IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.1775 of 2017
Date of Decision-22.11.2017

Dhruv Galgotia ... Petitioner

Versus

S.E. Investment Ltd. ... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Vikas Behal, Senior Advocate with
Mr. Ajay Kalra, Advocate and
Mr. Amandeep Singh, Advocate
for the petitioner.

Mr. Kamal Sehgal, Advocate
for the respondent.

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__RAJ MOHAN SINGH, J.__

[1]. This revision petition has been preferred by the petitioner against the order dated 02.12.2016 passed by Additional Civil Judge (Senior Division), Gurgaon vide which application under Order 7 Rule 11 CPC filed by the petitioner was dismissed.

[2]. Respondent filed a petition under Section 13(2) read with Section 7 of the Provincial Insolvency Act, 1920 with the allegations that Smt. Shakuntla Educational and Welfare Society

is a Society registered under Society Registration Act having its registered office at Delhi. Since the year 2000, the aforesaid Society has been availing loan from the petitioner. Last loan was advanced to the Society on 29.11.2012 in a sum of Rs.5.35 crores. First loan transaction had taken place in the year 2000 and it was for a sum of Rs.55,000/-. The members of the Governing Body of the Society including Mr. Dhruv Galgotia who is an Executive Member of the Society have been entrusted with the property of the Society. Till September, 2012, the relations between the parties remained smooth. The Society through its Governing Body has utilized the facilities of loan to the use of the Society and acquired various properties with the funds made available by the respondent/Investment Company. Subsequently, the Society through its Governing Body started defaulting in repayment of dues of the respondent/Company. The Investment Company alleged that the Society and its Governing Body induced the Investment Company to grant facility of loan of Rs.5.35 crores on 29.11.2012 on the assurance that the entire outstanding amount sanctioned earlier in 9 loan accounts to the Society which was more than Rs.26.75 crores would be liquidated at the earliest and the loan of Rs.5.35 crores will be cleared at the earliest not later than one month time.

[3]. Investment Company further alleged that it was reluctant to advance further loan of Rs.5.35 crores to the Society, but the Governing Body insisted upon the same. The President of

the Society namely Mr. Suneel Galgotia approached the Managing Director of S.E. Investment Company and offered to furnish five pronotes payable on demand each amounting to Rs.5.35 crores from five guarantors of the loans granted to the Society namely M/s Golgotia Hotels and Resorts Private Limited, M/s Galgotia Publications Private Limited, Mr. Suneel Galgotia, Mrs. Padmini Galgotia and Mr. Dhruv Galgotia for existing liability which was more than Rs.26.75 crores as on 29.11.2012. The guarantors undertook to honour their commitments. Mr. Dhruv Galgotia being one of the members of the Governing Body and one of the guarantors, furnished a pronote dated 29.11.2012 for a sum of Rs.5.35 crores along with interest @ 26% per annum. The liability of the Society towards Investment Company was much more which the debtor was liable to pay as guarantors jointly and severally. The liability under the pronote came to be Rs.7,78,52,027/-. On presentation of pronote, the debtor promised to pay within a short time, but ultimately failed to honour and repay the amount of the pronote.

[4]. The debtor issued cheque No.181346 for Rs.5.35 crores drawn at Union Bank of India, Main Branch, Noida. On presentation, the cheque was dishonoured with the remark *"Payment stopped by drawer*". The instructions issued to the Bank were of *"Stop Payment of Cheque*" by the debtor in order to delay and defeat the payment of Investment Company and that amounted to suspension of payment under the provision of the

Provincial Insolvency Act, 1920. Pronote was again presented to the debtor by way of demand notice dated 30.08.2014, but the debtor took no steps to make the payment and pronote was dishonoured and the same amounted to suspension of payment of debts. The Investment Company took all steps to comply with the provision of Negotiable Instruments Act and then filed arbitration proceedings, criminal complaint and case under Negotiable Instruments Act.

[5]. The Investment Company claimed that Company was entitled to get liquidated sum of Rs.7,78,52,027/- from the debtor. Mr. Dhruv Galgotia with an intent to delay and defeat the payment of the creditor, took no steps to make the payment. These acts of insolvency of the debtor fall within three months before the date of presentation of the petition. The statement of assets furnished by the debtor before the Judicial Forum showed that his assets were approximately Rs.27 lacs, whereas he was indebted with the liability to the tune of Rs.7,78,52,027/-. Thus he was unable to discharge his debts and was liable to be adjudged as insolvent.

