2025:BHC-OS:21502

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS INSOLVENCY JURISDICTION

INSOLVENCY PETITION NO. 01 OF 2025

Mehul Jagdish Trivedi
Aged 33 years, Occ. Service,
R/a. F-202, Sattellite Park,
Gufa Road, Jogeshwari (E),
Mumbai-400 060. ....Petitioner (Debtor)

Versus

Manisha Mehul Trivedi
Aged 32 years, Occ. Service,
R/a. C/o. Harshad Kumar Chawda,
1/2, Shantiniwas, Near French Bridge,
Chowpatty, Mumbai-400 007. ....Objector/
Respondent (Creditor)

Mr. Siddh Pamecha i/by Mr. Kuber Wagle for the Petitioner (Debtor).

Ms. Rekha Rane, Insolvency Registrar present.

CORAM : JITENDRA JAIN, J.
RESERVED ON : 14th NOVEMBER, 2025
PRONOUNCED ON : 20th NOVEMBER, 2025

JUDGMENT :

1. This petition is filed under Section 14 of the Presidency-Towns Insolvency Act, 1909 (Insolvency Act) by the petitioner seeking a declaration that the petitioner be declared as an insolvent under the provisions of the said Act and further seeks stay of the execution proceedings in respect of an order dated 17th May, 2021 passed by the Family Court, Mumbai, whereby the petitioner was directed to pay

maintenance of Rs.25,000/- per month under Section 125 of the Code of Criminal Procedure (Cr.P.C.).

Brief Facts :-

2. The petitioner-husband is a dance teacher staying in suburb of Mumbai and the respondent-wife is staying in South Mumbai.

3. On 28th January, 2014 petitioner-husband and respondent-wife tied marital knot. Within 2 months of marriage, there were differences resulting into dispute reaching the Family Court pursuant to proceedings filed by the respondent-wife.

4. On 17th May, 2021, the Family Court passed an order under Section 125 of the Code of Criminal Procedure ordering the petitioner-husband to pay Rs.25,000/- p.m. towards maintenance to respondent-wife w.e.f. 15th June, 2015. The said order has been challenged by the petitioner-husband by filing separate proceedings namely, Criminal Revision Petition, before the High Court which is pending as of today. The Family Court has rejected the contention of the petitioner-husband that his earnings are Rs.15,000/- p.m. only.

5. In the above backdrop, the present petition is filed for the reliefs stated above.

6. The ground on the basis of which the petition has been filed is that the petitioner is earning Rs.12,000/- to Rs.15,000/- per month, whereas the arrears amount calculated to be paid as per the Family Court's order is Rs.22,30,000/- and since he has no means to pay the said amount, he be declared as an insolvent.

7. The learned counsel for the petitioner in support of his aforesaid plea, relied upon Section 14(1)(a) read with Section 9(1)(f) of the Insolvency Act and contended that since the debts are more than Rs.500/-, the petitioner be declared as an insolvent and also took support of Explanation to Section 10 of the said Act. The learned counsel for the petitioner also relied on the observation made in the order dated 15th July, 2025 in the present matter, which was passed at the behest of the objector for vacating the ad-interim order.

8. The learned counsel for the petitioner has not made any further submissions or brought to the attention of the Court any judgments on the issue which is raised for consideration of the Court either in favour of the petitioner or against the petitioner.

Analysis and Conclusion :

9. The short point which requires adjudication in the present petition is whether the petitioner can be declared as an "insolvent" under the Presidency Towns Insolvency Act, 1909 since according to him he is unable to pay the amount ordered by the Family Court.

10. Relevant provisions of the Presidency Towns Insolvency Act, 1909 are as under :-

> Section 2 – Definitions–
> (b) "debt" includes a judgment-debt, and "debtor" includes a judgment-debtor.
>
> Section 9 – Acts of insolvency–
> (1) A debtor commits an act of insolvency in each of the following cases, namely,--
> (f) if he petitions to be adjudged an insolvent;

Section 10 – Power to adjudicate–
Subject to the conditions specified in this Act, if a debtor commits an act of insolvency, an insolvency petition may be presented either by a creditor or by the debtor, and the Court may on such petition make an order (hereinafter called an order of adjudication) adjudging him an insolvent.

Explanation– The presentation of a petition by the debtor shall be deemed an act of insolvency within the meaning of this section, and on such petition the Court may make an order of adjudication.

