

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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C.M.S.A.No. 38 OF 2011

JUDGMENT:

Respondent Nos. 5 to 7, who are legal-heirs of the deceased 1st respondent, in I.P.No. 68 of 2003 on the file of the Court of Principal Senior Civil Judge, Rajahmundry (for short, 'the trial Court'), preferred this appeal against the concurrent finding of the trial Court and the decree and judgment dated 05-08-2011 passed in A.S.No. 124 of 2010 on the file of the Court of Family-cum-Additional District Judge, East Godavari at Rajahmundry (for short, 'the Appellate Court'), adjudging the petitioner as an insolvent.

2. For convenience of reference, the ranks given to the parties in I.P.No. 68 of 2003 before the trial Court will be adopted throughout the judgment.

3. The petitioner, Nathipam Suribabu, filed petition under Section 10 of the Provincial Insolvency Act, 1920 (for brevity, 'the Act of 1920'), to adjudge him as insolvent contending that he is a coolie possessing no movable or immovable property of his own. The petitioner borrowed amount from the respondents under promissory notes but failed to discharge the debt due to the respondents. Now, the respondents are pressing for discharge of the debt due to them and, in the said process, in the first week of July, 2003, the respondents threatened the petitioner for repayment, highhandedly took away the petitioner to some unknown place and obtained thumb impressions of the petitioner on blank stamp papers. Thereafter, the 1st respondent filed a suit, obtained decree by playing fraud and filed execution petition in E.P.No. 13 of 2001 for his arrest. The liabilities of the petitioner are far exceeding the value of the property whatever he possessed. Hence, the petitioner sought to adjudge him as insolvent under Section 10 of the Act of 1920.

4. The 1st respondent filed counter contending that the petitioner is not a

coolie and the petitioner wantonly evaded to discharge the debt due to him. As such, he filed suit O.S.No. 707 of 1995 on the file of the Court of Principal Senior Civil Judge, Rajahmundry, and obtained decree. Thereafter, he filed E.P.No. 13 of 2001 for realization of the decree amount by arrest of the petitioner. The petitioner did not borrow any amount from respondent Nos. 2 to 4 and they are close relatives of the petitioner.

The petitioner possessed sufficient movable and immovable property and capable of discharging the debt due to the 1st respondent. The petitioner own and possessed Ac. 2.37 cents of land in R.S.No. 9/1 in Kanavaram Village and also own and possessed a house bearing D.No. 2-63 (new D.No. 3-4) in Parijellipeta Village. The petitioner is also having Ac. 2.00 cents of land but it was nominally put in the name of his wife. The petitioner is cultivating an extent of Ac. 5.00 cents of land on lease in Parijellipeta Village and Ac. 3.00 cents of land having obtained the same on lease from Uppulla Naganna. The petitioner also possessed double bullock cart and earning Rs.100/- per day. In all, the petitioner is earning Rs.50,000/- *p.a.* and capable of discharging the debt due to the 1st respondent. The 1st respondent finally prayed to dismiss the petition.

5. Respondent Nos. 2 to 4 remained *ex parte*.

6. During the course of enquiry, on behalf of the petitioner, P.W.1 was examined and got marked Exs.A1 and A2. On behalf of the respondents, R.Ws.1 to 3 were examined and got marked Exs.B1 and B2 and Exs.X1 to X4.

7. Upon hearing argument of both counsel and considering oral and documentary evidence, the trial Court allowed the petition adjudging the petitioner as insolvent vesting the properties of the petitioner on the Official Receiver, East Godavari, Rajahmundry, for general administration.

8. Aggrieved by the order and decretal order passed by the trial Court,

respondent Nos. 5 to 7 preferred appeal in A.S.No. 124 of 2010 before the Appellate Court. After hearing argument of both counsel and considering oral and documentary evidence on record, the Appellate Court dismissed the appeal confirming the order and decretal order of the trial Court. Thus, there is a concurrent finding of fact.

9. Aggrieved by the decree and judgment of the Appellate Court, respondent Nos. 5 to 7 preferred the present appeal raising various contentions, more particularly about non-consideration of oral and documentary evidence including Exs.B1 and B2 and X1 to X4.

Learned counsel for respondent Nos. 5 to 7 contended that non-consideration of evidence by the Court gives rise to substantial question of law and placed reliance on ***Sipani Automobiles Limited Vs. Tirath Ram Batra***^[1], wherein the Apex Court held that omission on the part of the commission, raised a substantial question of law within the meaning of Section 100 of the Code of Civil Procedure (for brevity, 'C.P.C.').

10. Basing on the above judgment, this Court framed the following substantial question of law

"Whether Principal Senior Civil Judge, Rajahmundry, and Family-cum-Additional District Judge, East Godavari at Rajahmundry, failed to consider the evidence on record, if so, are decree and decretal order in I.P.No. 68 of 2003 dated 09-07-2010 and decree and judgment in A.S.No. 124 of 2010 dated 05-08-2011 liable to be set aside while adjudging the petitioner as insolvent?"

