

Pirthi Vs. Budh Singh

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Court : Allahabad

Decided On : Oct-13-1981

Reported in : AIR1982All179

Judge : K.N. Singh and ;B.N. Sapru, JJ.

Acts : [Provincial Insolvency Act, 1920](#) - Sections 6

Appeal No. : F.A.F.O. No. 370 of 1975

Appellant : Pirthi

Respondent : Budh Singh

Advocate for Def. : M. Kumar, Adv.

Advocate for Pet/Ap. : A.R. Dubey, Adv.

Disposition : Appeal allowed

Judgement :

B.N. Sapru, J.

1. The appellant Pirthi has been adjudged insolvent. The respondent Budh Singh applied to the Court for adjudging Pirthi an insolvent on the ground that Pirthi has taken a loan on pronote dated 10-1-1971 for Rs. 16,000/- bearing interest at the rate of 12 per cent per annum. The amount due, according to Budh Singh, was Rs

20,025/-. It was asserted that the appellant had sold a major portion of his Bhumi-dhari property on 20-2-1973 in favour of Rura and Tilka sons of Mohan Lal and Inder Singh son of Daryao with an intent to delay and defeat the creditor. It was asserted that this sale deed had been effected by Pirthi after the filing of the Suit No. 65 of 1973 by the creditor in the Court of the Civil Judge, Muzaffar Nagar on 16-2-1973 for the recovery of the amount of the loan.

2. The appellant contested the petition. He denied taking of loan of Rs. 16,000/- as alleged by the creditor. He also asserted that the sale deed had been effected in pursuance of an agreement of sale executed by him prior to the institution of the suit by the petitioner against him in the Court of the Civil Judge, Muzaffarnagar. The appellant further asserted that he possessed agricultural property worth about Rs. 20,000/- and that he also had a Gher worth about Rs. 15,000/-, He denied having committed any act of insolvency.

3. The Insolvency Judge found that the appellant had taken a loan on a pronote as asserted by the creditor. The Insolvency Judge further found that though the agreement to sell had been entered into between the debtor and the vendees on 15-2-1973, nevertheless such an agreement did not create an interest or charge in the property and the sale was calculated to delay and defeat the creditor. It further found that the land possessed by the appellant-debtor was un-irrigated land; whereas the land sold by him was irrigated land. The value of the land possessed by the appellant was held to be not more than Rs. 100/- per Bigha. It further took note of the fact that the creditor had filed the lease deed, Ex, 7, executed by the appellant which showed that one Bigha 19 Biswas of land was sold for Rs. 500/- and the land sold was of the same quality as the land still possessed by the debtor-appellant. As regards the Notha, it found that it was practically of no value. It recorded a finding that the appellant's assets were less than the amount of the debt. The Insolvency Judge also found that the fact that the value of the appellant's assets might exceed his debt, was of no consequence if the debtor did not have liquid assets to pay of the debt. For arriving at this conclusion the Insolvency Judge relied upon two decisions, namely a decision of Nagpur High Court in the case of Gadi Bhi-kaji v. Govindrao Bapuji (AIR 1937 Nag 127) and a decision of Lahore High Court in the case of Bhagvan Dass v. Mahammad Nawaz Shah, (AIR 1939

Lah 349). The Insolvency Judge took note of the fact that in the suit filed by the creditor, respondent, the debtor-appellant had applied to the Court to pay the decretal amount in instalments. In the circumstances, the Insolvency Judge allowed the petition and adjudged Pirthi an insolvent.

4. Aggrieved, Pirthi has come in appeal. The learned counsel for the appellant has not challenged the finding that the appellant was indebted to the respondent and, therefore, we would proceed on the basis that the appellant is, in fact, indebted to the respondent to the extent determined by the Insolvency Judge.

5. The learned counsel for the appellant has, however, assailed the finding of the Insolvency Judge that the appellant did not possess sufficient assets to pay his debt as incorrect. He pointed out that in the application for attachment of the appellant's property the creditor had sought attachment of 5-5-0 of Bhumidhari land belonging to the appellant. The creditor had shown the value of the attached property at Rs. 16,000/- vide paper No. 35c. It is urged and rightly so that the creditor must have valued the attached property at a lower price than what would have actually fetched if it would have been sold. 5-5-0 of Bhumidhari land which was sought to be attached by the creditor, was valued at Rs. 16,000/-. This shows that, even according to the creditor, the value of the land was little over Rs. 3,000/- per Bigba. From the statement of Kailash Chand, the Assistant Record Keeper, it is clear that apart from the property which was attached, Pirthi possessed 3-19-0 of land. If this land is valued at the same rate as the land which was attached, its value would come approximately to Rs. 12,000/-.

6. The learned counsel has then referred to the statement of Kailash Chand, the Assistant Record Keeper, Muzaffarnagar Collectorate, who deposed on the basis of Form No. 45 that Pirthi possessed 5-19-0 of land in Khata No. 466 and 3-19-0 of land in Kbata No. 1137. In cross examination he deposed that Pirthi's name had been expunged from plot No. 126 having an area of 14 Biswas. This shows that Pirthi on the date of the statement of the Assistant Record Keeper possessed 9-4-0 of land.