Section 11 – Restrictions on jurisdiction–
The Court shall not have jurisdiction to make an order of adjudication, unless—
(a) the debtor is at the time of the presentation of the insolvency petition, imprisoned in execution of the decree of a Court for the payment of money in any prison to which debtors are ordinarily committed by the Court in the exercise of its ordinary jurisdiction.

Section 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.

Section 45 – Effect of order of discharge–
(1) An order of discharge shall not release the insolvent from–
(d) any liability under an order for maintenance under section 488 of the Code of Criminal Procedure, 1898.

11. Section 14(1)(a) of the Insolvency Act provides for conditions on the basis of which debtor may petition and it provides that a debtor shall not be entitled to present an insolvency petition unless his debts amount to Rs.500/-. In my view, Section 14(1)(a) of the Insolvency Act only lays down the qualifying amount for presenting or filing the insolvency petition by a debtor. Merely because the debts are more than Rs.500/-, it does not mean that automatically on a petition being filed, the Court has no option, but to declare the petitioner as an insolvent. Section 14(1)(a) read with Section

9(1)(f) only entitles a person to present an insolvency petition by treating the same as an act of insolvency but that would entitle the debtor to contend that order of adjudicating him as an insolvent is to follow as a right. This provision is only for the purpose of defining eligibility to file the petition and not for an automatic order by the Court to be declared as an insolvent.

12. Section 11(a) provides that the Court shall not have jurisdiction to make an order of adjudication unless the debtor is imprisoned in execution of the decree of a Court for payment of money in any prison **at the time of the prosecution of the insolvency petition.** In the instant case, it is not the case of the petitioner that at the time of the presentation of the present petition he was imprisoned though he may have been arrested/imprisoned prior to the date of filing the present petition. Therefore, even on this count, this Court would not have jurisdiction to make an order of adjudication.

13. Section 10 of the Insolvency Act provides/empowers the Court to make an order of adjudging the petitioner as an insolvent. The Explanation to Section 10 provides that the presentation of a petition by the debtor shall be deemed to be an act of insolvency within the meaning of the section and on such petition the Court may make an order of adjudication. Firstly, the phrase used in the Explanation is that the Court “may” make an order. Wherever the legislature in the Insolvency Act wanted to make a provision mandatory, they have used the word “shall”. Therefore, a conscious departure has been made in the said Explanation by using the word “may”. It is at the discretion of the Court whether to make an order of adjudication or not. If the legislature wished not want to give such a discretion to the Court, the provision would have been worded to state that once a petition

is filed by a debtor whose debts are more than Rs.500/-, then the Court shall make an order of adjudication. Therefore, to say that merely because a petition is filed by a debtor, the Court has no other option, but to make an order of adjudication on deeming the presentation of a petition as an act of insolvency would be to read the Explanation as mandatory. In my view, on a reading of Section 10 and the Explanation, the power to adjudicate a person as an insolvent cannot be read to be mandatory and the Court has the discretion in the peculiar facts of a particular case to refuse a person from being declared as an insolvent. Therefore, the contention raised by the learned counsel for the petitioner by placing reliance on Section 10 and thereby submitting that, since the petition has been filed, there is no other option but to declare the petitioner as an insolvent, cannot be accepted.

14. Assuming the powers of the Court to adjudicate the petitioner as insolvent is treated as mandatory on filing the petition and the word “may” is read as “shall”, still the Court in the facts of the present case would restrain itself in passing the order of adjudication of the petitioner as insolvent. The Insolvency Act cannot be abused to seek stay of the Family Court order granting maintenance when the petitioner himself has challenged that order in Criminal Revision Petition. Any relief granted in this petition would amount to this Court adjudicating the said Revision Petition which is not permissible. The object of the Insolvency Act is not to encourage this course of action. Therefore, even on this count, this Court cannot grant any relief sought for by the petitioner. This Court cannot be used as a tool to do indirectly what is not permissible directly.

15. Section 10 begins with “subject to the conditions specified in this Act” and Section 11(a) does not empower the Court to pass an order of adjudication if the debtor is not imprisoned at the time of presentation of

insolvency petition. Therefore, on a conjoint reading, this Court cannot pass an order of adjudication merely on the basis of filing of the petition which is treated as an act of insolvency.

