
(2008) 02 CAL CK 0023

Calcutta High Court

Case No: G.A. No. 1180 of 2006 and IC No. 3 of 1995

Nawratam Purohit

APPELLANT

Vs

Arvind Agarwal

RESPONDENT

Date of Decision: Feb. 27, 2008

Acts Referred:

- Presidency Towns Insolvency Act, 1909 - Section 13, 13(2), 21, 9

Citation: AIR 2008 Cal 70 : (2008) 2 CHN 797

Hon'ble Judges: Sanjib Banerjee, J

Bench: Single Bench

Advocate: S.N. Mitra, D. Basak and A. Mitra, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

Sanjib Banerjee, J.

Neither the insolvent nor the creditor at whose behest the insolvency proceedings were launched are represented even at the second call. Affidavits have been used both by the insolvent and the creditor at whose behest the debtor was declared insolvent.

2. The order declaring the debtor insolvent was made on June 13, 1995 and after recording the submissions made on behalf of the parties, the following finds mention in the order:

Having considered the submission made by Mr. Utpal Bose, the learned Counsel appearing for the creditor and after going through the petition and relevant sections of the Provincial Insolvency Act, I hold that the creditor has made out his case and the debtor Mr. Arvind Agarwal is to be adjudicated as an insolvent. Therefore upon considering the Insolvency Petition and after hearing the learned Counsels, it is ordered that the debtor Arvind Agarwal of 42A, C.R. Avenue, Calcutta be and is hereby adjudged an insolvent. It is further ordered that the debtor should

apply for his discharge as and when he is in a position to liquidate the debt of the creditor herein.

3. The present applicant is a decree holder. The present applicant says that the acts of insolvency enumerated in Section 9 of the Presidency Towns Insolvency Act, 1909 requires to be adjudicated upon by Court and the Court's satisfaction has to be recorded before the declaration of a debtor as insolvent.

4. Section 13(2) of the 1909 Act provides that at the hearing of a creditor's application seeking the debtor to be declared as insolvent, the Court shall require proof of the debt of the petitioning creditor and the act or acts of insolvency.

5. It appears that the order of June 13, 1995 proceeded on the basis of the debtor admitting the position without the Court assessing as to whether there was, indeed, any act of insolvency or whether the claim brought to Court by the petitioning creditor was unimpeachable.

6. Ordinarily, such order of June 13, 1995 may not have been looked into. However, an order of such nature operates not only for the creditor who launches the insolvency proceedings but confers protection to the debtor upon the declaration of his insolvency against all other creditors of the insolvent. It is necessary, in such circumstances, that the Court be satisfied that the grounds for declaring a debtor insolvent exists rather than proceed on the admission of the debtor, which admission may be contrived and willingly given by a debtor to ward off creditors other than the creditor who launches the insolvency proceedings.

7. Since the preconditions to the exercise of jurisdiction u/s 13 of the 1909 Act do not appear to have been met, albeit the debtor's admission thereof, the order should not be allowed to prevail insofar as it operates as a bar to the applicant creditor from enforcing the decree obtained by the applicant creditor.

8. u/s 21 of the 1909 Act, where it appears to Court that a debtor ought not to have been adjudged insolvent, the Court may annul the declaration of insolvency made as regards the insolvent. The present applicant demonstrates that the acts of insolvency were not gone into by the Court at the earlier stage and the satisfaction of the Court was not recorded as to acts of insolvency having been committed and the credibility of the claim made by the original creditor.

9. The order of June 13, 1995 declaring the debtor as insolvent is annulled in such circumstances.

10. The insolvency proceedings revive and it will be open to the original creditor to seek a further order requiring the debtor to be declared insolvent.

10. G.A. No. 1180 of 2006 is disposed of without any order as to costs.

12. Urgent certified photostat copy of this order, if applied for, be supplied to the parties upon all requisite formalities.