7. It is necessary to mention here that subsequent to the decision of the Insolvency Judge, the Zamindari Abolition and Land Reforms (Amendment) Act

No. 1 of 1977 came into force whereby all sirdari land had become Bhumidhari land and the aforesaid holdings of Pirthi which were sirdari holdings, had become Bhumidhari land, it is well known that agricultural land in Muzaffar-nagar is very valuable. The statement of the respondent that the value of the land after the execution of the sale deed by Pirthi, was only Rs. 100/- per Bigha, cannot be accepted. The creditor, as mentioned earlier, valued himself the land which was sought to be attached, at Rs. 16,000/-. The other remaining land of Pirthi which was not attached, measured 3-9-0 of land. This land valued at a conservative figure of Rs. 3,000/- per Bigha would be worth about Rs. 12,000/-. Thus, when the insolvency petition was presented Pirthi possessed agricultural land worth Rs. 16,000/- which was attached plus other land worth Rs. 12,000/-. The total value of the agricultural property come to at least Rs. 28,000/-. Since the amount due to Budh Singh was Rs. 20,025, the value of Pirthi's assets exceeded this liability. He could, thus, not be declared an insolvent on the ground that his assets were less than his liabilities.

8. The Insolvency Judge was of the view that the insolvency petition had to be allowed because the cash, available with Pirthi was not sufficient to discharge his debt. In the case of Gadi Bhikaji v. Govindrao Bapuji, (AIR 1937 Nag 127) Justice Pollock held that under Section 25 of the Provincial Insolvency Act the burden of proof lies on the debtor that he is able to pay his debt. He further went on to hold that in a case where there is no evidence to show that the debtor had sufficient assets which, if liquidated, would enable him to pay his debt, the petition must be allowed. The learned Judge relied upon a decision of the Calcutta High Court in the case of Pratap Mall Rameshwar v. Chunilal Johuri : AIR1933 Cal417 wherein Rankin, C. J., had remarked that a person cannot be declared insolvent if he cannot meet his debts in the ordinary way by making legal tender and discharging his debts. The other decision relied upon by the Insolvency Judge is the decision of Rangoon High Court in the case of Maj Kyin Myaing v. M. L. R. M. Mthaya Chettyar (AIR 1930 Rang 147(1)). The decision does not support the conclusion of the Insolvency Judge. In that case the debtor had been declared an insolvent. In appeal, the learned Judge observed as follows :

'It would seem that he has not taken the trouble to read Section 6, Provincial Insolvency Act, which sets out the various acts which amount to acts of insolvency. That section does not provide that the mere fact that a person's assets are less than his debts is an act of insolvency. The respondent-petitioner failed entirely to establish any ground on which the appellant could be adjudged insolvent.'

9. The appeal was allowed. This case is a clear authority of the proposition that the mere fact that a person's assets are less than his liabilities, is not per se an act of insolvency.

10. The acts of insolvency are defined in Section 6 of the Provincial Insolvency Act. Clause (b) provides that a debtor who makes a transfer of his property or of any part thereof with intent to defeat or delay his creditors commits an act of insolvency. In order to adjudge him an insolvent the Court has to record a finding that the debtor had made a transfer of his property with an intent to delay or defeat his creditors. Therefore, unless the Court can find that a transfer of property by a debtor has been made with an intent to delay or defeat the creditors, it cannot adjudge the debtor an insolvent, one of the tests to determine whether the transfer is made by the debtor to delay and defeat the creditor, is to find out whether after the transfer the debtor has assets sufficient to pay his creditors.

11. In fact, we have found that the assets remaining with Pirthi after the transfer made by him were sufficient to discharge his debts.

12. Now coming to the question as to whether a debtor can be declared an insolvent if he does not have in hand sufficient liquid assets to pay his debts, no absolute proposition can be laid down that in all circumstances where the debtor while possessing assets, had not enough liquid assets in hand, he must be adjudged an insolvent. It all depends on the circumstance of each individual case. If the assets in a normal case can be liquidated within a reasonable time and the creditor paid, the debtor cannot be declared an insolvent. If, however, the assets are not presently saleable or are encumbered then the debtor may be declared an insolvent.

13. In the instant case the agricultural land can be sold and the sale proceeds can be applied towards the liquidation of assets (liabilities?) and, therefore, Pirthi cannot be declared insolvent. A creditor cannot file an insolvency petition and get the debtor de-cleared an insolvent as an alternative to the proceedings in execution of a decree that ha may have obtained against the debtor. It appears that it is exactly this what the creditor is seeking to do in the instant case.

14. Having come to the conclusion that the assets in hands of Pirthi exceed the amount of his debt, the appeal must necessarily be allowed.

15. In the result, the appeal is allowed and the order adjudging Pirthi an insolvent is set aside. In view of the fact that Pirthi was undoubtedly indebted to the respondent, Budh Singh, we make no order as to costs.

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