

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 406 of 2021
Date of decision: 02.03.2021

Chhote Lal Pandit & anotherPetitioners

Versus

Mrs. Usha GuptaRespondent

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Manish Jain, Advocate for the petitioners

ALKA SARIN, J.

Heard through video conferencing.

This is a revision petition against the impugned order dated 07.12.2020 (Annexure P-1) passed by the Executing Court dismissing the application filed by the JD-petitioner no.1 for staying the execution proceedings in view of the pendency of a petition under Sections 7 and 10 of the Provincial Insolvency Act, 1920 filed by him.

The brief facts, relevant to the present *lis*, are that in 2008 the DH-respondent had instituted a civil suit for recovery against the JD-petitioners. In this civil suit the JD-petitioner no.1 was represented as the sole proprietor of JD-petitioner no.2. This civil suit was decreed vide judgement and decree dated 18.12.2012. An appeal was filed by the JD-petitioners wherein the JD-petitioner no.1 represented himself as the sole proprietor of JD-petitioner no.2. This appeal was dismissed vide judgement and decree dated 27.03.2014. The JD-petitioners filed RSA No.3463 of 2014 in this Court in which the JD-petitioner no.1 represented himself as the sole proprietor of JD-petitioner no.2. This RSA. No.3463 of 2014 was dismissed

on 10.07.2014. The SLP of the JD-petitioners was dismissed by the Supreme Court of India on 01.12.2014. The JD-petitioners filed a review petition seeking review of the order dated 01.12.2014 passed by the Supreme Court. However, this review petition was also dismissed on 12.02.2015.

The DH-respondent had filed an execution petition in 2013 after the Trial Court had decreed her civil suit for recovery. Objections filed by the JD-petitioners were rejected by the Executing Court on 10.01.2020 and conditional warrants of arrest with regard to the decretal amount were ordered to be issued against the JD-petitioner no.1. The JD-petitioners challenged the order dated 10.01.2020 by filing a civil revision (CR-511-2020) in this Court which civil revision petition was dismissed on 14.02.2020. On 19.02.2020, immediately after the dismissal of the civil revision mentioned above, the JD-petitioner no.1 filed a petition under Section 7 read with Section 10 of the Provincial Insolvency Act, 1920 (hereinafter referred to as the 'Insolvency Act') before the Insolvency Court. The DH-respondent has been impleaded as respondent no.2 in the said petition (INSO 4/2020). These facts have been obtained from the website of District Court, Ludhiana and the record of CR-511-2020 as the civil revision is silent about the date or year of filing of this insolvency petition and the factum of filing and dismissal of CR-511-2020. The impugned order (Annexure P-1) mentions about the order dated 10.01.2020 passed by the Executing Court and the civil revision filed against it.

After the JD-petitioner no.1 had filed the insolvency petition (INSO 4/2020) on 19.02.2020, on 27.02.2020 he filed an application (Annexure P-2) before the Executing Court for staying the execution proceedings in view of the pendency of the insolvency petition. It was also

alleged that the JD-petitioner no.1 was not the sole proprietor of his firm (JD-petitioner no.2) rather it was a private limited company. The DH-respondent filed a reply (Annexure P-3) to this application. Vide impugned order dated 07.12.2020 (Annexure P-1) the Executing Court dismissed the application for stay (Annexure P-2) filed by the JD-petitioner no.1. The Executing Court inter-alia held that :

“21) In the case at hand, admittedly, only notice of the insolvency petition has been issued to the creditors and no further, let alone passing the order of adjudication. Hence, looking at the contention of a pending insolvency petition from any angle, the same is without merits and thus stands rejected.

22) In light of the entire discussion above, the present application for staying the proceedings stands dismissed. Accordingly, conditional warrants of arrest as per the order dated 10.01.2020 be issued against the JD for 14.12.2020”.

The only contention raised by learned counsel for the JD-petitioners is that once the JD-petitioner no.1 had filed the petition under Section 7 read with Section 10 of the Insolvency Act before the Insolvency Court, the Executing Court ought to have stayed the execution proceedings. Counsel relied upon the provisions of Section 7 and 29 of the Insolvency Act to stress that presentation of a petition by a debtor shall be an act of insolvency and once this fact had been brought to the notice of the Executing Court it ought to have exercised power under Section 29 of the Insolvency Act and stayed the execution proceedings.

I have heard learned counsel for the JD-petitioners. Sections 7, 10 and 29 of the Insolvency Act, as applicable to Punjab, Haryana and Chandigarh, which have been relied upon by learned counsel for the JD-petitioners, read as under :

“7. Petition and adjudication - Subject to the conditions specified in this 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 (hereinafter called an order of adjudication) adjudging him an insolvent.

Explanation - The presentation of a petition by the debtor shall be deemed an act of insolvency within the meaning of this section, and on such petition the Court may make an order of adjudication.

