

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

C.M.A.NO.865 of 2006

JUDGMENT

The present appeal is filed against the orders dated 22.6.2006 passed in I.P.No.18 of 2001 by the Senior Civil Judge, Nizamabad

The application is filed seeking a declaration that the petitioner has become insolvent.

In response thereto, the respondents have filed their counter and contested the matter.

In the lower Court both oral and documentary evidence were introduced. The petitioner himself was examined as PW.1. For the respondents five witnesses were examined and 17 documents Exs.B1 to B.17 were marked. After considering the documentary and oral evidence, the lower Court dismissed the petition. This order is now impugned in the appeal.

The learned counsel for the appellant vehemently urges that the order of the lower Court is wrong and it did not consider the matter in its proper perspective and wrongfully dismissed the application.

There is no representation for the respondents.

This Court notices that the lower Court dismissed the application on the ground that the appellant-petitioner did not prove that he was actually insolvent. The proportionality between his assets and borrowings is not proved. The lower Court rightly realized that a measure that is to be taken as a last resort cannot be used as a first resort to avoid payment of money. The requirement under Section 10 of the Provincial Insolvency Act has to be *prima facie* proved to the satisfaction of the Court. The lower Court noticed that except the interested testimony of the petitioner, there is no other material available on record. Nothing

contrary to what has been noticed by the lower Court has been brought to the notice of this Court. Therefore, this Court holds that there are no valid grounds made out to interfere with the impugned order.

Hence, the appeal is dismissed. No order as to costs.

Miscellaneous petitions pending, if any, in this appeal shall also stand closed.

D.V.S.S.SOMAYAJULU,J

Date: 07/02/2018

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