

**IN THE HIGH COURT OF SINDH, KARACHI**

**Insolvency Petition No.3 of 2018**

Petitioner : Abdul Ahad Ansari (Nemo).  
Respondent : Mst. Lubna Qaiser (Nemo).  
: Ch. Wasim Iqbal, Official Assignee.  
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Date of hearing: 29.09.2020  
Date of order: 29.09.2020  
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**ORDER**

**ZAFAR AHMED RAJPUT, J:-** Through instant petition, the petitioner namely Abdul Ahad Ansari son of Irfan Ahmed Ansari seeks his adjudication as “insolvent” under Section 10, 13 & 15 of the Insolvency (Karachi Division) Act, 1909 (“**the Act**”), alleging therein that two years before he was working as labourer but now due to diabetes, skin diseases, osteoarthritis and osteoporosis of left knee he is unable to do any job and has come at the verge of starvation and he has become insolvent, having no house articles moveable and immovable. It is further alleged by the petitioner that he was married with the respondent on 25.10.2013 but unfortunately due to some misunderstanding she left his house and filed Family Suit No.1594/2014, which was decreed by the XII<sup>th</sup> Family Judge, Karachi-Central in her favour. He preferred Family Appeal No.62/2016, which was also dismissed by the learned II<sup>nd</sup> Additional District Judge, Karachi-Central. Thereafter, the respondent filed Execution Application being No.5/2017 wherein the Executing Court has issued warrant of arrest against the petitioner as he failed to satisfy the decree of maintenance of Rs.6000/- per month with effect from April 2014 to December 2016, total comes to Rs.198,000/-, and dowry amount of Rs.58,000/-, and since the petitioner is unable to discharge his liabilities, as he is having no assets for the adjustment thereof, he has been compelled to file this petition as a last resort.

**2.** On 07.02.2018, the matter was fixed before the Assistant Registrar, Execution Branch of this Court when the petitioner was directed to appear before the Official Assignee for examination in respect of his affairs. In response thereof, the petitioner appeared before the Official Assignee on 28.2.2018 and got his statement recorded. On 07.03.2018, Official Assignee submitted Reference No.1/2018. The operative part thereof is reproduced as under:-

*5. That during examination, the petitioner also stated that he tried his best to save his matrimonial life and for reconciliation but all the efforts went into vain, therefore, he sent Talaq Ahsan to the lady on 31.12.2016. Mst. Lubna Qaiser decree-holder filed Ex. No.5/2017 and order dated 18.12.2017 has also been passed. He further stated that at present he is not in position to pay any single penny to Mst. Lubna Qaiser, whereas the concerned police is visiting his house and extending harassment to his family. Due to fear of arrest he has shifted himself to another place where presently he is residing. He also stated that as he is not in position to pay he has filed insolvency petition under Section 10, 13 and 15 of the Insolvency (Karachi Division) Act, 1909 before the Hon'ble Court praying therein to adjudge him as insolvent and has prayed for issuance of certificate as required under Rule 586(2) Sindh Chief Court Rules.*

*6. The Official Assignee respectfully submits that the petitioner has neither done any business nor sustained any loss. The matter was between husband and wife. The petitioner may pursue his matter at appropriate forum as the same does not fall under the provisions of Insolvency (Karachi Division) Act, 1909. Thus the instant petition is devoid of any merit and is liable to be dismissed being not maintainable.*

**3.** On 22.3.2018, the petitioner filed his objections to the said Reference, alleging therein that he has filed this petition on the ground of poor health and he is unable to do any work and at present he is passing

his life on the mercy of his well-wishers. Today, none is in attendance on behalf of the petitioner; I have heard the learned Official Assignee and have perused the material available on record with his assistance.

4. Section 14 of the Act lays down the conditions on which a debtor may petition for adjudging him an insolvent. That section read:

14. Conditions on which debtor may petition.—(1) A debtor shall not be entitled to present an insolvency petition unless—

- a) his debts amounts to five hundred rupees, or
- b) he has been arrested and imprisoned in execution of the decree of any Court for payment of money, or
- c) an order of attachment in execution of such a decree has been made and is subsisting against his property;

It appears from above section, that a person seeking adjudication must satisfy the conditions laid down therein. He must be a '*debtor*' and he must show that he is unable to pay his '*debt*'. The terms '*debt*' and '*debtor*' have been defined in section 2 (b) of the Act as '*debt*' includes a *judgment-debt*, and '*debtor*' includes a *judgment-debtor*, which in my opinion is not helpful in deciding the question at issue.

