

10.12.2024
Ct. No. 22
Sl. No.89
KB

**In The High Court at Calcutta
Civil Revisional Jurisdiction
Appellate Side**

C.O. 2101 of 2022

**Sri Sabyasachi Chakraborty
-versus-
Sri Chandrama Prasad Shaw**

**Mr. Sharanya Chatterjee
Mr. Ayaskanta Ghosh
... For the petitioner.**

**Mr. Ashit Kumar Chowdhury
... For the opposite party.**

1. Affidavit of service is filed and taken on record.

2. The instant revisional application has been filed assailing the order dated 20th January, 2022 passed in connection with Insolvency Case No.02 of 2021 wherein Learned Additional District Judge, 3rd Court, Alipore disposed of an application under Section 5 of the Insolvency Act, 1920 (hereinafter referred to as PI) and directed the disbursing authority of the General Manager, Gun and Shell Factory, Cossipore, Khagendra Chatterjee Road, C.I.T. Kolkata -700002 to realize the entire claim amount of Rs.1,90,000/- from the monthly salary of the petitioner.

3. Learned counsel appearing on behalf of the petitioner has submitted that the Learned District Judge, Alipore, South 24 Parganas registered an application under Section 13(2) of the PI Act, 1920 and the opposite party herein also filed application under Sections 5 and 21 of the PI Act, 1920 for direction upon the disbursing authority to attach and withhold the claim amount of Rs.1,90,000/-. The case was registered and transferred to the Additional District Judge, 3rd Court, Alipore for disposal.

4. Learned Additional District Judge, 3rd Court, Alipore passed an order on 13th January, 2022 directing the petitioner to appear on 27th January, 2022 and notice was issued as requisites along with process fee had already been filed.

5. It has been further submitted that the next date of hearing was fixed on 27th January, 2022 for appearance.

6. It appears that Learned Judge put up the record on 20th January, 2022 and passed an order directing the disbursing officer to attach the salary of the petitioner without giving any opportunity of hearing.

7. Learned counsel appearing on behalf of the opposite party did not deny the fact that the order impugned was passed by the Learned Additional District Judge by allowing one put up petition that too

prior to date fixed for appearance after issuance of notice.

8. Section 21 of the Act deals with the interim proceeding against the debtor.

9. According to Section 21(1) of the Act an order may be passed directing debtor to give reasonable security for his appearance.

10. That apart an order of attachment can also be made under Clause 2 of Section 21. But nowhere from the provision, it is found that interim order can be passed without giving an opportunity to the debtor whereas proviso to Clause 3 has clearly spelt out that Clause 2 and 3 of Section 21 shall not be applied unless Court is satisfied that the debtor with intent to defeat or delay its creditors, will avoid any process of the Court.

11. It is not disputed that notice was issued fixing 27th January, 2022 for appearance.

12. It is also not disputed that the debtor was an employee of Gun and Shell Factory, Cossipore. So, question of being satisfied with debtor with intent to defeat or delay its creditors or avoiding the process of the Court does not arise.

13. Regard being had to the above, I find that Learned Judge passed the order impugned without giving any opportunity of hearing to the petitioner/debtor.

14. On this score, the order dated 21st January, 2022 passed in connection with Insolvency Case No./02/2021 stands set aside.

15. Learned Trial Judge is requested to dispose of the application under Section 5 of the PI Act after giving an opportunity of hearing to the petitioner/debtor, within two weeks from date of communication of this order.

16. Both the parties to this revisional application are directed to appear before the Learned Additional District Judge, 3rd Court, Alipore, on the day fixed by the Learned Judge, for hearing of the application under Section 5 of the PI Act filed at the instance of the creditor/opposite party herein.

17. With the aforesaid observations, the revisional application stands disposed of.

18. Interim order, if there be any, stands vacated.

19. All parties shall act on the basis of a server copy of this order duly downloaded from the official website of this Court.

20. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Bibhas Ranjan De, J.)