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10. Conditions on which debtor may petition - (1) A debtor shall not be entitled to present an insolvency petition, unless he is unable to pay his debts and -

- (a) his debts amount to five hundred rupees; or*
- (aa) his debts amount to two hundred and fifty rupees, and he satisfies the Court that he is entitled to summary administration of his estate under section 74 of this Act; or*
- (b) he is under arrest or imprisonment in execution of the decree of any Court for the payment of money; or*
- (c) an order of attachment in execution of such a decree has been made, and is subsisting, against his property.*

(2) A debtor in respect of whom an order of adjudication whether made under the Presidency-towns Insolvency Act, 1909 (3 of 1909), or under this Act has been annulled, owing to his failure to apply, or to prosecute an application for his discharge, shall not be entitled to present an insolvency petition without the leave of the Court by which the order of adjudication was annulled. Such Court shall not grant leave unless it is satisfied either that the debtor was prevented by any reasonable cause from presenting or prosecuting his application, as the case may be, or that the petition is founded on facts substantially different from those contained in the petition on which the order of adjudication was made.

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29. Stay of pending proceedings - Any Court in which a suit or other proceeding is pending against a debtor shall, on proof that an order of adjudication has been made against him under this Act, either stay the proceedings, or allow it to continue on such terms as such Court may impose”.

A reading of the above reproduced provisions of the Insolvency Act make it crystal clear that there is no automatic stay of any proceedings pending against a debtor upon his (the debtor) filing a petition for being declared insolvent. The filing of the insolvency petition has to be followed by the Insolvency Court making of an order of adjudication under Section 27 of the Insolvency Act. It is only thereafter that under Section 28 of the Insolvency Act all properties of the insolvent vest in the Insolvency Court or in a Receiver and other consequences take effect. It is only after the making

of the order of adjudication that a Court can either stay the proceedings pending against a debtor or allow them to continue on such terms as the Court may impose. The order of adjudication also has to be published under Section 30 of the Insolvency Act in the Official Gazette stating the name, address and description of the insolvent, the date of the adjudication, the period within which the debtor shall apply for his discharge, and the Court by which the adjudication is made.

In the present case, as has also been noticed by the Executing Court, there is no order of adjudication made in the insolvency petition. Without such an order having been made under Section 27 of the Insolvency Act, the Executing Court cannot pass an order under Section 29 of the Insolvency Act staying the execution proceedings filed by the DH-respondent. There has also been no publication in the Official Gazette under Section 30 of the Insolvency Act of any order of adjudication for the reason that there is no order of adjudication in existence. The words of Section 29 of the Insolvency Act are also very clear - it is only after a debtor presents proof that an order of adjudication has been made against him that a Court can either stay the proceedings or allow them to continue on such terms that the Court may impose. The existence of an order of adjudication under Section 27 of the Insolvency Act is a prerequisite for a Court to exercise power under Section 29 of the Insolvency Act. Thus, in the present case, there was no occasion for the Executing Court to exercise jurisdiction under Section 29 of the Insolvency Act and it rightly dismissed the application Annexure P-2.

The argument of the counsel for the JD-petitioners that in view of the Explanation to Section 7 of the Insolvency Act the presentation of a

petition by the debtor shall be deemed an act of insolvency and therefore on the JD-petitioner no.1 having filed the insolvency petition the Executing Court ought to have stayed the execution proceedings is being noticed to be rejected. There is nothing in the Insolvency Act which even remotely suggests that proceedings against a debtor can be stayed or put to terms merely on his presenting a petition under the provisions of the Insolvency Act. The making of an order of adjudication by the Insolvency Court is a sine qua non for any other Court to exercise power under Section 29 of the Insolvency Act. Counsel for the JD-petitioners has further argued that the Insolvency Court has not decided their application under Order 39 Rules 1 and 2 CPC where he has prayed for grant of a restraint order. However, the present civil revision petition emanates from the execution proceedings and not from the insolvency proceedings. As such, this Court cannot pass an order or make any comment in regard to the insolvency proceedings or the pendency of any application in those proceedings pending before the Insolvency Court.

It is often said that “*The travails of a decree holder commence after he has obtained a decree in his favour*”. This case is no different. The attempt by the JD-petitioners is clearly only to delay and stall the execution proceedings. They have lost the civil suit right upto the Supreme Court and have succeeded in prolonging the execution proceedings for several years. In the light of the sequence of events narrated above, this Court has no hesitancy in holding that the filing of the application for stay (Annexure P-2) was not *bona fide* and was only an attempt to derail the execution proceedings.

In view of the discussion above, this Court finds no illegality or perversity in the impugned order (Annexure P-1) passed by the Executing Court. There is no merit in this revision petition and the same is dismissed with costs of Rs.10,000/- to be deposited by the JD-petitioners with the ‘Punjab Chief Minister Relief Fund – Covid-19’.

Dismissed.

**(ALKA SARIN)
JUDGE**

**2nd March, 2021
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NOTE:

Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO