

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Insolvency Appeal No.01 of 2016

Date	Order with signature of Judge
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For hearing of main case

10.01.2022

None for the Appellants

None present nor any intimation received. Same was the position on the last date of hearing, whereas, this is a date by Court matter. It appears that this matter was heard by another bench on 3.12.2021 and after arguing the matter at length, appellants Counsel had sought time to place on record case law to support his arguments. Thereafter matter was adjourned to 3.12.2021 at 11.00 A.M; when no one turned up on behalf of the Appellant and matter was adjourned to 23.12.2021. On 23.12.2021 once again no one appeared on behalf of the Appellant and the matter was adjourned for today for re-hearing. It further appears that this appeal is also being fixed as to maintainability pursuant to order dated 13.3.2020.

The conduct as above reflects that the Appellant is not interested in proceeding with this Appeal; hence, the Appeal ought to have been dismissed for Non-prosecution; however, since this matter relates to insolvency of the Appellant, I have even otherwise perused the record and the impugned order and apparently no ground for any indulgence is made out. The impugned order reflects that the Appellant had failed to produce any documentary evidence to prove his low income or inability to pay the accrued debts. Such being the most pivotal and important aspect of the matter in an insolvency case, it is not understandable as to on what grounds the Appellant had sought insolvency declaration.

An insolvency petition can be filed by a debtor (Appellant) in terms of section 10 of The Provincial Insolvency Act, 1920, for seeking such declaration and must state his inability to pay his debts and that his debts

amount to Rs. 500/- or more. Section 13¹ of the said Act specifies the particulars which are required to be stated in the insolvency petition. Section 24(1)² provides that when the insolvency petition is filed by the debtor he shall have to furnish such proofs which will satisfy the court to believe that there are prima facie grounds that he was unable to pay his debts otherwise the court will not hear the application. Section 25 provides that if the debtor-petitioner fails to satisfy his inability to pay the debts his application shall be dismissed.

All these requirements are a pre-requisite before an insolvency petition can be heard and adjudicated upon. Therefore, the only question which is required to be considered in an insolvency petition is whether the debtor has furnished prima facie grounds to prove his inability to pay the debts and whether he has disclosed in the insolvency petition all the parties specified in Section 13 of the said Act.

Perusal of the record as noted hereinabove does not reflect that any of these conditions have been met, whereas, notwithstanding these shortcomings, the learned Court below had admitted the petition and allowed the Appellant an opportunity to prove its case, which apparently the Appellant failed to do so. I have also examined the affidavit in evidence filed by the Appellant in support of his contention, and it

¹ Section 13(1) : Every insolvency petition presented by a debtor shall contain the following particulars, namely--

- (a) a statement that the debtor is unable to pay his debts;
- (b) the place where he ordinarily resides or carried on business or personally works for gain, or, if he has been arrested or imprisoned, the place where he is in custody;
- (c) the Court (if any) by whose order he has been arrested or imprisoned, or by which an order has been made for the attachment of his property, together with particulars of the decree in respect of which any such order has been made;
- (d) the amount and particulars of all pecuniary claims against him, together with the names and residences of his creditors so far as they are known to, or can by the exercise of reasonable care and diligence be ascertained by him;
- (e) the amount and particulars of all his property, together with--
 - (i) a specification of the value of all such property is to be found; and
 - (ii) the place or places at which any such property is to be found; and
 - (iii) a declaration of his willingness to place at the disposal of the court all such property save in so far as it includes such particulars (not being his books of account) as are exempted by the Civil P. C., V of 1908, or by any other enactment for the time being in force from liability to attachment and sale in execution of a decree;

² Section 24(1) : On the day fixed for the hearing of the petition, or on any subsequent day to which the hearing may be adjourned, the Court shall require proof of the following matters, namely,--

- (a) that the creditor or the debtor, as the case may be, is entitled to present the petition :
Provided that, where the debtor is the petitioner, he shall, for the purpose of providing his inability to pay his debts, be required to furnish only such proof as to satisfy the Court that there are prima facie grounds for believing the same and the Court, if and when so satisfied, shall not be bound to hear any further evidence thereon;
 - (b) that the debtor, if he does not appear on a petition presented by a creditor, has been served with notice of the order admitting the petition; and
 - (c) that the debtor has committed the act of insolvency alleged against him.
- (2) The Court shall also examine the debtor, if he is present, as to his conduct, dealings and property in the presence of such creditors as appear at the hearing, and the creditors shall have the right to question the debtor thereon.

appears that even in his affidavit the Appellant could not bring forth any supporting material so as to prove his case. He has stated that for making payment to certain creditors he also sold some of his properties, but in the entire petition and the affidavit in evidence he failed to place on record any documentary evidence so as to assist the court that what was the detail of the said property; for how much amount it was sold; and as to in what manner and how some of the creditors were paid out of it. All these shortcomings in the case of the Appellant does not support his case in any manner, and a mere filing of such a petition does not entitles him for grant of the same. The impugned order appears to be correct in law and does not require any interference from this Court; hence, this appeal even on merits fails, and is accordingly dismissed.

JUDGE