THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL MISCELLANEOUS SECOND APPEAL No.88 of 2011

JUDGMENT:

The unsuccessful appellant before the Additional District Judge, Hindupur, Anantapur District preferred this appeal questioning the judgment and decree in A.S.No.3 of 2006 filed against the order dt.02.12.2005 in IP.No.26 of 2003 on the file of the Senior Civil Judge, Penukonda.

2. For convenience of preference, the ranks given to the parties in I.P.No.26 of 2003 before Senior Civil Judge, Penukonda will be adopted throughout the judgment.

3. The petitioner/appellant filed I.P.No.26 of 2003 alleging that the petitioner initially did agriculture and incurred heavy debts due to drought in Anantapur area and later started cloth business in a rented premises at Nallamada to over come his debts. But due to inexperience in the business, he was subjected to heavy loss in the business also and thereby he was heavily indebted to many creditors and not in a position to discharge the debts to the creditors shown in the 'A' schedule. Petitioner further contended that the liability of the petitioner has grown up to such an extent that he cannot discharge the said debts as they are more than the value of his assets shown in B-schedule property. Therefore, he sought to adjudge him as insolvent.

4. Respondents 3, 4, 7, 33, 35 and 36 remained ex parte.

5. Respondents No.6, 29, 30, 34 and 37 filed separate counters. Respondents 1, 2, 5 and 8 to 21, 23 to 28, 31 and 32 filed memo adopting the counter of 6th respondent.

6. Respondent No.39 filed memo stating that under Section 8 of the Provincial Insolvency Act,1920 (for short 'the Act'), this petition against Respondent No.39 is not maintainable as per the authority held in

2002(4) ALT page 16.2 (DN.OH.C).

7. Respondent No.6 filed counter stating that respondents 29 and 30 are maternal uncles of the petitioner and respondent No.29 had no capacity to lend any amount; respondent No.34 is the brother-in-law of the petitioner and they are all fake creditors. Further Respondent No.30 is indebted to T.Prathap Reddy of Vengalamma Cheruvu. It is stated that the petitioner has been in the habit of lending money at higher rate of interest by borrowing money from others at lesser rate of interest and in that process, petitioner lent Rs.1,15,000/- to Manige Narayanappa, S/o Rangappa of Kambalaparthi, Rs.40,000/- to Manige Narayana Swamy of Kambalaparthi, Rs.20,000/- to Gandodi Vemanna of Cherlopalli and Rs.10,000/- to Sankara Reddy of Cheruvuvandlapalli and those debts are subsisting. Further the petitioner owns vast agricultural lands apart from the lands shown in the 'B' schedule of the petition and the petitioner is not indebted any amount to the 4th respondent. The petitioner is indebted to Respondent No.5 under two promissory notes for Rs.18,000/- and Rs.22,000/- and the petitioner is not indebted to respondent Nos.7, 21, 22, 29, 33, 34 and 35. Further the petitioner has got good source of irrigation and he has been getting good crop from agricultural lands. He also possessed movable property apart from the property shown in 'B' schedule and the house at Nallamada worth more than Rs.6,00,000/- and that the petitioner did not suffer any loss in his cloth business but suppressed entire stock of cloth, profits earned by him and his other properties to avoid payment of debts to the genuine creditors by making false allegation and thereby played fraud upon the Court. Therefore, the petitioner is not liable to be adjudged as an insolvent.

8. Respondent No.29 filed counter contending that on 22.11.2000 petitioner borrowed an amount of Rs.1,00,000/- from him and executed a promissory note in his favour agreeing to repay the said amount with

interest @ 24% per annum and that the petitioner filed IP in order to evade payment to him and other real creditors and prayed to dismiss the petition.

9. Similarly respondent No.30 filed counter admitting about borrowing of Rs.80,000/- from him by the petitioner on 7.11.2001 under promissory note agreeing to repay the same together with interest @ 24% per annum and that the petitioner deliberately used the names of respondent 1, 2, 3, 5, 6, 8 to 20, 23 to 28, 31 and 32 for the purpose of this petition to avoid payment of debts to the real creditors.

10. Respondent No.34 also filed counter admitting borrowing of Rs.1,00,000/- from him and executing promissory note in his favour agreeing to repay the same with interest @ 24% per annum but deliberately utilized the names of respondent 1, 2, 3, 5, 6, 8 to 20, 23 to 28, 31 and 32 though they did not lend any amount to the petitioner, with a view to avoid payment to the genuine creditors.

11. Respondent No.37 filed separate counter contending that the petitioner has been lending money at higher rate of interest by borrowing money from others at lesser rate of interest and in that process he lent amount of Rs.1,15,000/- to Manige Narayanappa, S/o Rangappa of Kambalapalli, Rs.40,000/- to Manige Narayana Swamy of Kambalaparthi, Rs.20,000/- to Gandodi Vemanna of Cherlapalli and Rs.10,000/- to Sankara Reddy of Cheruvuvandlapalli and their liability is subsisting. He also raised similar other contentions as raised by respondents 29 and 34.

12. During enquiry, the petitioner himself was examined as PW1 and got marked Exs.A1 to A25 on his behalf. On behalf of the respondents, RWs.1 to 4 were examined but no documents are marked.

13. After hearing argument of both counsel and considering oral and documentary evidence adduced by both party, the Senior Civil Judge,

Penukonda adjudged the petitioner as an insolvent, directing the Official Receiver to take possession of the 'B' schedule property for administration.