11. The only ground on which the judgment of the Appellate Court assailed before me is that non-consideration of oral evidence of R.W.1 and Exs.B1 and B2 and Exs.X1 to X4. The scope of the second appeal is limited. However, it is obligatory on the part of this Court to advert to the evidence to find out the error committed by both the trial Court and the

Appellate Court. Ex.B1 is certified copy of adangal for the fasli 1413 which shows that land in an extent of Ac. 2.57 cents is registered in the name of Nathipam Suribabu and he is in possession and enjoyment of the same. In column No. 12 of the document, which is provided for mentioning the name of accountholder/pattedar, the name of the petitioner was mentioned. As per column No. 11, the account number is 102. To prove this document, P.W.2 was examined and, in his evidence, he admitted that there are interpolations in the original of Ex.A2 regarding survey number *etc.* Even assuming for a moment that contents of Ex.B1 are true, it is only a cultivation account prepared for the purpose of collection of land revenue by Government and an entry in revenue records will not create any title to immovable property as per settled law. Therefore, much evidentiary value cannot be attached to those documents to conclude that the person whose name is recorded in revenue records is the owner of property. In view of the law declared by Apex Court, Ex.B1 does not confer or create any title to Ac. 2.57 cents of land.

12. In the cross-examination of P.W.1, a suggestion was put to P.W.1 that he own Ac. 2.37 cents in S.No. 9/1 of Kanavaram Village but he denied the same. Therefore, it is not the evidence in support of the respondents' case to establish that the petitioner possessed Ac. 2.37 cents or Ac. 2.57 cents. Hence, the allegation of the respondents that the petitioner own and possessed sufficient property and able to discharge the debt cannot be accepted on the strength of Ex.B1. Thus, the evidence of Tahsildar, R.W.2, creates any amount of doubt in view of the admissions made by him regarding interpolations of entries in Ex.A2. Therefore, much credence cannot be attached to Ex.B1 and evidence of R.W.2 to conclude that the petitioner own and possessed Ac. 2.57 cents in S.No. 9/1 of Kanavaram Village.

13. The other contention of the respondent Nos. 5 to 7 is that the petitioner possessed a residential house and residing in house bearing

D.No. 3-4 of Kanavaram Village. In support of their contention, respondent Nos. 5 to 7 produced enumerators list for the year 2003 and entry No. 811 shows that Suribabu Nathipam, S/o Venkatrao, is residing in D.No. 2-114. Similarly, Exs.X1 to X4 assessment registers would go to show that Nathipam Suribabu was assessed to tax under assessment No. 384 as per Exs.X1 to X4 but father's name was not mentioned in Exs.X1 to X4 against the name of the petitioner for assessment No. 384. In the absence of any proof that the petitioner, Nathipam Suribabu, S/o Venkatrao, own and possessed a house, it is difficult to accept the contention of the respondents that the petitioner own and possessed substantial movable and immovable property and able to discharge the debt.

14. The trial Court, after appreciation of entire evidence, disbelieved the contention the respondents about property possessed by the petitioner and means to discharge the debt due to the 1st respondent. As the petitioner proved the pre-conditions to file a petition under Section 10 of the Act of 1920, the trial Court adjudged him as insolvent. According to Section 10 of the Act of 1920, a debtor is entitled present an insolvency petition if his debt amount exceeds Rs.500/- or more; or he is under arrest or imprisonment in execution of the decree of any Court for the payment of money; or an order of attachment in execution of such a decree has been made, and is subsisting against his property. Here, execution petition in E.P.No. 13 of 2001 is filed for realization of decretal amount in O.S.No. 707 of 1995 by arrest of the petitioner but he was not under arrest as required under Section 10 (1) (b) of the Act of 1920. According to Section 7 of the Act of 1920, if a debtor commits an act of insolvency, an insolvency petition may be presented either by a creditor or by the debtor. When the petitioner satisfied the pre-conditions contemplated under Section 10 of the Act of 1920 and liabilities of the petitioner far exceeds the value of the property he possessed, he is entitled to be adjudged as insolvent. Right to adjudge as insolvent is

substantial right of a debtor and proof of conditions laid down under Section 10 of the Act of 1920 are sufficient to adjudge a debtor as insolvent. Here, the petitioner established that he did not possess any property either movable or immovable to discharge the debt of the 1st respondent, who filed execution petition for realization of money and the property he possessed is disclosed in the schedule annexed to the petition expressing his readiness and willingness to place the property at the disposal of Official Receiver for general administration. Hence, the trial Court and the Appellate Court did commit no error. I find no legal infirmity warranting interference of this Court even after appreciation of oral and documentary evidence. Therefore, the appeal deserves to be dismissed.

15. The appeal is, accordingly, dismissed. Pending miscellaneous petitions in this appeal, if any, shall stand dismissed in consequence. No order as to costs.

MURTHY, J.

Date: 17-06-2015.

JSK

M.SATYANARAYANA

[\[1\]](#) (2005) 13 SCC 225