

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2015

CORAM

THE HON'BLE MR.JUSTICE R.SUBBIAH

I.P.No.48 of 2014

Mrs.B.Sushila Bai

.. Petitioning Creditor

vs.

Mrs.Usha Rani

.. Debtor

ORDER

Heard the learned counsel appearing for the Petitioning Creditor.

2. The present petition has been filed by the petitioning creditor under Sections 9, 10, 11, 12 and 13 of the Presidency Towns Insolvency Act, III of 1909 and Order III-A of the Insolvency Rules, 1958, to adjudicate the debtor as insolvent and to direct the estate of the debtor to be vested with the Official Assignee, High Court of Madras.

3. It is the case of the petitioning creditor that the debtor herein along with Yudi Srinivas owed money to the Petitioning Creditor. Since they failed to repay the money, the petitioning Creditor filed a Suit in O.S.No.3962 of 2004 on the file of the City Civil Court, Chennai and the said suit was decreed as against the debtor herein on

24.11.2004. Even after passing of the decree, the debtor failed to pay the decree amount. Therefore, the petitioning creditor sought for an order for Insolvency Notice in I.N.No.36 of 2012 before this Court for issuance of Insolvency Notice to the debtors and the said Insolvency Notice was sent by prepaid registered post with acknowledgement due. The said notice was served on the 1st debtor in I.N.No.36 of 2012 on 20.07.2012. Even after such service of the insolvency notice, the debtor failed to comply with the said insolvency notice. Since the notice could not be served on the second debtor, publication was effected in one edition of Tamil Daily Malai Murasu as substituted service on 26.01.2013. The period of 35 days specified in the said insolvency notice for compliance has already expired. Therefore, the debtor has committed acts of insolvency within the meaning of Section 9(2) of the Presidency Towns Insolvency Act, III of 1909 commencing from 02.03.2013. The amount due and payable by the debtor to the petitioning-creditor as per the Insolvency Notice is Rs.72,676/- and the same amounts to Rs.76,676/- as on the date of Insolvency Petition. Hence, the present Insolvency Petition.

4. Heard the learned counsel appearing for the petitioning-creditor. There is no representation on behalf of the debtor. Even on earlier occasions, there was no representation on behalf of the debtor.

5. Since there was no representation on behalf of the debtor and the debtor was called absent, by order dated 19.01.2015 the debtor was set *ex parte* by this Court. Thereafter, the matter was referred to the learned Master for recording evidence. The petitioning-creditor's husband one Babulal was examined as P.W.1 and has filed the following documents as Exs.P1 to P5, viz.,

|       |                                                                                                   |
|-------|---------------------------------------------------------------------------------------------------|
| Ex.P1 | Authorization letter given by the petitioning creditor in favour of her husband dated 26.03.2015. |
| Ex.P2 | Certified copy of the decree dated 24.11.2004.                                                    |
| Ex.P3 | Insolvency Notice addressed to the debtor                                                         |
| Ex.P4 | Returned postal covers sent to the debtors.                                                       |
| Ex.P5 | Copy of the paper publication effected in one issue of Malai Murasu dated 26.01.2013.             |

6. Having considered the averments made in the accompanying affidavit, the exhibits marked and also the submission made by the learned counsel for the petitioning creditor/petitioner, this Court is of the view that the respondent / debtor has not chosen to appear and make payment of the amount claimed by the petitioning creditor, which is a liquidated sum payable to the petitioning creditor. It has been established that the respondent/ debtor has committed an act of insolvency and therefore, the respondent/debtor is liable to be adjudicated as insolvent, as per procedure known to law.

7. Accordingly, the petition is allowed, adjudicating the respondent/debtor as insolvent. Consequently, the estate of the debtor shall vest with the Official Assignee of the High Court at Chennai, for the benefit of the general body of the creditors. The cost of this petition shall be paid by the Official Assignee from and out of the estate of the debtor. The insolvent is granted 18 months time to apply for discharge. Cost of the proceedings will also come out of the estate.

30.03.2015