[6]. According to the Investment Company, the cause of action to file the petition arose when the debtor failed to discharge his debts and issued instructions i.e. *"Stop Payment of Cheque"* to his banker which clearly indicated the intention of the debtor to delay and defeat the payment. All such acts amounted

to suspension of payment under the provisions of the Provincial Insolvency Act 1920. The cause of action arose when the pronote dated 29.11.2012 was presented to the debtor by way of demand-cum-notice dated 30.08.2014 and demanded payment of the amount under the promissory note for which the debtor took no steps to make payment of his debts and the pronote was dishonoured and the same resulted in suspension of payment of his dues. The cause of action arose when the debtor with an intent to defeat and delay the payment of his creditor took no steps to make payment of his debts. The cause of action was still subsisting at the time of filing of the petition. With this background, the petition was filed for adjudging debtor Mr. Dhruv Galgotia as insolvent and pass an order for realization of all his assets and thereupon distribution of the said amount amongst all his creditors.

[7]. Mr. Dhruv Galgotia filed an application under Order 7 Rule 11 CPC for rejection of insolvency petition under Section 6(1)(g) of the Provincial Insolvency Act, 1920 on the ground that insolvency petition is barred by law.

[8]. The application was contested by S.E. Investment Company. While replying para No.2(iv) of the application, Investment Company submitted that the Society had given post-dated cheques for EMI's and the Society and its guarantors

including the respondent gave security cheques as per the agreed terms of the loan agreements.

[9]. Trial Court dismissed the application vide order dated 02.12.2016. That is how, the present revision petition came to be filed.

[10]. I have heard learned counsel for the parties.

[11]. Learned Senior Counsel for the petitioner submitted that even if averments made in the petition under Section 13(2) read with Section 7 of the Provincial Insolvency Act are taken on its face value, the petition has to be rejected as the same does not disclose any cause of action. The debtor has not issued any instructions of "*Stop Payment of Cheque*" in respect of all the creditors. As per the pleadings of the creditor in the petition, the acts of the debtor were intended to delay and defeat the payment of the creditors which amounted to suspension of payment under the provision of the Act. The filing of arbitration proceedings, criminal complaint, Negotiable Instruments Act were the instances of individual liability and the same could not be treated to be the intention of the debtor towards all the creditors. There was no notice qua all the creditors, nor there was any reference in respect of number of creditors for whom the debtor was having liability to pay the amount.

[12]. Learned Senior Counsel relied upon Section 6(1) (g) of the Act and contended that the debtor commits an act of insolvency in each of the following cases namely:-

> "(a) if, in 2[India] or elsewhere, he makes a transfer of all or substantially all his property to a third person for the benefit of his creditors generally; 2[India] or elsewhere, he makes a transfer of all or substantially all his property to a third person for the benefit of his creditors generally.
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> (b) XXXX
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> (c) XXXX
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> (d) XXXX
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> (e) XXXX
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> (f) XXXX
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> (g) if he gives notice to any of his creditors that he has suspended, or that he is about to suspend payment of his debts."

According to Section 7 of the Act, if a debtor commits an act of insolvency, an insolvency petition may be presented either by a creditor or by the debtor, and the Court may on such petition make an order adjudging him an insolvent. Under Section 13(2) of the Act, every insolvency petition presented by a creditor or creditors shall set forth the particulars regarding the debtor specified in clause (b) of sub-Section (1), and shall also specify:-

(a) the act of insolvency committed by such debtor, together with the date of its commission and

(b) the amount and particulars of his or their pecuniary claim, or claims against such debtor.

According to Section 25 of the Act, in the case of a petition presented by a creditor, where the Court is not satisfied with the proof of his right to present the petition or of the service on the debtor of notice of the order admitting the petition, or of the alleged act of insolvency, or is satisfied by the debtor that he is able to pay his debts, or that for any other sufficient cause no order ought to be made, the Court shall dismiss the petition.

