

APHC011478522010



**IN THE HIGH COURT OF ANDHRA
PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3505]

TUESDAY ,THE TWENTY FOURTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

CIVIL REVISION PETITION NO: 7212/2017

Between:

Vaddempudi Sivannarayana

...PETITIONER

AND

Marella Venkata Rao and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.K RAMA KOTESWARA RAO

Counsel for the Respondent(S):

1.

The Court made the following:

1. The present revision petition is directed against the order dt.15.03.2010 in AS No.91 of 2006, on the file of the District Judge, Ongole. The case of the petitioner is that he filed Insolvency Petition vide IP No.46 of 2004, on the file of Additional Senior Civil Judge, Ongole against the respondents under section 10 of Provisional Insolvency Act to adjudicate him as insolvent.

2. It is the further case of the petitioner that, he did business in Tobacco and incurred loss. He further pleaded that he borrowed loans from the respondents by executing promissory notes and note letters. As he sustained heavy loss in the business and he has no properties to discharge the same, the Insolvency Petition was filed.

3. He further contended that the respondents pressuring for discharge of the debts and in fact the 1st respondent filed suit against the petitioner and obtained a Judgment and decree and thereafter the 1st respondent filed Execution Petition to arrest the petitioner, as such the present

petition is filed seeking to adjudicate him as insolvent. The 1st respondent alone filed counter affidavit denying the averments made in the Insolvency Petition and the other respondents remained ex-parte.

4. It is the case of the 1st respondent that, the petitioner suppressed about his properties and with a malafide intention to deprive the respondents to recover the debts, the insolvency application was filed. He further contended that except his debt, all other debts mentioned in the Insolvency Petition are fictitious.

5. It is further pleaded that the petitioner mortgaged his properties with Pinakini Grameena Bank, Yedugundlapadu, and the mortgage was redeemed subsequently, which would suffice to discharge the loan. Therefore, the Insolvency Petition is not maintainable and the same is liable to be dismissed.

6. The petitioner was examined himself as PW-1 and on behalf of 1st respondent, the 1st respondent himself was examined as RW-1. No documents are marked on behalf of the petitioner, the 1st respondent marked Exhibits B1 to B5. The Trial Court after considering the case, held that the petitioner has no income earning properties and he sustained heavy loss in the business. It

was also held that, though the 1st respondent pleaded that, the petitioner is having properties, no documentary proof is filed to substantiate the same and accordingly by order dt.02.02.2006 allowed Insolvency Petition by adjudging the petitioner as insolvent.

7. Aggrieved by the said order, the 1st respondent preferred an appeal vide AS No.91 of 2006, on the file of District Court, Ongole and after hearing the matter, the Appellate Court set aside the order passed in Insolvency Petition, adjudging the petitioner as insolvent, which is impugned in the present revision petition.

8. Heard learned counsel for the petitioner.

9. Despite of service of notice, none appeared for the respondents.

10. The Trial Court based on the evidence let in by PW-1 & 2 came to the conclusion that the petitioner has no income earning properties. Further the 1st respondent placed the Ex.B1 to B5, the depositions of Branch Manager, Pinakani Grameena Bank, Yedugundalapadu in E.P.No.486 of 2003 in OS No.82 of 2006, on the file of I Additional Junior Civil Judge, Ongole, in

which the petitioner herein was the defendant and the 1st respondent was the plaintiff.

11. On a perusal of the same, it is clear that the petitioner herein has obtained the loan by hypothecating the crop and he also produced 10-(I) Adangal, Pattadar pass books in respect of various Sy.No.23/2, 24 and 15 of Mynampadu Village, admeasuring a total extent of Ac.6-29 cents and also land an extent of Ac.0.90 cents of Sy.No.408/1, 445/1, 443/1 of Peddakothapalli Village. It is also clear that during the year 2003 and on 28.01.2004, he closed the Saving Bank loan account by discharging the same. Further to substantiate that he did business, the petitioner has not filed any documentary evidence including the license, payment of any tax to the Tobacco Board or the stocks sold to the purchasers. It is also clear that the petitioner was having a Account-Grower Registration No.2007/4066 in platform No.20, T.B.J.R.N.G.O and nothing is placed on record to show that, he did business. Further the Senior Grading Officer of Tobacco Board deposed that they issued license to the persons having land of Ac.5-00 or more, either owned by them or on lease. It is also not the case of the petitioner that he was having any lease, the 10-(i), Adangal and

also the properties hypothecating the crop in Sy.Nos.23/2, 24 and 15 of Mynampadu Village, admeasuring an extent of Ac.6-29 cents and also the land an extent of Ac.0.09 cents in Sy.No.408/1, 445/1, 443/1 of Peddakothapalli Village belonging to the petitioner. The Trial Court without examining the oral and documentary evidence put-forth by the 1st respondent came to the conclusion based on the evidence let in by the petitioner and believed that the petitioner has no income earning properties.

12. The Appellate Court having examined the same, has come to conclusion that the petitioner never conducted any business in tobacco except growing the same in the lands belonging to him and in fact the same is evident on a perusal of the Account-Grower Registration No.2007/4066 in platform No.20, T.B.J.R.N.G.O coupled with the fact that the petitioner has discharged the loan in Pinakani Grameena Bank.

13. From the above, it is clear that the petitioner in order to avoid the payment of debts to the 1st respondent filed the Insolvency Petition within unclean heads by suppressing of the material facts.

14. In that view of the matter, this Court does not find any merit in the revision petition in order dt.15.03.2010 passed in AS No.91 of 2006, by the District Judge, Ongole does not warrant any interference.

15. Accordingly, the Civil Revision Petition is dismissed.
No order as to costs.

JUSTICE T.C.D. SEKHAR

23.12.2024
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THE HONOURABLE SRI JUSTICE T.C.D. SEKHAR

CRP No.7212 of 2017
Date 23.12.2024

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