16. The learned counsel for the petitioner has also relied upon Section 9(1)(f) of the Insolvency Act which states that a debtor commits an act of insolvency if he petitions to be adjudged as an insolvent. In my view, the reliance placed on this provision is misplaced. The basis of the present petition is that the petitioner is unable to make the payment to his wife as per the order of the Family Court dated 17th May, 2021. As per the Family Court's order, the petitioner is a debtor and the wife of the petitioner is a creditor. Section 9(2) of the Insolvency Act provides that, a debtor commits an act of insolvency if a creditor who has obtained a decree or order against him for the payment of money has served on the debtor a notice as provided in sub-section (3), and the debtor does not comply with that notice within the period specified therein, then in such a scenario, unless the insolvency notice is set aside on an application made by the debtor, he will be treated as an insolvent.

17. The insolvency notice, as per sub-section (3) of Section 9 of the Insolvency Act, shall be in the prescribed form and served in the prescribed manner specifying the amount due under the decree or order and should also specify compliance within certain period specified therein, and shall state the consequences of non-compliance.

18. In the instant case, the creditor-wife has not issued a notice under Section 9(2). The facts of the present case and on the basis of which, the present petition is filed is an amount to be paid under an order of the Family Court dated 17th May, 2021. Since, under the Insolvency Act, there is a specific provision under Section 9(2) for dealing with insolvency

proceedings on the basis of a decree or order for payment of money, the petitioner cannot take shelter of Section 9(1)(f) of the Insolvency Act, and cannot bypass the provisions of sub-section (2) of Section 9 for declaring himself as an insolvent.

19. Section 9(1)(f) is a general section, whereas Section 9(2) is a specific and special provision and it is a settled position that a special provision has to prevail over the general provision. The contention of the petitioner to declare himself as an insolvent by placing reliance on Section 9(1)(f) when the facts and the basis of the petition fall under Section 9(2), cannot be entertained.

20. It is a settled position that what cannot be done directly cannot be done indirectly. By this petition, the petitioner is attempting to frustrate the order of the Family Court dated 17th May, 2021, by seeking a declaration of insolvency. It is also important to note that the order of the Family Court is dated 17th May, 2021 and according to the petitioner, his income is around Rs.15,000/- all throughout, still the petition was lodged in May 2023, after a period of two years to frustrate the order of payment made by the Family Court. The petitioner cannot adopt a *modus operandi* by taking recourse to the Insolvency Act to modify or frustrate the order passed by the Family Court. The petitioner has adopted separate proceedings for challenging the Family Court order and by adopting the present proceedings, he is attempting to stall these proceedings whereby the Family Court's order is again sought to be challenged. In my view, on the basis of the analysis made by me above, such a course of action cannot be adopted and the Court cannot exercise its discretion under Section 10 for declaring the petitioner, in the facts of the present case, as an insolvent.

21. Effect of order of adjudication is that under Sections 18 and 25 of the Insolvency Act, proceedings against an insolvent in any Court would not only be stayed but an order for protection from arrest or detention may also be passed. In the instant case, the petition is based on the Family Court's order dated 17th May, 2021 and by this petition an attempt is made to stall the Family Court proceedings and avoid any arrest for non-compliance of any order. It cannot be overlooked that the order of Family Court has been challenged in the Criminal Revision proceedings before this Court and, therefore, allowing the present petition would be permitting the petitioner to adopt two parallel proceedings after electing one. Therefore, in my view, such an attempt cannot be achieved by taking recourse to proceedings under the Insolvency Act for declaration of the petitioner as an insolvent.

22. If the contention of the petitioner is that, irrespective of him being declared as an insolvent, the liability under the Family Court's order would continue and the proceedings under the Family Court's Act can be taken independently, then in that scenario I fail to understand why the present petition is filed only on the basis that he is unable to discharge the liability under the Family Court's order. This is contradiction in itself. It is the contention of the petitioner that the persons from whom he has taken loan are not seeking recovery and further the recovery under the Family Court order is saved by virtue of Section 45 of the Insolvency Act, then, I fail to understand where is the apprehension of him for non-payment of any debt to declare him as an insolvent.

