

Sarat Chandra Roy

Vs

Harak Chand Damani and Another

Civil Appeal No. 338 of 1967

(K. S. Hegde, P. Jagmohan Reddy, D. G. Palekar JJ)

11.01.1972

JUDGMENT

HEGDE, J. -

1. This appeal by special leave arises from insolvency proceedings initiated by the first respondent Petitioning Creditor on the original side of the Calcutta High Court against the appellant. No other creditor had either joined the proceedings or was a party thereto. Excepting the fact that the petitioner alleged that some other debts were also due from the insolvent there is no satisfactory proof about those debts. At any rate, there is no satisfactory proof to show that the insolvent was unable to discharge the debts due from him. The prayer for adjudicating the appellant as an insolvent had primarily proceeded on the basis of the failure of the appellant to discharge the decree debt due to the petitioning creditor. At the hearing of the appeal the appellate Bench of the High Court determined on September 23, 1964, that the balance amount due from the insolvent to the petitioning creditor was Rs. 46,623.49 paise. The court directed the appellant that if he paid to the petitioning creditor Rs. 28,186.40 P. by December 2, 1964, and the balance with interest by June 30, 1963, the order of adjudication would be set aside. On the same day i.e. September 23, 1964, the appellant to the petitioning creditor Rs. 28,186.49 paise. The balance amount was not paid within the time fixed. For that reason the appellate court confirmed the adjudication of the insolvent by its judgment, dated July 12, 1966. Thereafter on July 30, 1966, the appellant's solicitors sent a cheque for Rs. 20,466.06 paise to the solicitors of the petitioning creditors in full satisfaction of the balance of the balance due to the petitioning creditor. That cheque was returned by the solicitors of the petitioning creditor on August 1, 1966, on the sole ground that the amount in question had not been paid within the time fixed by the court. There was no justification in doing so. After the tender in question the appellant applied to the appellate court to review its order. That application was dismissed mainly on the ground that the petitioning creditor opposed the same and that there was difference between the two. We fail to see how the creditor was interested in the adjudication of the appellant as an insolvent even after the entire amount due to him was tendered. The court was not justified in maintaining the adjudication of the appellant under the circumstances of the case. From the records we are satisfied that there was no justification for initiating the insolvency proceedings in question. Non-payment of a decree promptly by itself is no ground to adjudicating a person insolvent. Appellant appears to be a person of substantial means. In this case insolvency proceedings appear to have been initiated as an alternative to execution proceedings.

2. We are informed that at the time of the application for certificate before the High Court the insolvent had given a cash security of Rs. 1,32,311.00. As mentioned earlier the solicitors for the petitioning creditor had not accepted the cheque for Rs. 20,466.06 paise. That being so, that amount yet remains to be paid to the petitioning creditor. In addition the insolvent has also to pay a sum of

Rs. 2,500 as costs as agreed to by him under his letter, dated September 23, 1964.

3. For the reasons mentioned above we allow this appeal and set aside the order of adjudication of the appellant. The petitioner creditor will be entitled to draw from the security given before the High Court a sum of Rs. 22,966.06 paise. The balance amount with the interest accrued thereon will be returned to the appellant. The parties to bear their own costs in this court.

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