THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.M.S.A.No. 9 OF 2008

JUDGMENT:

The petitioner in I.P.No. 31 of 2000 on the file of the Court of Additional Senior Civil Judge, Narasaraopet (for short, 'the trial Court'), preferred this appeal challenging the decree and judgment dated 23-11-2006 passed in A.S.No. 54 of 2004 on the file of the Court of X Additional District & Sessions Judge (FTC), Narasaraopet (for short, 'the Appellate Court'), whereunder the order passed by the trial Court in I.P.No. 31 of 2000 dated 13-11-2003 was set aside dismissing the insolvency petition filed by the petitioner.

2. For convenience of reference, the ranks given to the parties in I.P.No. 31 of 2000 before the trial Court will be adopted throughout the judgment.

3. The petitioner, who carried on pawnbroker business at Narasaraopet, borrowed amount from the respondents under promissory notes. Due to heavy loss in the business, the petitioner is unable to discharge the debts due to the respondents as described in A schedule appended to the petition. The assets of the petitioner are shown in B1 to B5 schedules. The liabilities of the petitioner exceeded the value of his assets and, therefore, it is not possible for the petitioner to discharge his debts. Hence, the petitioner sought to adjudge him as insolvent.

4. The 1st respondent filed counter denying material allegations while contending that the petitioner and his unmarried son and daughter are living under one roof. The petitioner purchased Ac. 1.50 cents of land in D.No. 20/2A in the name of his son at Harichandrapuram Village of Amaravati Mandal; Ac. 0.89 cents of land in D.No. 71/1 in the name of his daughter besides purchasing house site and construction of building in the 2nd ward of Amaravati Village in the name of his wife and an extent of Ac. 1.06 cents of

land in S.No. 86 of Harichandrapuram Village in name of his wife Seshu Kumari but the properties purchased in the name of his wife and children were not shown in the schedule though all they constitute joint family and the business also belongs to joint family and prayed to dismiss the petition.

5. Respondent Nos. 2 to 14, 16, 19, 21 to 32 and 34 to 36 remained *ex parte* and respondent Nos. 15, 17, 18 and 20 did not choose to file any counter.

6. Respondent No. 33 filed counter contending that he purchased Ac. 3.04 cents in D.Nos. 71/1, 71/3B and 42, in respect of which he filed O.S.No. 390 of 1999 on the file of the Court of Additional Senior Civil Judge, Guntur, for specific performance of agreement of sale. Therefore, he is not a creditor and prayed for dismissal of the petition.

7. Respondent Nos. 37 to 40 filed separate counter contending that the petitioner willfully avoided arraying them as respondents even though the petitioner borrowed amount from them under promissory notes and arrayed some of his friends and relatives as respondents. Thereby, the petitioner suppressed the real creditors besides suppressing the property owned and possessed by joint family and prayed to dismiss the petition.

8. During the course of enquiry, on behalf of the petitioner, P.W.1 was examined but no documents were marked. On behalf of the respondents, R.Ws.1 to 4 were examined and got marked Exs.B1 and B2.

9. Upon hearing argument of both counsel and considering oral and documentary evidence, the trial Court allowed the petition adjudging the petitioner as insolvent and appointed Official Receiver for *interim* administration of A and B1 to B5 schedules by granting three months time for discharge.

10. Aggrieved by the order passed by the trial Court, respondent No. 33 preferred appeal in A.S.No. 54 of 2004. After hearing argument of both

counsel and considering oral and documentary evidence on record, the Appellate Court allowed the appeal, setting aside the order passed by the trial Court, dismissing the insolvency petition filed by the petitioner.

11. Aggrieved by the decree and judgment of the Appellate Court, the present appeal is preferred on various grounds. The specific contention of the petitioner is that he established the ingredients required under Section 10 of the Provincial Insolvency Act, 1920 (for brevity, 'the Act of 1920'); proved that amount due to the creditors is far exceeding the value of the assets and, therefore, the trial Court rightly allowed the petition. However, the Appellate Court, on erroneous appreciation of facts and law, dismissed the petition, allowing the appeal, setting aside the order passed by the trial Court.