23. The reliance placed by the learned counsel for the petitioner on the order dated 15th July, 2025 to contend that an act of filing a petition is an act of insolvency and, therefore, this Court cannot adjudicate upon the maintainability, is misconceived. The said order merely reproduces what is

stated in Sections 10 and 14 of the Insolvency Act and directed the Insolvency Registrar to determine whether any of the requirements of Section 14 are satisfied for being adjudicated as an insolvent. Therefore, by this order, there is no adjudication of the petitioner being declared as an insolvent. This order was only for modification of ad-interim order sought for by the objector.

24. It is important to note that in the preliminary examination report dated 01st October, 2025, the petitioner has submitted that he has taken loans prior to and post the order of the Family Court dated 17th May, 2021 and further he has stated that two of such creditors, namely, R. V. Gorgi and Co. and Priya Padlekar have not issued any letter for recovery with respect of the said loan. However, there is no such averments with respect to the loan from Jagdish Trivedi and Ashwin Kacha. If the petitioner's contention that he is earning only Rs.15,000/- and, therefore, is not able to make the payment under the Family Court order is accepted, then I fail to understand that even during the period when he had taken the loan, his income was Rs.15,000/-, which on his own saying, would result in his incapacity to make repayment of loans, then in that case, why he did not make an application for being declared as insolvent in 2019 and 2023. It is also unbelievable that the persons from whom he has taken a loan would not ask for repayment, nor has any statement of such lenders been furnished waiving the loan.

25. The only basis canvassed before me by the learned counsel for the petitioner for declaring the petitioner as insolvent is on the basis of Section 14(1)(a) read with Section 10 read with Section 9(1)(f) of the Insolvency Act and the Family Court's order dated 17th May, 2021.

26. The issue whether the order/decree of a Civil Court passed against the husband for maintenance of his wife is a "debt" or not came up for consideration in the case of ***Hemavathiamma vs. Kumaravela Mudalia***[1]***,*** before the Mysore High Court. The said decision after analyzing the meaning of the word "debt" came to a conclusion that amount payable for the maintenance of wife cannot be termed as a debt but it is a moral duty and, therefore, an order of declaring the respondent therein as an insolvent cannot be passed under the Provincial Insolvency Act. The provisions of the Presidency Towns Insolvency Act, 1909 is *pari materia* to the Provincial Insolvency Act and, therefore, in my view, this decision squarely applies to the facts of the present case. Since the amount payable under the order of the Family Court cannot be a "debt", the present petition on the basis of Section 14(1)(a) cannot be said to be maintainable. I may clarify that before me, the petitioner has not rested his case on any other provision except Section 14(1)(a). Relevant paragraphs of the Mysore High Court reads as under :-

> *12. The ratio desidendi of the decisions of the Courts in England and U. S. A. holding that alimony is not provable in bankruptcy is, that the award of alimony or maintenance does not arise from any contract express or implied, but from the relation of marriage and that the alimony or maintenance is awarded not in payment of a debt but in performance of a general duty of the husband to support his wife, made specific and measured by decree of court. In the words of Justice Day, who delivered the opinion of the Supreme Court of U. S. A. in Wetmore v. Markoe, (1904) 49 Law Ed. 390 the principle is stated thus:*
>
> *".....the doctrine that a decree awarding alimony to the wife or children or both, is not a debt which has been put in the form of a Judgment, but is rather a legal means of enforcing the obligation of the husband and father to support and maintain his children. He owes this duty, not because of any contractual obligation, or as a debt due from him to the wife, but because of the policy of*

1 AIR 1968 Mysore 111

the law which imposes the obligation upon the husband. The law interferes when the husband neglects or refuses to discharge this duty, and enforce it against him by means of legal proceedings".

Under the Hindu Law, which governs the parties in the instant case, a Hindu is under a legal obligation to maintain his wife, his minor sons, his unmarried daughters and his aged parents, whether he possesses any property or not. The obligation to maintain these relations is personal in character and arises from the very existence of relationship of the parties. When a Hindu refuses or neglects his legal duty, the court enforces that duty by making a decree in favour of the wife or children. When the court awards maintenance to the wife against her husband, it does not enforce the payment of any debt. Unless insolvency releases a man altogether from the obligation to support his wife and children, the husband 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 and children of the support and maintenance due from the husband and father which it has ever been the purpose of the law to enforce. Systems of bankruptcy or insolvency have been designed with the object of relieving the honest debtor from the weight of indebtedness which has become oppressive and to permit him to have a fresh start in business or commercial life freed from the obligation and responsibilities which may have resulted by his misfortunes. 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 obligation moral and legal devolved upon the husband to support his wife and to maintain and educate his children.