5. As per Corpus Juris secundum, volume twenty-six, page-1 to 3, the word '*debt*' is derived from the Latin '*debere*' meaning to owe, '*debitum*' meaning something owned. It is common-law word of technical meaning: but it has no fixed legal meaning. It is used in different statutes in senses varying from a very restricted to a very general one. The word implies the existence of a debtor, legality of the obligation, the existence of a consideration, and execution of performance by the creditor. As a legal term, '*debt*' is an obligation arisen out of contract express or implied, which entitles the creditor unconditionally to receive from the debtor sum of money, which the debtor is under legal, equitable and moral duty to pay without regard to any future contingency.

6. The legal concept of 'debt' has been stated by Blackstone in his classical commentaries on the Law of England, (12) Volume 3 (3<sup>RD</sup> Edition) page 162 as follows:

*“the legal acceptance of debt is a sum of money due by certain and express agreement; as, by a bond for a determinate sum; a bill or note; a special bargain: or a rent reserved on a lease; where the quantity is fixed and specific, and does not depend upon any subsequent valuation to settle it. The non-payment of these is an injury, for which the proper remedy is by an action of debt, to compel the performance of the contract and recover the special sum due. This is the shortest and surest remedy; particularly where the debt arises upon a specialty that is upon a deed or instrument under seal. So also, if I verbally agree to pay a man a certain price for a certain parcel of goods, and fail in the performance, an action of debt lies against me; for this is also a determinate contract; but if I agree for no settled price, I am liable not to an action of debt, but to a special action, according to the nature of my contract.”*

7. The term 'maintenance' has not been defined in the Family Court Act, 1964; therefore, we have to look at its dictionary meaning. It has been described in Black's Law Dictionary, Sixth Edition, at page 953 as:

*“sustenance; support; assistance; aid. The furnishing by one person to another, for his or her support, of the means of living, or food, clothing, shelter, etc. particularly where the legal relation of the parties is such that one is bound to support the other, as between father and child, or husband and wife.”*

8. According to common-law concept, neglect or refusal to support the wife by making her an allowance suitable to her position during period she remains in matrimonial bond with him, gives right to the wife to sue the husband for maintenance, and the grievance of the wife is redressed by awarding to her proper maintenance and compel the husband to pay it.

**9.** Under Muslim Law, which governs the parties in the instant case, a Muslim husband/father is under obligation to maintain his wife/children. He owes this duty, not because of any contractual obligation, or as a debt due from him to the wife and children, but because of the policy of the law which imposes the obligation upon the husband/father. Such obligation is personal in character and arises from the very existence of the relationship of the spouses. When a husband refuses or neglects his legal duty, the Court enforces that duty by making a decree in favour of the wife. When the Court awards maintenance to the wife against her husband, it does not enforce the payment of any debt, as the maintenance does not arise from any contract express or implied, but from the relation of marriage and the maintenance is awarded not in payment of debt but in performance of a duty of the husband to support his wife measured by the decree of the court. Unless insolvency releases a man altogether from the obligation to maintain his wife/children, the husband/father cannot obtain discharge of his liability under a decree for maintenance by recourse to insolvency. The object of insolvency law is not to deprive the wife/children of support and maintenance due from the husband/father which has never been the purpose of the law to enforce. Unless expressly required by statutory enactment, the Court should not presume the intention on the part of the Legislature in providing a law for giving relief to unfortunate debtors, to make the law a means of avoiding enforcement of moral and legal obligation devolved upon the husband/father to maintain his wife/children.

**10.** The petitioner has filed this insolvency petition in order to defeat the right of respondent/wife to realize the amount due under the maintenance decree. I am of the view, if the obligation of the husband, in the absence of a judgment or order does not constitute a debt owned by him to his wife, it does not, become a debt when the very same obligation is enforced by decree of the court and therefore, what the

Court has to ascertain is whether the obligation to maintain one's wife is a '*debt*' for the purpose of the Act. What is not a debt does not become a debt when the same obligation is enforced by decree or order of Court. I, therefore, hold that the decree as the one here under consideration is not a '*debt*' within the meaning of the Act, it cannot form the basis of adjudication of the petitioner/husband as insolvent. The instant petition is, therefore, being not maintainable and devoid of any legal merit is dismissed, accordingly.

**11.** Above are the reasons of my short order dated 29.09.2020.

JUDGE

Abrar