

to prove that the sale was for necessity. Therefore it was desirable that at any rate the debts which it was suggested were paid off out of the purchase price should have been recited in the deed and it was not sufficient that there should be merely a recital that the property had been sold for debts. The learned Judge pointed out:—

“There is absolutely nothing to show that Daji was really indebted. He possessed considerable land, both at Delada and Dholgam. It is probable that the suit lands were sold because the widow who resided at Dholgam could not manage them. On the evidence I am not prepared to hold that the sale was for necessity.”

In any event it is impossible to come to the conclusion that the learned Judge was wrong in his appreciation of the evidence. The defendant has also failed to prove that his father spent about a thousand rupees on improvements as alleged in this case, and as the revenue of the land is said to be Rs. 320 a year, we think the defendant must have recouped the money which his father spent in purchasing the property with interest thereon. The appeal fails and must be dismissed with costs.

*Decree confirmed.*

J. G. R.

### APPELLATE CIVIL.

*Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.*

THE LAXMI BANK, LIMITED, POONA (ORIGINAL OPPONENT No. 6),  
APPELLANT v. RAMCHANDRA NARAYAN APTE (ORIGINAL APPLICANT),  
RESPONDENT<sup>o</sup>.

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*Provincial Insolvency Acts (Act III of 1907), sections 11 14 and 15, (Act V of 1920), sections 10 and 24—Debtor's petition—Inability to pay debts—Practice.*

An issue whether the petitioning debtor has made a true and full disclosure of his property is not pertinent at an inquiry under section 15 of the Provincial

<sup>o</sup> Second Appeal No. 706 of 1921.

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Insolvency Act, 1907, provided the petitioner has given the particulars required with regard to his property.

The Provincial Insolvency Act of 1920 has made no change with regard to what is required to be proved before it can be decided that the petitioner has a right to present his petition.

SECOND appeal from the decision of G. K. Kale, Joint Judge of Poona, in Miscellaneous Appeal No. 1 of 1921; reversing the order passed by, and remanding the application to, J. N. Bhatt, Additional First Class Subordinate Judge at Poona.

This was an application by a debtor to be declared insolvent under the provisions of the Provincial Insolvency Act, 1907.

The issues raised at the trial were :—

- (1) Whether the petitioner has made a true and full disclosure of his property.
- (2) Whether his debts amount to Rs. 500.
- (3) Whether he is unable to pay them.

The findings recorded were : (1) No ; (2) Yes ; (3) No. As the result of findings the petition was dismissed.

The Assistant Judge on appeal was of opinion that the finding recorded on the first issue did not necessitate a dismissal of the petition. The order for dismissing the petition was, therefore, reversed and the application was directed to be heard on merits.

The opponent No. 6 appealed to the High Court.

The appeal was placed before Macleod C. J. and Shah J. for admission.

*S. Y. Abhyankar*, for the appellant.

MACLEOD, C. J.:—The petitioner filed a petition under the Provincial Insolvency Act (III of 1907) shortly before Act V of 1920 was passed. The petition, therefore, would have to be proceeded with under the provisions of Act III of 1907.

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Under section 14 (1) of the Act, 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 that the creditor or the debtor, as the case may be, is entitled to present the petition. Under section 6 (3) the debtor shall not be entitled to present an insolvency petition unless (a) his debts amount to five hundred rupees; or (b) he has been arrested or imprisoned in execution of the decree of any Court for the payment of money. Under section 11 (1) every insolvency petition presented by a debtor shall contain a statement that the debtor is unable to pay his debts.

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When the petition came on for hearing the following issues were raised: (1) whether the petitioner has made a true and full disclosure of his property, (2) whether his debts amount to Rs. 500, and (3) whether he is unable to pay them. Under section 15 (1) where the Court is not satisfied with the proof of the right to present the petition, or of the service of notice on the debtor, or of the alleged act of insolvency, or is satisfied by the debtor that he is able to pay his debts or that for any other sufficient cause no order ought to be made, the Court shall dismiss the petition. The issue whether the petitioner has made a true and full disclosure of his property would not be pertinent at the inquiry under section 15, provided the petitioner has given the particulars required with regard to his property, as it is not until after the adjudication that it can be ascertained whether the petitioner has made a true and full disclosure. The trial Judge seems to have dismissed the petition on the very ground on which he ought to have entertained it, namely, the unsatisfactory conduct of the debtor with regard to his property, for it would only be by the administration of the estate in insolvency that the claims of the creditors could be

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properly protected. He also thought that the debtor had not satisfied the Court that he was unable to pay his debts, but we think that this finding was based on wrong grounds.

In appeal the Joint Judge dealt merely with the question whether the debtor was unable to pay his debts, and though it was rightly held that the insolvency should proceed under the provisions of Act III of 1907 he appears to have thought that the new Act had made a change with regard to what was required to be proved before it could be decided that the petitioner had a right to present his petition. As a matter of fact there is no material difference in this respect between the Act of 1907 and the Act of 1920. Under section 11 (1) of Act III of 1907 the debtor has to state in his petition that he is unable to pay his debts, and if either on the face of the proceedings or on a representation by the opposing creditor the Court is satisfied that this statement is not correct, it can dismiss the petition. But if the debtor has made a disposal of his property with a view to defraud his creditors who might otherwise have been paid, then the Court is not justified in holding that he is able to pay his debts, but should admit the petition, so that the interest of the creditors may be benefited by the special powers given to the Court while administering an insolvent's estate. The order of remand was rightly made though the reasons given for making it were not correct. Therefore we dismiss the appeal. When the trial Court takes up the petition again according to the order of remand made by the lower appellate Court, the learned Judge will, no doubt, deal with the petition in the light of our remarks.

*Appeal dismissed.*

R. R.