

Mathai Varkey and anr. Vs. Achuthan Damodaran and ors.

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Court : Kerala

Decided On : Mar-21-1975

Reported in : AIR1975Ker195

Judge : G. Viswanatha Iyer, J.

Acts : [Provincial Insolvency Act, 1920](#) - Sections 6, 7 and 75(1)

Appeal No. : C.R.P. No. 838 of 1973

Appellant : Mathai Varkey and anr.

Respondent : Achuthan Damodaran and ors.

Advocate for Def. : M.V. Joseph,; S.N. Potti,; K. Velayudhan Nair and;

Advocate for Pet/Ap. : S. Subramonia Iyer, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

G. Viswanatha Iyer, J.

1. This revision petition is filed by two debtors who are ad-judicated insolvents by the order of the Sub-Court, Kottayam, which was confirmed by the District Court on appeal. The petitioners are brothers and are admittedly indebted to the

respondents. The petition for adjudication was brought by the 1st respondent and later the other respondents got themselves impleaded in the petition as counter-petitioners 3 to 3. The petition was grounded on Sub-clauses (ii) and (iii) of Clause (d) of Section 6 of the Insolvency Act -- that with intent to defeat or delay their creditors the petitioners had departed from their dwelling houses or usual place of business or otherwise absented themselves and that they had secluded themselves so as to deprive their creditors of the means of communicating with them. The petitioners resisted the insolvency petition contending that it was not maintainable, that they are possessed of extensive properties and considerable assets more than sufficient to discharge their debts, that they have their residence and place of business near the court house at Vaikom, that they have not absented themselves from their dwelling houses or place of business and that they have not caused any inconvenience to their creditors to communicate with them. They further contended that the petition lacks good faith and hence has been inspired out of spite to harass and ruin them if possible. The courts below held on the evidence let in the case that with intent to defeat or delay the creditors the petitioners have departed from their dwelling houses and usual place of business and were absenting themselves otherwise. It was also found that the petitioners are unable to pay their debts and are therefore liable to be adjudicated insolvents. This revision petition is filed in these circumstances.

2. This revision petition is filed Under Section 75 of the Insolvency Act and the power of this Court, though wider in scope than the power under Section 115, Civil Procedure Code, is not unlimited. Interference is possible only if this Court is satisfied that the order made in appeal by the District Court is not according to law. The expression 'according to law' mentioned in the first proviso to Section 75(1) is similar in content to that given to same expression in Section 25 of the Provincial Small Cause Courts Act. The scope of the latter expression was explained by Beaumont. C. J., in *Bell and Co.. Ltd. v. Waman Hemraj*, (AIR 1938 Bom 223) as follows:--

'The object of Section 25 is to enable the High Court to see that there, has been no miscarriage of justice, that the decision was given according to law. The section does not enumerate the cases In which the Court may interfere in revision, as

does Section 115 of the Code of Civil Procedure, and I certainly do not propose to attempt any exhaustive definition of the circumstances which may justify such interference: but instances which readily occur to the mind are cases in which the Court which made the order had no jurisdiction or in which the Court has based its decision on evidence which should not have been admitted, or cases where the unsuccessful party has not been given a proper opportunity of being heard, or the burden of proof has been placed on the wrong shoulders. Wherever the Court comes to the conclusion that the unsuccessful party has not had a proper trial according to law, then the Court can interfere. But, in my opinion, the Court ought not to interfere merely because it thinks that possibly the Judge who heard the case may have arrived at a conclusion which the High Court would not have arrived at'

This statement of the law was accepted as correct and applied in the case of revisions filed under the Insolvency Act by the Supreme Court in *Malini Naicker v. Seth Manghraj*, (AIR 1969 SC 1344), paragraphs 7 and 8. Applying this principle to the facts of the case here it is not competent for this Court to disturb the concurrent findings of fact arrived at by the courts below, namely that the petitioners with a view to defeat or delay the creditors departed from their dwelling places and usual place of business and otherwise absented themselves. The petitioners' counsel contended that this finding of fact has been arrived at on no evidence and to substantiate that submission he took me through the entire oral evidence of the 1st respondent who was a petitioner in the insolvency court. On going through that evidence and the documentary evidence produced in the case I do not think that the conclusions arrived at by the courts below can be said to be on no evidence or perverse. Exts. P-1 to P-4 and P-7 are copies of the Execution diaries in five decrees obtained by as many creditors. Exts. P-1 to P-4 show that despite repeated attempts the petitioners could not be arrested as the warrants were returned on the ground that they could not be found. In Exts. P-1 to P-4 cases warrants were returned on this ground on 13, 7, 10 and 20 times respectively until all the execution petitions were dismissed owing to the order of stay issued in the insolvency case. These several infructuous proceedings, for which the revision petitioners have no reasonable explanation, clearly show that they had been absenting themselves with intent to defeat or delay the creditors. The small or

nominal payments evidenced by the memos, Ext. D-4 series, made out of court to the decree-holders' counsel by the debtors' counsel do not minimise the inference stated above. There is absolutely no evidence to show that the petitioners had appeared in court on any of the dates on which the amounts were paid. The debtors had ceased to carry on any banking business since 1956 in pursuance to an order of the Reserve Bank. The number of decrees obtained against them are mentioned in paragraph 4 of the Insolvency petition. The debtors would admit that the decree debts will come to more than Rs. 60,000/-. According to the 1st respondent's evidence it will come to more than 1 1/4 lakhs of rupees. Though the debtors have some landed property, they had no liquid cash and no attempt was made to pay off the creditors even after the institution of the first insolvency petition in 1963. Thus, the evidence provided by Exts. P-1 to P-4 and the circumstances of the case amply justify the following conclusion arrived at by the learned Judge:--

'In my view, the fact that the appellants' banking business has come to a standstill, that their chitties have stopped, that despite owning landed property, they have no liquid cash, that they have not discharged their enormous debts and are not even earnestly attempting to do so and that they could not be arrested in several decrees on innumerable occasions on the ground that they could not be seen all clearly establish that with intent to defeat or delay the creditors they have departed from their dwelling places and usual place of business or are otherwise absenting themselves.'

This finding clearly establishes the act of insolvency stated in Section 6, clauses (d) (ii) and (iii). But, the revision petitioners' counsel contended that it has not been established that this act of insolvency was committed within three months of the filing of the petition for adjudication. This submission is incorrect. The Execution diaries referred to above clearly show that within the period of three months immediately preceding the filing of the insolvency petition warrant steps were returned on the ground that the debtors could not be seen. The petitioners' counsel further contended that the courts below have not kept in view Section 25 of the Insolvency Act which deals with the powers of the insolvency court in the matter of disposal of insolvency petition. The aspect pressed in this connection is

that the court is not satisfied of the inability of the debtors to pay the debt and also that there are sufficient reasons to hold that the petition for adjudication is not maintainable. This submission is also incorrect. The courts below have found that though the petitioners have landed property they have no liquid cash to pay the debts. The courts below have also found that the petitioners were not taking any effective steps to discharge the huge debts payable by them. The fact that some of the amounts due to the debtors deposited in other courts are under attachment or the further 'fact that landed properties are under attachment effected by the creditors are not reasons to hold that petition for adjudication is not maintainable. Hence, I do not find any error in the conclusions arrived at by the courts below that the revision petitioners are liable to be adjudicated insolvents.

3. In the result. I do not find any reason to interfere with the order made in appeal by the District Court in this case. The civil revision petition therefore fails. It is dismissed with costs to the 1st respondent.

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