12. The only substantial question of law that arises for consideration of this Court is

> *"Whether the petitioner suppressed his assets, if so, is the petition filed under Section 10 of the Act of 1920 liable to be dismissed?"*

13. The main contention of the petitioner is that he disclosed all his properties but immovable property belonging to his children and wife was not disclosed because the petitioner is not the registered owner of the property and it belongs to his wife and children but the Appellate Court allowed the appeal not only on the ground of failure of the petitioner to disclose the properties belonging to members of the joint family but also on the ground that the petitioner failed to disclose the details of articles pledged with him in the pawnbroker business and no explanation was offered what had happened to those articles. In fact, it is the obligation of the petitioner to disclose details of the property under Section 13 (1) (e) of the Act of 1920 which reads as follows:

> *"The amount and particulars of all his property, together with –*
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> *(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 (5 of 1908), or by any other enactment for the time being in force from liability to attachment and sale in execution of decree.

In view of Section 13 (1) (e) of the Act of 1920, the duty is caste upon the debtor to disclose all his properties expressing his readiness and willingness to place those properties at the disposal of the Court. In the present case, the petitioner carried on pawnbroker business in the name and style of Anjaneya Pawnbrokers advancing amount against pledge of gold ornaments but did not advance amount under promissory notes. In para No. 2 at page No. 2 of cross-examination of the petitioner as P.W.1 by learned counsel for the 3rd respondent, P.W.1 admitted as follows:

> *"In all my business transactions I have taken gold as pledge and there were no pronote transactions. About one year prior to close of my business, I realized that I was suffering losses in my business."*

From this admission, it is clear that the petitioner advanced amount only against pledge of gold ornaments but nowhere in the evidence disclosed what had happened to the gold pledged for obtaining loans. However, the petitioner realized that his business was running in loss about one year prior to filing of the petition. In ordinary course of events, when amount is advanced on pledge of gold ornaments, question of sustaining such huge loss does not arise. Unless there is explanation from the petitioner about gold ornaments pledged, it is difficult to believe the contention of the petitioner that he disclosed all his assets. Thereby, failure to disclose the assets possessed by the petitioner is a ground to dismiss the petition under Section 13 (1) (e) of the Act of 1920.

14. In ***Dasari Srihari Rao Vs. Talluri Harinadha Babu***[1], this Court

ruled as follows:

> *"The Provincial Insolvency Act entitles a debtor to an order of adjudication when its conditions are satisfied. This does not depend on the Court's discretion, but is a statutory right; and a debtor who brings himself properly within the terms of the Act is to be deprived of that right on so treacherous a ground as an abuse of the process of the Court. Any misconduct of a debtor is to be visited with its due consequences at the time of the debtor's application for discharge and not on the initial proceeding."*

If this principle is applied to the present facts of the case, right to file an application by debtor is a statutory right and it cannot be dismissed but subject to satisfying the conditions laid down under Section 10 of the Act of 1920.

In ***Kumarthal Vs. Balasubramania Gounder***[2], the High Court of Madras held as follows:

> *"The Courts below did not consider the scope of Sections 10, 13 and 24 as regard to the conditions to be satisfied for making an application. Further, the Court ruled that the applicant failed to make out a case for adjudication as an insolvent by not complying with the requirement of Section 13 and reversed the order.*
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> *Even if tested on the general principles of law, a person who is guilty of suppression of facts, is not entitled to get any relief. Where there is an obligation to speak, a failure to speak will constitute the suppression of a fact and it is expressed in the Latin Maxim 'Suppressio veri expression falsi' which means that suppression of the truth is equivalent to the expression of falsehood. The oft quoted expression that 'he who comes to the Court must come with clean hands' is squarely applicable to the facts of the case. The said principle is embedded into the statute by directing the applicant to state the facts as mandated by Section 13 of the Act and failure will visit the consequence of dismissal of the application under Section 25 (2) of the Act. Thus, the long line of cases on suppression of facts disentitles the applicant to seek intervention of the Court are not being adverted to."*

