Mahadeo Prasad vs Sheo Dass on 22 November, 1954

Equivalent citations: AIR1955ALL352, AIR 1955 ALLAHABAD 352

JUDGMENT

Randhir Singh, J.

1. This is an application for revision which was originally instituted as a second appeal but was later treated, at the request of the appellant, as an application for revision arising out of proceedings under the Insolvency Act.

2. It appears that the applicant filed an application under the Provincial Insolvency Act for adjudging the opposite party an insolvent and the act of insolvency, which was alleged on behalf of the applicant, was that the opposite party, who was a partner in business with the applicant had not paid the profits which were due to the applicant on account of the business.

3. The application was resisted on behalf of the opposite party on the ground that such an application was not maintainable, firstly, because no relationship of creditor and debtor existed and secondly that the amount claimed was in the nature of unliquidated damages and as such the application was barred under the provisions of Section 9(1)(b), Provincial Insolvency Act.

4. The Court of first instance upheld the objections raised on behalf of the opposite party and held that the amount said to be due by the opposite party was in the nature of unliquidated damages and as such the application was barred under Section 9(1)(b), Provincial Insolvency Act. The applicant then went up in appeal to the District Judge who agreed with the view taken by the Court of first instance and dismissed the appeal. He has now come up in revision.

5. The first point which arises for determination in this case is whether there was a liquidated sum which was payable either immediately or at some, future time, Section 9(1)(b) of the Act is as follows :

> "A creditor shall not be entitled to present, an insolvency petition against a debtor unless
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> (b) the debt is a liquidated sum payable either immediately or at some future time."

6. In the present case, it is not disputed that the applicant and the opposite party were carrying on joint business, one contributing the capital and the other labour and that the amount which was alleged by the applicant to be due by the opposite party was on account of profits earned by the business. It was also alleged in the application that the opposite party had written the accounts himself and if the accounts were examined, the amount claimed by the applicant would be found

due. It remains, however, to be considered whether such a claim was or was not a 'liquidated sum' within the meaning of Section 9(1)(b) of the Act.

7. Learned counsel for the applicant has cited some rulings in which the question is said to have cropped tip. In -- 'Gangi Reddi v. Narasimha Reddi', AIR 1941 Mad 895 (A), the question which arose before the Madras High Court was if an order passed by ah insolvency Court rejecting an application merely because complicated questions of fact and law would arise was a good order. The facts of the reported case were that an application to adjudge another party an insolvent was presented and the defence of the alleged debtor was that the creditors had agreed to a composition scheme and had accepted it and as such no debt was due by him. The execution of the composition deed was, however, disputed and it was under these circumstances that the insolvency Court rejected the application. It was held, however, that an application for insolvency could not be rejected merely because complicated questions of law and fact would arise. This authority is not, therefore, of much assistance to us in this case.

Another case cited on behalf of the applicant is -- 'Ananta Kumar v. Sadhu Charan', AIR 1925 Cal 234 (B). In this case it appears that the only question which arose for determination was whether the plea taken by a debtor that no sum was due by him or that a very small sum was due could be determined by the insolvency Court and it was held that the decision of such a question was entirely the concern of the insolvency Court. In -- 'Bibi Janbi v. Abbas Ali', AIR 1941 Nag 167 (C), the point involved was altogether different. It was contended that a deferred dower debt was not a debt within the meaning of Section 9(1)(b) of the Act. It was, however, held in this case that a contingent interest would also be covered within the meaning of 'debt'.

In -- 'U Ba Thwin v. U Tun Tha', AIR 1935 Rang 435 (D), it was held by a Division Bench that a sum can be said to be liquidated if it could be computed with certainty and a debt would be said to be liquidated if it could be readily ascertained on inquiry. In this reported case a claim had been made for mesne profits on account of a share in an estate and it was contended that the mesne profits could be calculated from the rents collected. It was, however, held that the debt would not be a liquidated debt if it involved an elaborate inquiry in order to ascertain the net amount due. This last ruling in fact favours the contrary contention and not the argument advanced by the learned counsel for the applicant.

8. The applicant had in the present case alleged that a certain sum would be found due if the accounts prepared by the opposite party were examined and that the opposite party had not paid up that sum and he should, therefore, be adjudged an insolvent. As remarked above such a relationship between the two partners in business cannot be said to be that of a creditor and a debtor and the amount which may be found due on accounting cannot be said to be a liquidated sum within the meaning of Section 9(1)(b), Provincial Insolvency Act. We are, therefore, clearly of opinion that the application was not maintainable and the view taken by the two Courts below was correct.

9. The application is, therefore, dismissed with costs to the opposite party.

10. Since the revision application has been dismissed, Civil Miscellaneous Application No. 603 of 1952 is also dismissed.