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Madras High Court

Case No: C.M.S.A. No. 32 of 1998

The Association of the Creditors of the Madras Roasted Cram Mills and Others	APPELLANT
Vs	
Krishnan	RESPONDENT

Date of Decision: Aug. 18, 2009

Acts Referred:

- Provincial Insolvency Act, 1920 - Section 13(2), 13(2)(e), 19, 6, 9

Citation: (2010) 1 MLJ 762

Hon'ble Judges: K.K. Sasidharan, J

Bench: Single Bench

Advocate: Malini Ganesh, for the Appellant; K.V. Venkatapathi for Mr. K.V. Sundararajan, for the Respondent

Final Decision: Dismissed

Judgement

K.K. Sasidharan, J.
This civil miscellaneous second appeal is directed against the Judgment and Decree dated 19.01.1998 in C.M.A.No.2/2007 on the file of the learned Principal District Judge, Pondicherry confirming the Judgment and decree dated 19.02.1996 in I.P.No.1/1993 in the file of the Principal Subordinate Court, Pondicherry.

Background facts: The appellant is an association of the creditor of Madras Roasted Gram Mills owned by the respondent.

2. The Appellants preferred a petition u/s 9 of the Provincial Insolvency act before the Principal Subordinate Judge, Pondicherry against the Respondent praying for an order to adjudge him as insolvent and to vest the properties describe in the schedule to the official receiver or in the alternative to appoint a receiver to take possession of the entire

Property and sale of his estate for the purpose of payment of the amount due to the member of the Appellant Association.

3. In the petition in I.P.No.1/1993, Appellants as petitioners contended thus :-

(a) Petitioner is an Association of Creditor registered under the provisions of the societies Registration Act. The member of the Association invested considerable amount with the Respondent in the business concern floated by him in the name and style of Madras roasted gram mills at 57, Rangapillai Street, Pondicherry. The Respondent was doing business as its sole proprietor. Taking advantage of the trust and confidence reposed in him the Respondent has collected more than Rs.19 lakhs from as many as 74 persons. Since the Respondent failed to pay interest, members of the Association of the Creditors approached him and demanded payment of the amount invested by them. However, the Respondent gave evasive replay promising to replay the amount after one year. In the meantime, the petitioner came to know that the Respondent was attempting to sell the building bearing D.No.57, Rangapillai street, Pondicherry with a view to defeat the claim made by the creditors.

(b) The Respondent is a native of Madurai District and the petitioner learnt that he has purchased several items of properties in the name of his wife, son and other relative so as to keep the properties beyond the reach of his creditors. Respondent also sold his factory for Rs.47 lakhs and he has not paid the money to the members of the Association and invested the same in real estate in the name of his family members. In such circumstances, application u/s 9 of the Provincial Insolvency Act, 1920 was filled to declare the Respondent as an insolvent.

4. Respondent on appearance before the trial Court filed his counter denying the allegation leveled against him. In the counter filled by him, it was stated thus:-

(a) The Association is legally incomplete to maintain petition u/s 9 of the provincial insolvency Act.

(b) The Association which is a separate legal entity under law, has not deposited any amount with him so as to give a cause of action u/s 9 of the provincial insolvency Act.

(c) Respondent was not served with notice of the order fixing the date of hearing of the Insolvency petition as required u/s 19 of the Act. It was only on coming to know of the pendency of the insolvency petition, he took steps to enter appearance for the purpose of contesting the proceedings.

(d) The petitioner has not furnished correct particulars of the Act of insolvency and the date of commission of such Act, as required u/s 13(2) of the Act and therefore, the petition which contains vague allegation and irrelevant particular was liable to be dismissed as not maintainable. The Court at Pondicherry has no territorial jurisdiction, as the Respondent was residing outside the jurisdiction of the said Court.

(e) Respondent has no intention to defraud the creditors at any point of time and he got property sufficient to discharge the entire debt. Therefore, there was no cause of action for filing an insolvency petition against him.

Disposal by the Insolvency Court :-

5. The learned trial Judge found that there was no documentary evidence produced by the Appellants to show that the member of the Appellant Association have lent money to the Respondent and they have deposited the amount with him and he failed to repay the amount in spite of the request made by the creditors. According to the learned trial Judge, the Appellants have not proved the Act of insolvency in with the meaning of Section 13 (2) (e) of the Act since the creditors have not specified the Act of insolvency committed by the debtor together with the date of commission of such Act.

6. The learned Trial Judge also rendered a factual finding that no particular date was mentioned in the insolvency petition for the purpose of limitation. In short, the learned trial Judge concluded that the insolvency petition filed by the Appellant was not maintainable both on law as well as on facts.