14. Aggrieved by the said order, the respondents 1, 2 to 6, 8 to 21, 23 to 28, 31, 32 and 36 filed AS.No.3 of 2006 before Additional District Judge, Hindupur.

15. By order dt.18.02.2011 the Additional District Judge reversed the finding of the Senior Civil Judge, Penukonda in IP.No.26 of 2003 and dismissed the petition filed by the petitioner under Section 10 of the Act.

16. Aggrieved by the said order, the petitioner(debtor) filed the present appeal on various grounds while pointing out a substantial question of law about non consideration of Ex.P6 by the appellate Court and judgment of apex Court in 2002(7) SCC 411.

17. In view of the facts and circumstances of the case including the substantial question of law raised by the petitioner, the point that arises for consideration is:

Whether the petitioner suppressed the properties he owned and possessed, in violation of Section 13(1)(e) of Provincial Insolvency Act, 1920, if so, is the petitioner can be adjudged as insolvent?

18. **POINT:** The trial Court ordered the petition IP.No.26 of 2003 adjudging the petitioner/debtor as insolvent assigning its own reasons. The Additional District Judge, Hindupur set aside the said order only on the ground of non compliance of Section 13(1)(e) of the Act. The Additional District Judge discussed entire evidence in para No.16 of the judgment referring each and every sentence of admission in the examination in chief and cross-examination of PW1.

19. Even on reappraisal, there are clear admissions about

possessing houses bearing door Nos.1/83, 2/76 and 2/253 but the petitioner contended that he transferred those properties prior to filing of the petition but did not produce any scrap of paper to establish transfer of those three houses to any other persons prior to filing of the petition. When the petitioner admitted about possession of three houses, the onus of proof is on him to establish that he transferred those houses to third parties. However, he did not produce any material to establish the said factum of transfer. Besides possessing three houses referred to above, he admitted that he own and possess lands to an extent of Ac.2.80 cents at Nallamada revenue village and the said property was purchased by his father in his name and got mutated in his name. He also admitted the factum of investing Rs.2,00,000/- in cultivation and incurred loss. He further admitted that he invested Rs.10,00,000/- in business and sustained loss and that he also gave total amount of Rs.10,00,000/- as loans to several ryots numbering about 200 persons and all these properties were not disclosed in the 'B' schedule property of the insolvency petition.

20. The petitioner's contention is that his liabilities are far exceeding the value of properties he possessed and that he satisfied the conditions required under Section 10 of the Act. He further contends that the evidence on record establishes that debts due by him is more than Rs.500/- and that his liabilities are far exceeding the value of the property as shown in 'A' and 'B' schedule property.

21. However Section 13(1)(e) of the Act obligates the petitioner to disclose all the properties he own and possesses and he shall file a declaration to the effect that he is willing to place at the disposal of the Court all such properties subject to Section 60 CPC, for administration and distribution of the sale proceeds of the properties among creditors. But various items of property including three houses, Rs.10,00,000/- advanced to various ryots and land of an extent of Ac.2.80 cents situated in Nallamada revenue village were not

disclosed in the 'B' schedule. Therefore, the petitioner is not entitled to be adjudged as insolvent.

22. According to Section 30 of the Act, the debtor shall show that he is unable to discharge his debts and satisfy one of the condition stipulated in Section 10 of the Act and on his furnishing all the information as required under Section 30, he can be adjudged as insolvent. Section 13(1)(e) of the Act imposes a condition on the debtor to make an application, to furnish such particulars of all the property in his application and it is mandatory as held by the Division Bench of this Court in ***Dasari Srihari Rao vs Talluri Harinadha Babu***[1].

23. In ***Chittineni Mohana Rao v. Jagarlamudi Subbarao***[2] this Court held that effect of declaring an individual as an insolvent would be that his liability towards his creditors is over and above the value of his assets, gets wiped away the person claiming such extraordinary benefit conferred by law, and he is supposed to approach the Court with true facts and figures.

24. In ***S.Siva Rama Rao v. Suresh Trading Co.***[3] this court held that a petitioner, if resorts to suppression of facts or makes wrong statement with object of procuring the benefit, his petition is liable to be rejected under Section 25(2) of the Act.

25. In view of the law declared by this Court, it is clear that it is the duty of the debtor to disclose all his assets and gave declaration that he is willing to place the properties he own and possessed before the Court for administration and distribute the sale proceeds of the properties to the creditors.

26. Strangely, the petitioner suppressed several properties he own and possessed referred above and disclosed only few of the properties

with a view to get benefit out of this litigation by adjudging him as insolvent. Therefore, it is clear that the petitioner has not complied with the requirement under Section 13(1)(e) of the Act, while seeking an extra ordinary remedy of adjudging him as insolvent to wipe out all his liabilities. Thus, the petitioner suppressed several facts and did not approach the Court with true facts, as such, he is not entitled to be adjudged as insolvent.

27. Hence, I find that the appellate Court did commit no error, much less suffering from any legal infirmity warranting interference of this Court, in reversing the order passed in IP.No.26 of 2003 as the trial Court did not look into the effect of suppression under Section 13(1)(e) of the Act and this appeal deserves to be dismissed.

28. Accordingly, the Civil Miscellaneous Second Appeal is dismissed, but without costs in the circumstances.

29. Consequently, Miscellaneous Petitions, if any, pending in this Civil Miscellaneous Second Appeal shall stand closed.

M.SATYANARAYANA MURTHY, J

Date: 17.07.2015
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[1] 002(3) ALT 484

[2] 2010(6) ALD 514

[3] 1977(2) An WR 462