

THE HON'BLE SRI JUSTICE K.C. BHANU
AND
THE HON'BLE MRS JUSTICE ANIS

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CIVIL MISCELLANEOUS APPEAL No.575 OF 2006

JUDGMENT:(per Hon'ble Sri Justice K.C.Bhanu)

This Civil Miscellaneous Appeal is filed challenging the Order, dated 03.08.2004, in Insolvency Petition No.10 of 2001 passed by the Principal Senior Civil Judge, Srikakulam, whereunder and whereby the petition filed by the petitioners to adjudicate them as insolvents was dismissed.

2. The brief facts that are necessary for the disposal of the present Civil Miscellaneous Appeal may be stated as follows:

The appellants/petitioners, who are brothers, jointly filed a petition under Sections 7 and 10 of the Provincial Insolvency Act, 1920 praying the Court to adjudicate them as insolvents and absolve them from all liabilities to their creditors. It is stated in the petition that they are residing in the petition 'A' and 'B' schedule properties; that they used to do paddy, rice, pulses and medical business and borrowed amounts from the respondents for the purpose of their business having executed the promissory notes, and sustained heavy loss in their business and could not repay the amounts; that except the petition 'A' to 'F' schedule properties, they have no other properties and hence the petition.

3. Some of the contesting respondents filed counters denying that for the purpose of business, appellants borrowed the amounts. They further stated that the 1st appellant was having T.V., steel almirah, fridge, brass and bronze vessels; that the appellants' family was exclusively running a medical and general

stores; that some of the creditors are not real creditors; that the appellants are having gold and silver ornaments worth about Rs.20,00,000/- and the house worth about Rs.10,00,000/-; and prayed to dismiss the petition.

4. Basing on the above pleadings, the point framed by the Court below for consideration was:

“Whether the petitioners are entitled to be adjudged as insolvents?”

5. During enquiry, on behalf of the appellants/petitioners, PW.1 was examined and no documents were marked. On behalf of the respondents, RWs.1 to 3 were examined and got marked Exs.B.1 to B.13.

6. The Court below upon considering material on record came to the conclusion that the appellants are guilty of suppression of facts relating to their assets. Challenging the same, the present Civil Miscellaneous Appeal is filed.

7. Learned counsel for the appellants contended that as the appellants sustained heavy loss in the business, they could not repay the amounts due to the respondents; that all the assets have been shown in the Insolvency Petition and except the properties mentioned in the Petition Schedule, the appellants have no other properties and therefore, he prays to set aside the impugned order.

8. None appears for the respondents.

9. Findings of the Insolvency Court are that the appellants' family is a trading family and they did business for a long time

viz., 15 years and therefore, they must have possessed the valuable movables, but the said fact has been suppressed; that such business people would not be without cash balance, but the cash has not been revealed by the appellants and they suppressed their assets relating to the movable and immovable properties. Therefore, the petition was dismissed.

10. PW.1 admitted that he used to maintain the accounts relating to business transactions and those books were available with him. But, the appellants have not filed the account books of their business to show that they sustained heavy loss in the business. Had they produced the books, the truth would have come out. There is wilful suppression of material evidence, which is in the custody of the appellants. The appellants have not come to the Court with clean hands. Therefore, an adverse inference can be drawn under Section 114(g) of the Indian Evidence Act, 1872.

11. It is in the evidence that the yearly turnover of the appellants' business was Rs.15,00,000/- and they used to do business on credit basis from their customers. If such is the case, the appellants must have possessed considerable amount. The said fact has been suppressed by the appellants. Furthermore, they are having properties worth more than the debts.

12. Considering these aspects, the learned Principal Senior Civil Judge, Srikakulam, rightly dismissed the Insolvency Petition. None of the findings is shown to be perverse or contrary to the law. The impugned order needs no interference by this Court.

13. Accordingly, the Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs. Miscellaneous Petitions, if

any, pending in this Civil Miscellaneous Appeal shall stand closed.

JUSTICE K.C. BHANU

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JUSTICE ANIS

Date:10.09.2014
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