

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

SECOND APPEAL No.1040 OF 2016

JUDGMENT:

This Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.') aggrieved by the judgment and decree dated 20.10.2016 passed in A.S. No.60 of 2013 on the file of the XV Additional District Judge, Nuzvid, Krishna District (for short, 'first appellate court'), wherein the first appellate court confirmed the dismissal order and decree dated 04.05.2010 passed in I.P. No.20 of 2005 on the file of the Senior Civil Judge, Nuzvid, Krishna District (for short, 'the trial court'). The appellant herein filed the Insolvency Petition seeking to declare him as an insolvent.

2. Heard the learned counsel for the appellant-petitioner and the learned counsel for the respondents, apart from perusing the material on record.

3. Learned counsel for the appellant-petitioner would contend that an agricultural land and a house were attached in O.S. No.299 of 2005 on the file of the Junior Civil Judge, Nuzvid; both the Courts below erred in dismissing the petition filed by the appellant without considering the evidence on record; and ultimately, prayed to allow the second appeal as prayed for.

4. On the other hand, learned counsel for the respondents would contend that the appellant is making attempts to screen away his immovable properties with an intention to defraud the respondents; the appellant has not shown all his immovable properties and furnished wrong information; both the Courts below rightly dismissed the petition filed by the appellant; there are no circumstances to set aside the findings of both the Courts below; and ultimately, prayed to dismiss the second appeal.

5. While admitting the Second Appeal on 06.01.2017, the following substantial questions of law are framed:

(1) Whether the Appellate Court is justified in disposing of the appeal without formulating proper points as contemplated under Order 41 Rule 19 CPC? and

(2) Whether both the courts right in rejecting the petition filed under Section 10 of the Insolvency Act only on the ground that appellant has not shown suit property in O.S.No.299 of 2005 filed by respondent No.1 herein without there being any evidence to that extent and respondent No.1 has failed to prove that the appellant has any property disentitle him to declare as insolvent?

6. To adjudicate the *lis* and to answer the substantial questions of law, it is necessary to refer to the relevant pleadings of the parties.

(a) The appellant filed the Insolvency Petition under Section 10 of the Provincial Insolvency Act, 1920, seeking to declare him as an insolvent stating that he possessed Ac.0-94 cents in R.S.No.98/2 and Ac.1-00 in R.S.No.177/1 of Chittapur village, which was described in B-schedule. He used to do mangoes business from the last several years and he sustained huge loss and as such, he could not discharge the debts due to the respondents. The appellant is not having any property except the B-schedule property worth Rs.1,50,000/-. The appellant borrowed a sum of Rs.1,30,000/- under a blank promissory note from the 1st respondent in the month of January, 2002, for the purpose of mango business and some time thereafter, he repaid the same to the 1st respondent. The 1st respondent told the appellant that after 15 days, he would return the promissory notes and later, he told the appellant that he torn the promissory notes as the time of promissory notes was lapsed. Later, the appellant received copies of documents in O.S.Nos.299, 300 and 301 of 2005 on the file of the Junior Civil Judge, Tiruvuru, filed by the 1st respondent for recovery of money on the foot of promissory notes. In total, the appellant is liable to pay a sum of Rs.11,50,000/- with interest to the respondents. The appellant is not in a position to discharge the above said debts.

(b) The 1st respondent filed counter contending that the appellant borrowed an amount of Rs.2,65,000/- on 04.06.2002 and executed four promissory notes, i.e., three demand promissory notes for Rs.65,000/- under each promissory note and fourth promissory note for Rs.70,000/-. As the appellant failed to discharge the said amount, he filed suits in O.S.Nos.299, 300, 301 and 474 of 2005 on the file of the Junior Civil Judge, Tiruvuru. The appellant was making attempts to screen away his immovable property with an intention to defeat the defraud him and he also filed petitions seeking attachment of Acs.1-50 cents in R.S.No.104/05 and Acs.1-34 cents in R.S.No.118/2 of Chittapuru village. The appellant failed to show all his immovable properties in the B-schedule and he furnished wrong information in respect of his immovable property and the particulars of A-schedule property are incorrect. Respondents 2 to 11 remained *ex parte* before the trial Court.

c) The trial Court after considering the evidence of P.Ws.1 to 4 adduced on behalf of the appellant-petitioner and the evidence of R.Ws.1 and 2 adduced on behalf of the respondents, framed the following point for determination:

"Whether the petitioner is made out any ground to declare him as an insolvent?"

d) The trial Court while dealing with the matter, held that the insolvency petition is not maintainable due to concealment of other immovable properties of the appellant-petitioner and ultimately, dismissed the insolvency petition filed by the appellant, vide order and decree dated 04.05.2010. Aggrieved by the said order, the appellant preferred A.S. No.60 of 2013 and the first appellate court, vide judgment and decree dated 20.10.2016, dismissed the appeal confirming the order and decree passed by the trial Court. Challenging

the said judgment of the first appellate court, the appellant-petitioner preferred the second appeal.

7. In view of the submissions of both the learned counsel, the only point that arises for determination is, whether the findings of both the Courts below are liable to be set aside?

8. There cannot be any dispute that under the amended Section 100 C.P.C., a party aggrieved by the decree passed by the first appellate court has no absolute right of appeal. He can neither challenge the decree on a question of fact or on a question of law. The second appeal lies only where the High Court is satisfied that the case involves a substantial question of law. The word 'substantial' as qualifying 'question of law', means and conveys of having substance, essential, real, of sound worth, important, considerable, fairly arguable. A substantial question of law should directly and substantially affect the rights of the parties. A question of law can be said to be substantial between the parties if the decision in appeal turns one way or the other on the particular view of law. But, if the question does not affect the decision, it cannot be said to be substantial question between the parties. Recording a finding without any evidence on record; disregard or non-consideration of relevant or admissible evidence; taking into consideration irrelevant or inadmissible evidence; perverse findings are some of the questions, which involve substantial questions of law.

9. Both the Courts below while dealing with the subject matter, held that the appellant has to disclose the entire property owned by him, i.e., agricultural lands and houses. Further, without disclosing the property owned and possessed by the appellant, it is not possible to give a finding with regard to whether the properties owned by the appellant are insufficient to pay the debts incurred by him. The appellant has to show the property attached by the civil court in the schedule of the insolvency petition, which he did not do so. The

appellant failed to prove that he was insolvent. All these aspects were elaborately dealt with by both the Courts below.

10. It is appropriate to state that under Section 100 of the C.P.C., the jurisdiction of the High Court to interfere with the judgment of the Courts below is confined to substantial question of law. The findings recorded with regard to the factual aspects by the first appellate court are final. Those findings of facts are not amenable to the jurisdiction of this Court by way of second appeal. In the circumstances of the case, this Court cannot re-appreciate the evidence and arrive at a different conclusion. Neither inadmissible evidence has been considered nor admissible evidence not acted upon. Viewing from any angle, no question of law much less substantial question of law does arise for determination in this second appeal. No perversity is established. Therefore, this second appeal is devoid of merit and is liable to be dismissed.

11. In the result, the Second Appeal is dismissed confirming the judgment and decree dated 20.10.2016 passed by the first appellate court in A.S. No.60 of 2016. Interim order dated 06.01.2017 granted in S.A.M.P. No.2681 of 2016 stands vacated and Miscellaneous Petitions pending, if any, shall stand closed in terms of this judgment. There shall be no order as to costs.

Date: 27.08.2018

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Dr. SHAMEEM AKTHER, J