APPLICATION NOS.190 TO 195 OF 2014
IN
I.P.NO.25 OF 2014

PUSHPA SATHYANARAYANA, J.

From the materials available on record, it is seen that Insolvency Petition No. 25 of 2014 was filed by one Smt. Chitra Desai / Petitioning Creditor under Sections 9 d(iii) (g) and 10 to 12 of the Presidency Towns Insolvency Act III of 1909 seeking to adjudicate one Arjunlal Sunderdas / respondent debtor as Insolvent and direct administration of the estate in a regular manner.

2. Earlier, the debtor / respondent / third respondent herein has admitted that his liabilities are more than the assets and he has no objection in adjudicating him as an insolvent. In view of the same, by order of this Court dated 21.4.2014, the debtor / respondent was adjudicated as an insolvent and observed that the estate of the debtor shall vest with the Official Assignee at Chennai for the benefit of the general body of the creditors.

3. The applicant purchased the schedule mentioned property measuring an extent of 9.5 grounds of land at 33-34 College Road, near Chetpet or Nungambakkam from one Arjunlal Sunderdas, third

respondent herein, and one S.M. Lal for a consideration of Rs. 35 Crores by virtue of registered sale deed dated 27.7.2012 registered as Document No. 713 of 2012. According to Chitra Desai, Petitioning Creditor / second respondent herein, the said transaction is not *bona fide* as it took place during June 2013 and by August 2013, the third respondent herein started defaulting in making payments to his creditors. In such circumstances, the Petitioning Creditor filed Insolvency Petition No. 25 of 2014 during March 2014.

4. It is also seen that the applicant has put up a construction of 11 apartments in the schedule mentioned property and also entered into agreements of sale. Besides, in respect of one apartment, sale deed has been executed and registered as Document No. 933 of 2014. On coming to know that the schedule mentioned property has been included in the Insolvency Petition, the appellant has come up with Application No. 190 of 2014 on 09.9.2014 contending that he had no personal relationship with the vendors of the property and as such, he had no knowledge of the alleged act of insolvency. It is pertinent to note that the order of adjudication dated 21.4.2014 whereby the third respondent was adjudicated as an insolvent was published in newspaper on 18.7.2014.

5. According to the applicant, since the sale transaction of the schedule mentioned property was completed in good faith and for valuable consideration even before the adjudication, it falls within the scope of exemption under Sections 55 and 57 of the Presidency Towns Insolvency Act, 1909.

6. The Official Assignee has filed his report in this regard questioning the maintainability of the application under Section 57 of the Presidency Town Insolvency Act, 1909 [for short, “the Act”] filed by the applicant on the ground that when the application under Section 55 is pending, without deciding the same, Section 57 application cannot be considered. The Official Assignee also had contended that he had filed applications for (a) delivery of vacant possession of the property; (b) to sell the property; (c) to seize the property; (d) for an injunction not to create third party interest; and (e) to set aside the sale. It is reported that the insolvent himself had declared before the Official Assignee that he had borrowed a sum of Rs.4,00,00,000/- [Rupees Four Crores only] from the applicant, which was later adjusted in the sale consideration, which shows that there were financial dealings between the applicant and the insolvent.

7. The next contention is that the value of the property was undervalued as the value as on the date of the transfer was

Rs.53,39,00,000/- whereas the property was sold for Rs.36,00,00,000/-. The trustee / Official Assignee has brought to the knowledge of this court that the transaction is within the period of two years prior to the adjudication. It is stated further that the voluntary transfer made by the insolvent within two years prior to the date of adjudication is not in good faith and consideration and only to impeach the insolvency proceedings. Hence, prayed for dismissal of the application.

8. For ready reference, Section 55 of the Presidency Towns Insolvency Act III of 1909, is extracted as follows:

> "***Avoidance of voluntary transfer.***- *Any transfer of property, not being a transfer made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, shall, if the transferor is adjudged insolvent within two years after the date of the transfer, be void against the official assignee.*"

9. The application filed under Section 55 of the Act for setting aside the sale transaction between the insolvent Arjunlal Sundardas, the third respondent herein and the applicant Amarnath Reddy, with respect to the property situated in Door No. 34, College Road,

Nungambakkam, Chennai-34 is based on the allegation that the same was not made in good faith. As reported by the Official Assignee, sale consideration was much less than the value of the property, which goes to show that the sale is not *bona fide*. The second aspect is that the earlier transaction between insolvent and the purchaser for a sum of Rs.4,00,00,000/- was adjusted towards sale consideration of the said property. Therefore, the question that has to be decided is whether the alleged transaction is *bona fide* one?

10. The applicant has invoked Section 57 of the Presidency Towns Insolvency Act III of 1909 for protecting his sale. It would be useful to extract Section 57 of the Presidency Towns Insolvency Act III of 1909.

> *"**Protection of bona fide transactions.**- Subject to the foregoing provisions with respect to the effect of insolvency on an execution and with respect to the avoidance of certain transfers and preferences, nothing in this Act shall invalidate in the case of an insolvency--*
>
> *(a) any payment by the insolvent to any of his creditors;*
>
> *(b) any payment or delivery to the insolvent;*

(c) any transfer by the insolvent for valuable consideration; or

(d) any contract or dealing by or with the insolvent for valuable consideration:

Provided that any such transaction takes place before the date of the order of adjudication and that the person with whom such transaction takes place has not at the time notice of the presentation of any insolvency petition by or against the debtor."

11. Therefore, another question that has to be decided is whether the proviso to the above Section 57 is applicable to the applicant / purchaser?

12. It is the contention of the applicant/purchaser that his application under Section 57 of the Act is maintainable as the same is made for valuable consideration and in good faith and much prior to the date of presentation of the Insolvency Petition. The relevant fact for ascertaining that the purchaser acted in good faith is, the date when he made the purchase i.e on 27.07.2012. The good faith that has to be proved cannot be regarded as a matter of assumption or presumption. The same has to be proved like any other question of fact. So also, in interpreting Section 57 of the Act

which gives protection to a purchaser, the general circumstances like safeguarding the right of third party purchaser cannot apply.

13. The proper test to be applied in deciding the question of good faith on the part of the purchaser is to see whether inspite of the knowledge of the insolvency proceedings, he had made an unfair purchase. If he had done so, he can be said to be acting dishonestly. If the purchaser has entered into the sale without the knowledge of the insolvency proceedings, he can be regarded as acting in good faith only, if the sale consideration is said to be a fair one in all circumstances of the case. Therefore, to decide the question of good faith, the onus is on the purchaser. He must satisfy the court that the purchase made by him is in consistent with the general policy of Insolvency Law and that it is a fair sale by paying the market or near market value of the property. Evidence in this regard relied on by the official Assignee on P.W.1 is assailed by the learned counsel for the applicant, as it is categorically stated by her that the proof affidavit filed by her is not based on personal knowledge and only based on the records given to her. For this reason, the evidence of P.W.1 has to be discarded.

14. The learned counsel for the applicant places reliance on ***Mackintosh vs. Pogose [(1895) 1 Ch 505]***. In order to constitute

a “purchaser in good faith” within Section 47 of the Bankruptcy Act, 1883, it is sufficient if there be good faith on the part of the purchaser and it is not necessary that both the parties to the transaction should act in good faith. Lack of good faith on the part of the purchaser as alleged by the Official Assignee is that the he was aware of the insolvent circumstances of the Arjunlal Sunderdas and that he colluded with the applicant to defraud the claim of the creditor.

15. The learned counsel for the applicant pointed out that the Petitioning Creditor herself had stated that the insolvent was defaulting in making payments in or about August 2013. The promise given by the insolvent that the money would be deposited in September was also not kept up. The said default from August 2013 was proved by her by filing the Bank statement to show that no interest was deposited after July 2013. Whereas, the impugned transaction had taken place much prior to the date of cause of action as alleged in the Insolvency Petition I.e on 27.07.2012. Therefore, the allegation that the applicant was aware of the insolvent circumstances of the insolvent, even on the date of sale, cannot be true and acceptable. In the cause of action portion of the Insolvency Petition, it is admitted by the Petitioning Creditor that the act of insolvency has occurred within three months prior to the filing of the petition, which should be the end of December 2013.

16. It is not the case of the Official Assignee that there were other creditors also, who suspected the financial trouble of the insolvent during the period the sale transaction was made.

17. The fundamental aim of Insolvency Law is to combine and regulate two great objects, viz., distribution of debtors property in the most acceptable equal and economical manner and secondly to secure his release from his creditors, after certain conditions prescribed in the statute have been satisfied. In the light of the above principle, it could be seen that the scheme of insolvency enactment will require best price possible for the insolvent's property should be secured so that the creditors might get as much as possible for their dues. The allegation that there was an earlier transaction of Rs.4,00,00,000/- by the applicant with the insolvent, which was adjusted in the sale transaction would go to show that there was lack of good faith. The said allegation was based on Ex.A.5, wherein, a valuer has estimated the property as on date of sale for Rs.53,39,00,000/- and also the adjustment of Rs.4,00,00,000/- from the sale consideration by the applicant.

18. The learned counsel for the applicant specifically pointed out the fact that guideline value of the property as on date of sale was Rs.9,500 per sq.ft and total extent of the schedule mentioned property

is 21,155/- sq.ft. For this rate, the total value would be Rs.20,09,72,500/-. Whereas the sale was for a sum of Rs.35,00,00,000/- which means nearly Rs.16,500/- per sq. ft was the value paid for the sale. In support of his contention, Exs.B.2 and B.3 sale deeds have been marked, which are the sale with respect to the properties situate on Kothari Road and one on Sterling Road. These two properties are in a posh residential locality, within the distance of 500 to 800 metres from the scheduled property. On a relative evaluation of the sale prices, sale consideration paid by the purchaser is much higher on the date of the sale and there is no reason to doubt the *bona fides* of the purchaser.

19. The learned counsel for the applicant also places reliance on the Tamil Nadu Stamp (Constitution of Valuation Committee for Estimation, Publication and Revision of Market Value, