

Fasihullah Vs. U.P. State and ors.

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Court : Allahabad

Decided On : Feb-19-1985

Reported in : AIR1986All129

Judge : A.N. Varma, J.

Acts : [Provincial Insolvency Act, 1920](#) - Sections 24(2)

Appeal No. : S.A.F.O. No. 19 of 1976

Appellant : Fasihullah

Respondent : U.P. State and ors.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : N. Lal

Disposition : Appeal dismissed

Judgement :

A.N. Varma, J.

1. This is a second appeal under Section 75 of the Provincial Insolvency Act from an order passed by the learned District Judge dismissing the appeal filed by the appellant against an order dismissing his application for being declared an insolvent.

2. The relevant facts are that the appellant had filed an application for being declared as insolvent. The application was adjourned from time to time on one ground or another. On a date immediately preceding 12-5-1973, the Insolvency Judge sounded a note of warning to the appellant that no further adjournment shall be granted. However, on that date an application was moved by one Sabir Khan to be impleaded as a party in the proceedings. The learned Insolvency Judge rejected that application with the observation that the case was pending since 1969, and one person or another was being set up by the appellant to obstruct its further progress. It held that the application was not bona fide and rejected the same. The same day, the appellant also moved an application again for adjournment on the ground that he could not procure the presence of his witnesses because of the application moved by Sabir Khan. It was said that the application was brought to his notice and that is why he did not procure his witnesses. This application was also rejected by the learned Insolvency Judge on the ground that the appellant was interested solely in delaying further progress of the proceedings. There was no valid ground for granting any further adjournment. Accordingly after rejecting the said application the court also dismissed the Insolvency Petition, itself.

3. Aggrieved, the appellant filed an appeal. The appellate court agreed with the trial court that there was no valid ground for the appellant's failure to adduce evidence in support of his petition. It also agreed with the trial court that the entire attempt of the appellant was somehow to delay proceedings. Sabir Khan was also set up by the appellant and his application was also intended to help the appellant in delaying the proceedings. On these findings the appeal was dismissed.

4. Aggrieved by the aforesaid orders, this second appeal has been filed under Section 75 of the aforesaid Act.

5. Having heard learned counsel for parties, I find no merit in this appeal. The conclusion reached by the courts, below that there was no valid ground for granting the appellant any further indulgency, appears fully justified and the discretion exercised by the Insolvency Judge in declining to grant adjournment to the appellant and dismissing his petition on the ground that the appellant had by

his conduct clearly established that he was unwilling to co-operate in the further progress of the case was perfectly sound and proper and cannot hence be interfered with under Section 75 of the Provincial Insolvency Act having regard to the scope of interference under that provision. On the finding of the learned Insolvency Judge as well as the court below that the appellant was not prosecuting his petition bona fide and in good faith, the dismissal of his petition was fully justified and does not call for any interference.

6. Learned counsel for the appellant, however, submitted that even if the appellant was unable to procure his evidence, the Insolvency Judge was bound under Section 24(2) to examine the appellant if he was present and the failure of the Insolvency Judge to examine the appellant has vitiated the order. In support, learned counsel placed reliance on a decision of this Court reported in (1912) 9 All LJ 233, Banarasi Das v. Banarasi Das. I find no merit in the above contention. The sum and substance of the findings of the Insolvency Judge as affirmed by the lower appellate court with reference to the conduct of the appellant throughout the proceedings is that the appellant was clearly making attempt to get the case postponed on one pretext or other without intending to co-operate in its further progress. There is nothing in orders passed by either of the two courts below, or even in the order-sheet maintained by the Insolvency Judge which might in the remotest way suggest that though the appellant was willing to get himself examined under Section 24(2), the court itself declined to perform its duty under Sub-section (2) of Section 24 of the Act. Section 24(2) would be attracted only in a case where the debtor is himself ready and willing to have himself examined by the court for the purpose mentioned thereunder. It has no application to a situation where as here, the debtor indicates by his conduct that he is not willing to co-operate in the proceedings. Under the circumstances the decision cited by the learned counsel is of no assistance.

7. In the result, the appeal fails and is dismissed but I make no order as to costs.