.B.1 to B.6, the trial Court and the appellate Court disbelieved the contention that the appellants had no means to pay the debt. The said finding is assailed before this Court in the C.M.S.A. raising the specific contention that the trial Court did not consider Ex.A.3. Ex.A.3, at best, would go to show that the appellants did not possess any immovable property, but the said fact is disproved by Exs.B.1 to B.6 as the appellants are carrying on business and eking out their livelihood.

4. Section 24 of the Act which contemplates the procedure at hearing, and according to it, 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.

5. In view of Section 24(1)(a) of the Act, it is the duty of the petitioner/appellant to prove that he had no means to pay the debt by producing *prima facie* evidence. In the present case, the petitioners/appellants did not disclose the business being carried on by them as evidenced by Exs.B.1 to B.6 and it amounts to suppression of fact.

6. According to Section 13(1)(e) of the Act, every insolvency petition presented by a debtor shall contain the amount and particulars of all his property, together with

(i) a specification of the value of all such property not consisting of money;

(ii) the place or places at which any such property is to be found; and

(iii) a declaration of his willingness to place at the disposal of the Court all such property save in so far as it includes such particulars (not being his books of account) as are exempted by the Code of Civil Procedure, 1908, or by any other enactment for the time being in force from liability to attachment and sale in execution of a decree;

In view of the said provision, it is imperative for the appellants/debtors to disclose all the property they possessed. But, in the present case the appellants/petitioners did not furnish the details of business, which is being carried on by them.

7. In view of Exs.B.1 to B.6, it is fatal to the case of appellants to exercise power under Section 24 of the Act read with Section 13(1)(e) of the Act. Hence, I find that the appellants not only suppressed their business being carried on by them but also failed to prove that their liabilities are far exceeding than the value of the property they possessed. In such circumstances, this Court has no option except to conclude that the petitioners/appellants have miserably failed to establish their right to be adjudged as insolvents. Though the contention of the appellants that the trial Court and the appellate Court did not consider Ex.A.3, and in fact it was considered and even otherwise it is a question of fact but not a substantial question of law. Therefore, I find no ground to allow the appeal, *prima facie,* and thereby the appeal is liable to be dismissed.

8. In the result, the Civil Miscellaneous Second Appeal is dismissed at the stage of admission. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in the Civil Miscellaneous Second Appeal shall stand closed.

M.SATYANARAYANA MURTHY, J

Date: 22.06.2015
MVA

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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Date: 22.06.2015

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