

K.S. Velu Vs Vasudevan Nair

Court: High Court Of Kerala

Date of Decision: Oct. 31, 1990

Acts Referred: Kerala Insolvency Act, 1956 " Section 10, 24, 24(1), 42, 43

Hon'ble Judges: M.M. Pareed Pillay, J

Bench: Single Bench

Advocate: V. Divakaran Poti, for the Appellant; K. Aravindaksha Menon, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

M.M. Pareed Pillay, J.

Revision Petitioner challenges the judgment of the Additional District Judge, Thrissur in C.M.A. 32 of 1990. The

Additional District Judge dismissed the appeal confirming the order in I.A. 2981 of 1989 in I.P. 3 of 1985 of the Sub Court, Thrissur. The Courts

held that the revision Petitioner is not entitled to get absolute discharge in the insolvency matter.

2. Revision Petitioner filed I.A. 2981 of 1989 u/s 42 of the Kerala Insolvency Act. The Sub Judge allowed the petition on condition of the revision

Petitioner discharging the amount due to the Respondent under the decree in O.S. 466 of 1979 of the Sub Court, Thrissur.

3. Contention of the revision Petitioner is that as he was adjudged insolvent by order, dated 8th September 1989 the Respondent could not have

raised any objection later challenging it. In other words, revision Petitioner contends that once he has been declared insolvent on his petition u/s 10

of the Act the Court cannot reconsider it.

4. The question that arises for consideration is as to whether the Respondent is barred from raising objection to the revision Petitioner's application

for discharge on the ground that he did not urge the objections at the time when Petitioner filed the application u/s 10. Section 9 of the Act deals

with conditions on which a creditor may file insolvency petition against a debtor. Section 10 provides for the conditions by which a debtor may

prefer a petition. Section 6 enumerates acts of insolvency. u/s 10 a debtor can present petition only-

(1) if he is unable to pay his debts; and (2) his debts amount to Rs. 560 or if he is under arrest or imprisonment in execution of any money decree

or (3) if an order of attachment has been made against him in execution of such decree which order is still subsisting against his property.

At the time of initiation of the proceedings u/s 10 the Court has only to be satisfied that the essential conditions for adjudication are present.

Section 24 of the Act deals with the procedure to be adopted by the Court. When Section 10 petition is filed it is incumbent upon the debtor to

establish that he is unable to pay his debts. Proviso to Section 24(1)(a) makes the position clear that where a debtor is the Petitioner he is entitled

to furnish proof to satisfy the Court that there are prima facie grounds in support of his petition and the Court is not bound to hear any further

evidence thereon. It is only at the stage when the petition is filed for discharge u/s 42 that the Court has to consider whether it must refuse absolute

discharge or not. Section 43 gives out various grounds for refusal of an absolute discharge. Contention of the revision Petitioner that the

Respondent is barred from raising any objection with regard to the discharge as he failed to raise the same when the application u/s 10 was

considered is without any merit. The stage at which the Court can visit on the Petitioner its due consequence of misconduct is when he files the

application for discharge u/s 42 and not at the initial stage. See K.R.K.K. Krishnappa Chettiar Vs. V.V.R. Kasiviswanathan Chettiar and Others, .

In Chhatrapat v. Khani AIR 1916 S.C. 64 it was held that any misconduct of a debtor is to be visited with its due consequences at, the time of

debtor's application for discharge and not on the initial proceeding. Only when an application is made for discharge the creditor can oppose it on

the grounds enumerated u/s 43 and therefore merely because such objections were not raised at a time when the application u/s 10 was

considered it cannot be said that the creditor cannot raise it later when application for discharge is considered.

5. Ext. B-1 settlement deed was executed by the revision Petitioner after the institution of O.S. 466 of 1979. R.W. 1 stated that the revision

Petitioner executed Ext. B-1 settlement deed without consideration in order to avoid the payment of the decree debt in O.S. 466 of 1979. Revision

Petitioner did not care to adduce any evidence to controvert evidence given by R.W.I. Both the Courts below were justified in holding that the

only reasonable inference that can be drawn is that the revision Petitioner had executed Ext. B-1 only with the intention to defeat or delay his

creditors. The Courts below correctly held that the revision Petitioner is not entitled to get absolute discharge.

There is no merit in the C.R.P. and hence the same is dismissed with costs.