In ***Dasari Srihari Rao*** (1st *supra*), this Court is of the opinion that under Section 13 (1) (e) of the Act of 1920, it is the duty of the debtor to furnish particulars of all his properties in his application and dismissal of application under Section 25 of the Act of 1920 by the trial Court for suppression of all facts by debtor and thereby for failure to comply with mandatory requirement under Section 13 (1) (e) of the Act of 1920 is justified. In the instant case, the petitioner did not disclose the particulars of gold pledged with him by various borrowers and, admittedly, the petitioner advanced amount only against pledge of gold ornaments. In such case, it is for the petitioner to disclose the details of gold ornaments pawned or pledged but, here, the petitioner wantonly suppressed the *factum* of possessing gold articles pledged with him; the amount realized, if any, after discharge of loans by the petitioner and maintenance of books of accounts in the business. However, the explanation offered the petitioner for non-production of books of accounts is only that they are not available which is not convincing.

15. According to Section 24 (2) of the Act of 1920, 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. By state amendment *vide* Andhra Pradesh Act 23 of 1965, which came into force with effect from 01-06-1966, it is the duty of the Court not only to take into consideration of debtor's conduct, dealings and property but also his means for the repayment of the debts. If that is the case, the conduct of the petitioner in the present case is clear that he suppressed the *factum* of gold available with him or the amount he collected from debtors after discharging debts and even did not produce books of accounts. Therefore, failure to disclose of details of the property he possessed and produce books of accounts disentitles the petitioner to claim any relief.

16. In a petition by the debtor for being adjudged insolvent, the Court has under the proviso to Section 24 (1) (a) of the Act of 1920 only to be satisfied *prima facie* on the basis of a summary enquiry that the petitioner is unable to pay his debts. An enquiry at the instance of the creditor about the ownership of certain properties or other assets in order to come to conclude that the

petition is not a bona fide one is not warranted at the stage of adjudging him as insolvent but, when the petitioner did not disclose details of property he possessed, certainly the petition is liable to be dismissed in view of Sections 13 (1) (e) and 24 (2) of the Act of 1920. Therefore, the Appellate Court rightly held that the petitioner failed to disclose the property he possessed, more particularly gold ornaments pledged with him, the amount he realized after discharge of debts and not even produced books of accounts which he maintained just one year prior to filing of the petition before the trial Court. Thereby, the conduct of the petitioner throughout the proceedings is not free from any doubts. Hence, the petition is liable to be dismissed and, accordingly, the Appellate Court dismissed the petition.

17. The Appellate Court also recorded a finding that non-disclosure of property registered in the name of wife and children of the petitioner is also a ground but the petitioner is not required to disclose the property possessed by family members for the reason that the petitioner is not the registered owner. Therefore, the finding of the trial Court to the extent of non-disclosure of the property possessed by joint family members is hereby set aside.

18. In view of my foregoing discussion, I find that the petitioner failed to disclose the details of gold pledged with him and the amount realized by him after discharge of debts due from debtors and also failed to produce books of accounts maintained in his business. Therefore, the petitioner is not liable to be adjudged as an insolvent in view of bar under Sections 13 (1) (e) and 24 (2) of the Act of 1920. Hence, the finding of the Appellate Court is hereby confirmed.

19. The appeal is, accordingly, dismissed; confirming the decree and judgment dated 23-11-2006 passed in A.S.No. 54 of 2004 on the file of the Court of X Additional District & Sessions Judge (FTC), Narasaraopet; setting aside the decree and decretal order dated 13-11-2003 passed in I.P.No. 31

of 2000 on the file of the Court of Additional Senior Civil Judge, Narasaraopet. Pending miscellaneous petitions in this appeal, if any, shall stand dismissed in consequence. No order as to costs.

M.SATYANARAYANA MURTHY, J.

Date: 15-06-2015.

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[1] 2002 (3) ALD 456

[2] AIR 1996 Madras 277