13. *If liability under a decree for maintenance against the husband is held to be a debt provable in insolvency, on his discharge, the husband would be released from all obligation to support his wife. Under S. 28 of the Act, the entire salary or personal earnings of an insolvent after an adjudication, does not vest in the Receiver, but only so much of the salary or personal earnings as are not exempt from attachment under Section 60 of the Code of Civil Procedure. Salary to the extent of first Rs. 200 and one half of the remainder is exempt from attachment under Section 60(1)(i) of the Code. Now, take the instance of an insolvent earning a salary of Rs. 200. His salary will be entirely his and not a paisa out of it will vest in the Receiver for distribution among*

his creditors. Now, if the obligation to maintain the wife and children is held to be a provable debt against the estate of the insolvent, the wife and children cannot claim any portion of the salary for their maintenance.

14. The reason given by the High Court of Madras in the decisions cited above for distinguishing the ratio of the English cases, was that a decree or order for maintenance in India unlike an order for alimony in England is unalterable and therefore, it is a debt provable in insolvency. Similar contention was urged in (1904) 49 Law Ed 390 before the U. S. A. Supreme Court. It was a case where the liability for maintenance had become fixed by an unalterable decree. It was held that the ground of distinction urged did not change the nature of the obligation on which the judgment is founded. This is what Mr. Justice Day in repelling the contention stated:

"While it is true in this case the obligation has become fixed by an unalterable decree so far as the amount to be contributed by the husband for the support is concerned, looking beneath the judgment for the foundation upon which it rests, we find it was not decreed for any debt of the bankrupt, but was only a means designed by the law for carrying into effect, and making available to the wife and children, the right which the law gives them as against the husband and father".

In my opinion, the reasoning of the decision in (1904) 49 Law Ed. 390 is equally applicable to cases arising under Indian Insolvency Acts. In my opinion, if the obligation of the husband, in the absence of a judgment or order does not constitute a debt owed by the husband to his wife, it does not, become a debt when the very same obligation is enforced by decree of court and therefore, what the court has to ascertain is whether the obligation to support one's wife and minor children Is a "debt" for the purposes 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. In my judgment, the decree as the one here under consideration is not a 'debt' within the meaning of the Act and it cannot form the basis of adjudication of the husband, an insolvent.

27. It is also important to note that 17th May, 2021 order of the Family Court has been challenged by the petitioner and, therefore, the sum

directed to be paid may undergo a change. Even on this count "debt", assuming it is, has not crystallized and reached finality. The above decision of the Mysore High Court was found in the file because it was tendered on previous occasions. No attempt was made by the learned counsel for the petitioner to make any submissions on this decision or to distinguish the same.

28. Section 45 of the Insolvency Act would also not be applicable to the facts of the present case. Firstly, Section 45 deals with the effect of an order of discharge, whereas the present proceedings concern whether to adjudicate the petitioner as an insolvent. Secondly, Section 45(1)(d) provides that an order of discharge shall not release the insolvent from any liability under an order for maintenance under Section 488 of the Code of Criminal Procedure, 1898. Section 45(1)(d) does not deal with the Code of Criminal Procedure, 1973, though Section 488 of the old law is *pari materia* to Section 125 of the new law. Reading of Section 488 of the Code of Criminal Procedure, 1898 to mean Section 125 of the Code of Criminal Procedure, 1973 would be rewriting the law. Therefore, Section 45 cannot support the case of the petitioner. In any case, the legislature should consider amending Section 45(1)(d) to bring in line with the new law.

29. On a reading of prayer clause (b), seeking a stay of the Family Court order, the petitioner, under the guise of insolvency proceedings would undermine the very purpose of the order passed by the Family Court and would embolden the debtor to escape liability through insolvency proceedings. Petitioner seeks to take the shield of "insolvency" to protect himself from the sword of the Family Court order.

30. Before parting, I may observe that the present case clearly illustrates the prolonged course of litigation between the parties and which requires reconciliation as reflected in the following :-

2 months of marriage union;

120 months of litigation for division;

With no end in sight;

In proving who is right;

Would it not be better to amicably resolve the dispute;

Rather than trying to gain;

Save the balance period from mental pain.

31. For all the above reasons, the present petition is dismissed. No order as to cost.

[JITENDRA JAIN, J.]