

INSOLVENCY PETITION NO.: 01 OF 2016.

APPEARANCES:-

Shri P H Parmar Ld. Counsel for Petitioner
Shri S K Joshi Ld. Counsel for Respondent No.:2
Shri J P Pandya Ld. Counsel for Respondent No.:5
Shri M R Panjwani Ld. Counsel for Respondent Nos.: 1, 3, 4, 6 to 8

**SUBJECT: PETITION UNDER SECTION 10 AND 11 OF PROVINCIAL
INSOLVENCY ACT 1920 FOR DECLARING INSOLVENT.**

**ORDER BELOW APPLICATION - EXH.: 37 - UNDER SECTION 20 OF
PROVINCIAL INSOLVENCY ACT, 1920 READ WITH ORDER 40 OF THE CODE
OF CIVIL PROCEDURE, 1908 FOR APPOINTMENT OF RECEIVER.**

1. By way of present application, Respondent Nos.: 1, 3, 4, 6 to 8 of this petition have inter alia prayed for appointment of Receiver for taking into custody all the properties, of petitioner, in his custody and gains thereof.
2. The applicants have inter alia stated that, though petitioner has stated in his petition - **Exh.:1** that he is in possession of certain landed properties and taking yield thereof, however, details of such landed properties are not furnished by him in his petition. The applicants has further stated that, as per provision contained in section 20 of Provincial Insolvency Act, 1902, while admitting petition, filed by debtor, court is duty bound to appoint an interim receiver and direct such receiver to immediately take possession of such properties or part thereof.

3. The petitioner is duly served with notice of present application through his legal Counsel and he has not filed any reply however, he has filed his written argument to present application at **Exh.: 50**.
4. Heard Ld. Counsels for the contesting parties. Perused written argument at **Exh.:50**. Perused records as well as documents on record in the light of provisions contained in Provincial Insolvency Act, 1920.
5. On going through petition it is seen that, in Para 12 of petition, the petitioner has stated that he is in possession of 03 gunthas of ancestral landed properties and one house property, however, he has failed to give or provide details thereof, such as survey/block number of said land, exact measurement as per revenue record, how and since when he is in possession of such land and yield taken by him per annum from date of filing of this petition till date. The petitioner has also failed to furnish details of house property such as property or assessment number assigned by local authorities, area of said property, amenities available in said along with details of moveable properties lying in said house. As per provision contained in sub-clause (i) and (ii) of sub section (e) of section 13 of Provincial Insolvency Act, 1920, it is incumbent upon Debtor, filing such petition, to declare it, in clear and unambiguous terms.

6. The petitioner, in his written argument, has merely denied, facts put forth in present application, he has further stated that, right to food, shelter and cloth, being fundamental right, he cannot be deprived of it, by appointing receiver. In my opinion, there is no such Fundamental right bestowed upon citizens of India in Constitution of India. Even if it assumed for the sake of arguments that, then, also there is no fundamental right in the Indian Constitution which is absolute. Reasonable restrictions can be imposed on the exercise of the various fundamental rights guaranteed under Constitution of India and primary requirement is that the restriction must be prescribed by law, not by administrative non-statutory instructions. All these rights are not absolute, but subject to the reasonable restrictions which may be imposed by the State. Therefore, under the guise of fundamental right, petitioner cannot be permitted to ignore provision of statutory law, as contained in section 13 of Provisional Insolvency Act, 1920, when he has himself sought for shelter of this court as per provisions contained in section 10 and 11 of Provisional Insolvency Act, 1920. As such he cannot be permitted to read and take advantage of only benevolent provisions of Act of 1920 or favourable provisions contained in Act of 1920 and ignore other provisions contained in same Act, which are provided for in said Act, for safe guarding larger interest of creditors and/or also for just adjudication of lis by court of law.

In other words, Petitioner cannot be permitted to blow hot and cold at the same time!!!...

7. For the reasons assigned herein above, present application deserves to be allowed, however, in the first instance, following directions are issued, before passing final order for appointment of receiver :-

The Petitioner is hereby directed to declare on oath, along with precise details of all immoveable properties together with certified copies of revenue records of land and copies of extract of assessment register of house property, maintained by local authorities, together with amenities and moveable properties lying therein.

The Petitioner is also herein directed to place on record, on oath, together with valuation report of immoveable properties together with value of moveable property/ies, if any, found in house property.

The Petitioner is also directed to declare on oath, yield taken by him from agricultural land in his possession and where has sold such yield and amount received by him and from whom said amount is received, together with documentary evidence, in support of such such declaration.