[13]. Learned Senior Counsel relied upon ***Sukh Dayal and another Vs. Firm Gobinda Mal Nanl Lal through L. Narinjan Das and others, AIR 1944 Lahore 169, Narain Das Vs. Chimman Lal and another, 1926 ILR (XLIX) 321, T. Arivandandam Vs. T.V. Satyapal, 1977 AIR (SC) 2421, Church of Christ Charitable Trust & Educational Charitable Society, represented by its Chairan Vs. M/s Ponniamman Educational Trust represented by its Chairperson/Managing Trustee, 2012(3) RCR (Civil) 811, SNP Shipping Service Pvt. Ltd. and others Vs. World Tanker Carrier Corporation, 2000 AIR (Bombay) 34, Surinder Mohan Vs. Pritam Kaur and another,***

2009(2) PLR 638, Class India Ltd. and another Vs. A.K. Chopra and others, 2008 AIR (Punjab) 116, Saleem Bhai and others Vs. State of Maharashtra and others, 2003(1) RCR (Civil) 464 and ***M. Ratchaganadan Vs. M/s Kishindas Shamadasunder by Shyam Sunder and another, 1967 AIR (Madras) 279*** and contended that the notice issued by the debtor was not a notice as contemplated by Section 6(g) of the Act and the same was not served by the debtor himself and the same never amounted to suspend the payment of dues of the creditor. The issuance of letter to one of the creditors intimating his inability to meet the demand cannot be considered enough notice under Section 6(g) of the Act. Notice must be deliberately given and must amount to an intimation to the creditors that the debtor intended to suspend the payment of his debts due to all his creditors. Notice under Section 6(g) of the Act must be a notice in an unambiguous, decisive form, made in a definite form of words to a particular creditor at a definite time, that the debtor had suspended payment of his debts and that the suspension of the payment of debts means the entire suspension of his whole indebtedness and a general intention to stop payment to everybody. “Suspended payment of his debts” means the entire suspension of his whole indebtedness or is a notice to stop payment which of course means notice of a general intention to stop payment to everybody. Notice to only one of the creditors would not attract intention of the debtor qua all his creditors.

[14]. By referring to para No.9 of the petition, learned Senior Counsel contended that the averments themselves showed that it was bilateral obligation between the two persons i.e. debtor and the creditor to promise to pay within a short time and thereafter, failure to honour the commitment to repay the amount of the pronote, the averments cannot be applied in *rem* qua all the creditors, rather that alleged act was related to bilateral obligation between the two persons. Further by referring to para No.10 of the petition, learned Senior Counsel contended that instructions of *"Stop Payment of Cheque"* by the debtor to the Bank was allegedly pleaded to delay and defeat the payment of the creditor. It was not qua all the creditors. By referring to para No.12 of the petition, learned Senior Counsel contended that the filing of cases in different Forums were in the context of individual liability viz-a-viz the complainant and it cannot be applied qua *rem*. Further by referring to para No.15 of the petition, learned Senior Counsel contended that implied notice even if, presumed to be issued in the form of stop payment to the bank that would be a notice in person and not qua all the creditors. Even otherwise, the grievance of the creditor was that the intention of the debtor was to delay and defeat the payment of the creditor. It was not the case pleaded that the intention of the debtor was not to pay the debts of the creditor or all the creditors in any manner.

[15]. By concluding his arguments, learned Senior Counsel submitted that the averments made in the plaint/petition do not

show the act of insolvency as allegedly committed by the debtor and would not satisfy the ingredients in terms of Section 6(1) (g) of the Act and no notice in an unambiguous, decisive and definite form was ever issued by the debtor to the creditor that the debtor had suspended the payment of his debts and that the suspension of payment of debts means the entire suspension of his whole indebtedness and a general intention to stop payment to all his creditors. No notice qua all the creditors was ever issued by the debtor.

[16]. On the other hand, learned counsel for the respondent submitted that at the stage of invoking provision of Order 7 Rule 11 CPC, the Court has to see only the averments made in the plaint/petition. Plaint/petition has contained all the averments and cause of action has been duly disclosed. By referring to para No.14 of the plaint/petition, learned counsel submitted that the debtor incurred total liability of more than Rs.7.78 crores whereas his assets were worth Rs.27 lacs. He was unable to discharge his debts qua the creditors. The instructions issued by the debtor in respect of "Stop Payment of Cheque" would entail any further communication by the banker to the collecting bank and in this way, the information would be travelled down to the creditor and it would be a notice falling under Section 6(1) (g) of the Act.