Appellate decree:-

7. The Judgment and decree dated 19.02.2006 was taken up before the learned Principal District Judge Pondicherry in C.M.A.No.2/1997. The learned Judge agreed with the views expressed by the learned trial Judge and confirmed the decree. Aggrieved by the concurrent Judgment and Decree, the unsuccessful petitioners are before this Court. Substantial question of law:-

8. The following questing of law arises for consideration in the civil miscellaneous second appeal:-

Whether a society registered under the provision of the societies registration Act is entitled to maintain a petition u/s 9 of the Insolvency Act without disclosing the identity of its members and in the absence of proof of dues to the individual creditors Discussion:-

9. The Appellant is a society registered under the provisions of the Societies registration Act. According to the Appellants, the members of the society are none other than the creditors of the Respondent and he owes huge amount to them. However, neither the registration certificate nor the memorandum of articles of Association of the Appellant society was produced before the Court to substantiate the contention that the society was formed only for the purpose of claiming amount from the Respondent either through the regular process or by filing an application under the provision of the provincial Insolvency Act, 1920. The details of the individual debts with proof of such debts were also not produced before the trial Court to substantiate the contention that the Respondent was indebted to the individual creditors. Merely mentioning the name of the creditors with the amount due was not sufficient. There should be materials to substantiate the claim.

10. When the Appellant approached the Court with an application invoking the provision of the Provincial Insolvency Act, 1920, primary requirement was the production of the list of creditors along with their claim. In case the society was incorporated only for the purpose of making a claim against the Respondent, the memorandum and articles of Association should have been produced before the trial Court. However, for the reasons best known to the Appellants they have not produced a single scrap of paper to substantiate their contention that society was in fact formed by the creditors. Therefore, there was nothing on record before the trial Court to ascertain as to whether the Respondent was indebted to the member of the Appellant Association.

11. Section 6 of the Provincial Insolvency Act, 1920 prescribes the conditions to be satisfied to maintain an application. As per Section 9(1) (c), creditor was obliged to disclose the actual date of occurrence of the Act of insolvency since the Act of insolvency must have occurred within three months before the presentation of petition. However, very strangely, the petition does not contain any such details except stating that it was brought to their knowledge that the Respondent was contemplating to sell the property with a view to defeat the claim of the creditors. Therefore, the Court was not in a position to answer the issue as to whether application was barred by limitation.

12. The Respondent being the debtor should know as to who are all the persons to whom he has to pay the amount. There was no attempt made by the appellant to show that the respondent was indebted to the individual creditors for such and such amount and those dues were certified by documents. However, no such attempt was made by the Appellant.

13. Insolvency proceeding is very serious in nature. It cannot be taken so lightly. The creditor has to prove the basic requirement as provided under the provincial Insolvency act to maintain a petition u/s 9 of the Act. The debtor should be given a reasonable opportunity to contest the remedy available as per law to recover the debt by resorting to the provisions of Insolvency Act. In case a debtor is declared insolvent, it would change his very status. The consequence of such action is very heavy on the debtor. The status as an insolvent disentitles him from acquiring property as well as doing business. It had its adverse effects even in his social life. Therefore, law requires greater proof before declaring a person as insolvent.

14. The Appellants have stated that the Respondent was contemplating to sell the property. Mere sale of the property alone was not sufficient to declare the Respondent as an insolvent. There should be positive action on the Respondent to sell the property and to take away the proceeds with a view to delay and defeat the claim of the creditors. There was nothing on record to substantiate their contention about the Act of insolvency committed by the Respondent.

15. Respondent has not appeared initially before the trial Court and as such, an ex parte order was passed against him declaring him as insolvent. The said decree was subsequently set aside at the instance of the Respondent. However, after setting aside

the ex parte decree nobody was examined on the side of the Appellant and no documents were also marked to substantiate their contention that there was an act of insolvency committed by the Respondent which resulted in filling the application. Documents were not marked to substantiate their claim disclosing the names and addresses of the individual creditors and the amount due to them individually from the Respondent. Therefore, there were no materials before the trial Court to arrive at a conclusion that the Respondent has to be declared as an insolvent.

16. The trial Court as well as the first Appellate Court had considered the entire factual matrix and arrived at a conclusion that the appellants have not made out a case for declaring the Respondent as insolvent.

Disposal :-

17. Since there was nothing on record to show the individual debts and the proof of such debts coupled with the fact that the Respondent was not indebted to the Appellant Association, the petition was clearly not maintainable. Therefore, the substantial question of law is answered against the Appellants.

18. There is no error or illegality or perversity in the Judgment and decree of the courts below calling for interference in the appeal. In the result, the civil miscellaneous second appeal is dismissed. No cast. Consequently, C.M.P.No.14945/1998 is also dismissed.