

Item-22. 26-09-2022

sg

Ct. 8

FMA 1086 of 2015
CAN 1 of 2014 (old CAN 12145 of 2014)

Ram Shankar Lal
Versus
Haran Chandra Munda

Mr. Ashis Bagchi, Sr. Adv.
Mr. Satyajit Mandal, Adv.

...for the appellant

The appeal is at the instance of the creditor. The creditor filed an application under Section 13(2) of the Provincial Insolvency Act, 1920 claiming that the respondent should be declared as an insolvent. The appellant has also filed a petition under Section 30 read with Section 21 of the Provincial Insolvency Act, 1920. The claim of the appellant is that the respondent owes a sum of Rs.90,000/- on 18th December, 2012 which would be apparent from the promissory note executed by the respondent in favour of the appellant. The promissory note forms the basis of the application for adjudication of the respondent as an insolvent.

The learned Senior Counsel representing the appellant has submitted that merely because Haran Chandra Munda is the employee of the South Eastern Railway and has financial ability to pay the amount would not be a ground for dismissing the said application as it raised an adjudication of the facts of insolvency.

Our attention is drawn to Section 6 of the Provincial Insolvency Act, 2020. It is true that for a creditor, the Provincial Insolvency Act, 1920 could have been pursued but it needs to be seen that whether the said proceeding was initiated bonafide. For example, if it is found that a person is well-off and is capable of

paying the amount which is claimed to be due and payable to a creditor, the initiation of proceeding under the Provincial Insolvency Act without recourse to a civil proceeding may not be the proper proceeding in the absence of any proof that there may be other body of creditors to whom the alleged debtor is attempting to defraud. There has to be a positive case of intention to defeat or delay the realization of the alleged debtor. The condition which seems to have been weighed by the learned Trial Judge was that, having regard to the financial condition of respondent against whom such proceeding was initiated, it may not be a proper case under the Provincial Insolvency Act, 1920.

We also agree with the view that Section 13(2) of the Provincial Insolvency Act, 1920, ip so facto, does not constitute a ground for initiation of proceeding against the respondent having regard to completeness of the facts disclosed.

The appeal and the application accordingly, fail. However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)