[17]. Learned counsel relied upon ***Mayar (H.K) Ltd. and others Vs. Owners and Parties, Vessel M.V. Fortune Express and others, AIR 2006 SC 1828, Ram Parkash Gupta Vs. Rajiv***

Kumar Gupta and others, 2007(4) RCR (Civil) 605, Ramesh B. Desai and others Vs. Bipin Vadilal Mehta and others, AIR 2006 SC 3672, Prem Lala Nahata and others Vs. Chandi Prasad Sikaria, CA No.446 of 2007, Popat and Kotecha Property Vs. SBI Staff Association, (2005) 7 SCC 510, Kamala and others Vs. K.T. Eshwara Sa and others, AIR 2008 SC 3174, Lakhi Prasad Singhania and another Vs. Ugrah Mishra and others, AIR 1933 Patna 461, Banarsi Das-Kapur Chand Vs. Maman Chand-Radha Kishan, AIR 1933 Lahore 113, C Natrajan Vs. Ashim Bai and another, AIR 2008 SC 363, P.V. Guru Raj Reddy and others Vs. P. Neeradha Reddy and others, (2015) SCC 331, Hardesh Ores Pvt. Ltd. Vs. Hede and Company, 2007(7) Scale 348 and contended that the plaint cannot be rejected on the basis of allegations made in the written statement or in an application for rejection of the plaint. The Court has to read the entire plaint to find out that whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the Court under Order 7 Rule 11 CPC. Whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, willful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the Court, mere fact that in the opinion of the judge the plaintiff may not succeed cannot be a ground for rejection of the plaint. Few lines or passage should not be read in isolation and the pleadings have to be read as a whole to ascertain its true import. Disputed questions cannot be decided at the time of consideration of application under Order 7 Rule 11 CPC. The statement of facts given in the plaint has to be considered without addition or subtraction. Order 7 Rule 11(d) speaks of the suit being “barred by any law”. Bar means, a plea arresting a law suit or legal claim. It means to prevent by legal objection and to exclude from consideration. Plea of mis-joinder of parties or mis-joinder of causes of action is not the ground to hold the petition to be barred by any law within the meaning of Order 7 Rule 11(d) CPC. The Court is still competent to try and decide the suit, though the Court may also be competent to tell the plaintiffs either to elect to proceed at the instance of one of the plaintiff or to proceed with one of the causes of action. On the scheme of the Code of Civil Procedure, it cannot therefore be held that a suit barred for mis-joinder of parties or of causes of action is barred by a law. This may be contrasted with the failure to comply with Section 80 of the Code, where the notice under Section 80 of the Code is mandatory and non-compliance thereof would lead to rejection of the plaint. Therefore by no stretch of imagination the plea of mis-joinder of parties or mis-joinder of causes of action would be taken to be the ground for holding the suit to be barred by any law within the meaning of Order 7 Rule 11(d) CPC.

[18]. Learned counsel while concluding his arguments stated that the requirement of Section 6(1) (g) of the Act is only to give notice to any of his creditors. The condition was fully complied with. In the prayer clause of the plaint/petition, a specific prayer was made to adjudge the debtor as insolvent and pass an order for realization of all his assets and thereupon distribution of the said amount amongst all his creditors. By referring to the prayer clause, learned counsel contended that the prayer coupled with requirement of Section 6(1) (g) of the Act showed that the plaint in its entirety discloses a cause of action which cannot be throttle at this initial stage. Notice by way of instructions of *"Stop Payment of Cheque*" was travelled down to the creditor. There is no such requirement under Section 6(1) (g) of the Act that the notice must be in a specific form. Insolvency law does not require any particular form of notice, nor does it require that it should be in writing. A verbal statement will serve the purpose, but whether verbal or written, it must amount to a notice declaring that the debtor has suspended, or that he is about to suspend payment of his debts.

[19]. Reading of the plaint is manifestly vexatious and meritless as it does not disclose a clear right to sue. The clever drafting has created the illusion of a cause of action and the bogus litigation should be carved and shut down at the earliest stage. The power under Order 7 Rule 11 CPC can be exercised at any stage of the suit. Only averments made in the plaint are to be seen and it is the duty of the Court to scrutinize the averments in the plaint. The plea taken in the written statement is wholly irrelevant. Where the plaint does not disclose a cause of action or where the suit appears from the statement made in the plaint to be barred by any law or does not disclose a cause of action, the Court generally look at the averments of the plaint. Insolvency is a status to which no person should be reduced, unless an act of insolvency is fully established to the satisfaction of the trial Court. A creditor, in particular, ought not to be permitted to utilize this mode of obtaining an adjudication as insolvent as a kind of pressure in order to realize a debt more economically or by swifter means.

[20]. Order 7 Rule 11 CPC is an independent remedy available to the defendant to challenge the maintainability of the suit, irrespective of his right to contest the suit on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. The word ‘shall’ is used clearly implying thereby that it casts a duty on the Court to

perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11 Order 7 CPC. It has limited application. It must be shown that the suit is barred under any law. Such a conclusion must be drawn from the averments made in the plaint. Different clauses in Order 7 Rule 11 CPC should not be mixed up. There cannot be any addition or subtraction. Absence of jurisdiction on the part of a Court can be invoked at different stages and under different provisions of the Code. No amount of evidence can be looked into for invoking Order 7 Rule 11(d) CPC. The issues on merit of the matter which may arise between the parties would not be within the realm of the Court at this stage.

[21] Mere declaration that a person is unable to pay his debts may not by itself amount to an "act of insolvency" but coupled with the context and the surrounding circumstances it may amount to such an act. The test is the effect which the declaration would produce on the minds of the creditors. The circumstances have naturally produced the impression that the debtor had or was about to suspend payment. A notice required under Section 6(g) of the Act need not be in writing. The intention of the debtor can best be gathered from the circumstances under which the communication was made. The sufficiency of notice given by the debtor would depend upon the facts of each case. A statement by a debtor that he was utterly penniless and that he would not pay anybody was sufficient under the circumstances

and amounted to an act of bankruptcy. The declaration of inability to pay might amount to a notice of suspension, and that such stoppage need not be permanent, but may be temporary.

[22]. Insolvency law says that a debtor commits an act of insolvency if he gives notice to any of his creditors that he had suspended, or that he is about to suspend payment of his debts. The act does not require any particular form of notice. Nor does it require that it should be in writing. A verbal statement will do, but whether verbal or written, it must amount to a notice. The notice must amount to a declaration that the debtor has suspended, or that he is about to suspend payment of his debts. Suspension of payment is a business term usually applied to traders, which means failure to meet one's engagements and to pay debts in the ordinary course of business as they became due and payment is called for.

[23]. Rejection of the plaint under Order 7 Rule 11 CPC is a drastic power conferred upon the Court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order 7 Rule 11 CPC are very stringent and have been consistently held to be so by the Court. The language of Order 7 Rule 11 CPC is quite clear and unambiguous. The plaint can be rejected on the ground of limitation only where the suit appears from the statement in the plaint to be barred by any law. It is a settled principle of law that whether a plaint discloses a

cause of action is essentially a question of fact and for that purpose, the averments made in the plaint in their entirety must be held to be correct. The test is whether the averments made in the plaint if taken to be correct in their entirety a decree would be passed. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation.

[24]. Having considered the arguments of learned counsel for the parties, I am of the view that the requirement of Section 6(1)(g) of the Act does not contemplate issuance of notice to all the creditors. The words used, notice to any of his creditors would go in a way to explain the prayer clause, where the plaintiff specifically incorporated that the debtor be adjudged as insolvent and pass an order for realization of all his assets and thereupon distribution of the said amount amongst all his creditors. There is no such requirement of issuance of notice in a particular form. The only requirement is that the notice must amount to a declaration that the debtor had suspended or he is about to suspend payment of his debts. The stop payment of cheque by way of instructions issued to the banker will suppose to serve the purpose of a notice to the creditor. The conflict in some of the precedents at this stage would be taken care of by the trial Court, but in any case, the averments made in the plaint do not invite for application of Order 7 Rule 11 CPC to dismiss the same at this premature stage. Whether the notice was ambiguous or not in definite form, would be taken note of by the trial Court at the

relevant stage. Cause of action is a bundle of facts. Whether the case ultimately would succeed or otherwise in the opinion of the Court cannot be taken to be a ground for rejection of the plaint.

[25]. Therefore, in my considered opinion, no case is made out to reject the plaint at this stage. This revision petition is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

22.11.2017
Prince

Whether Reasoned/Speaking Yes/No

Whether Reportable Yes/No