

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

SECOND APPEAL No.1149 of 2017

JUDGMENT:

This Second Appeal is preferred by the appellant assailing the judgment and decree dt.13-06-2017 in A.S.No.160 of 2012 of the X Additional District Judge, Narsapur confirming the judgment and decree dt.30-03-2011 in I.P.No.5 of 2008 of the Senior Civil Judge, Narsapur.

2. The appellant herein filed a Debtor Insolvency Petition under Sections 7, 10 to 13 of the Provincial Insolvency Act, 1920 (for short “the Act”) seeking adjudication that he is an insolvent and to appoint a receiver to receive his assets.

3. In the said I.P., the appellant contended that he did the business by spending huge amounts and sustained loss and is unable to continue the business by taking loans from the respondents. He stated that he closed his business until the discharge of debts to respondent Nos.1 to 8, 20 and 21, and that he had no source of income and he is depending on his relatives for his livelihood. He contended that 1st respondent filed O.S.No.261 of 2001 for recovery of an amount of Rs.91,000/- before the Additional Junior Civil Judge, Palakol and obtained a decree on 13-12-2006; that she filed E.P.No.124 of 2006 and brought 50 sq. yds of site and shop room for

sale, auction was conducted on 25-01-2008 for Rs.4,55,000/- and the E.P. was posted for confirmation of sale. He also mentioned that 2 other suits O.S.Nos.421 of 2002 and 137 of 2003 were filed against him and stated that decrees had been passed therein and E.Ps. are pending. He contended that his liabilities exceed his assets and he should be adjudicated as insolvent.

4. Respondent Nos.2, 4 to 19 remained *ex parte* while respondent Nos.1, 3, 20 and 21 contested the matter.

5. Respondent Nos.1 and 3 filed separate counters and a common counter was filed by respondent Nos.20 and 21. All of them opposed granting any relief to the appellant. They contended that the appellant filed the I.P. only to defeat the realization of monies by them by showing bogus debts and creditors. They contended that neither the nature of business nor the amount of loss sustained was indicated by the appellant though he was doing business in wholesale and retail cloth business in Palakol.

6. The appellant examined P.Ws.1 and 2 and marked Ex.A-1. The respondent examined R.Ws.1 and 2 and did not mark any document.

7. By judgment and decree dt.30-03-2011, the trial Court dismissed the I.P. It held that the appellant did not establish that the conditions laid down in Section 10 of the Act are satisfied. After

referring to the contentions in the evidence of P.Ws., the trial Court came to the conclusion that the evidence of P.W.2 does not help the case of appellant in proving either monetary transactions with respondents or sustaining loss in his business. It held that there is no evidence from the appellant to show that there are other debts of the appellant apart from the debts mentioned above and there is also a discrepancy as to the year in which the appellant closed his business.

8. Assailing the same, the appellant filed A.S.No.71 of 2011 before the Judge, Family Court-cum-VII Additional District Judge, Eluru. This was transferred to the X Additional District Judge, Narsapur and re-numbered as A.S.No.160 of 2012.

9. The lower appellate Court also dismissed the appeal. It held that the appellant did not whisper either in the I.P. or in his evidence about the nature of business conducted by him, quantum of amount invested by him and loss sustained by him in the business. It also pointed out that in the cross-examination of R.W.1 by the appellant, it was suggested that the appellant sustained loss in his business in 2000 and closed his business in 2004, but in the cross-examination of R.W.2, it was suggested that business of the appellant was closed in the year 2000 and in the written arguments, the year of closure of business was mentioned as 2007. It also took note of the fact that no accounts or income tax returns or commercial tax returns were filed by the appellant to prove that he sustained loss in the business. It

therefore held that the appellant failed in proving before the trial Court that all the debts shown in petition-A schedule are true and genuine and his liabilities exceed his assets so as to adjudicate him as an insolvent.

10. Assailing the same, this Second Appeal is filed.

11. Though learned counsel for appellant sought to contend that the Courts below erred in dismissing I.P., it has to be noted that there are concurrent findings of both Courts below that appellant failed to establish that the grounds mentioned in Section 10 of the Act were satisfied by him. This finding is given by both the Courts below on appreciation of evidence and cannot be said to be based on no evidence or perverse. These concurrent findings of fact therefore cannot be interfered with in exercise of limited jurisdiction under Section 100 C.P.C. Therefore I hold that there is no question of law much less any substantial question of law warranting interference by this Court with the impugned judgments under Section 100 C.P.C.

12. Therefore, the Second Appeal is dismissed at the stage of admission. No costs.

13. As a sequel, miscellaneous petitions, if any pending, in this Second Appeal shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 13-10-2017

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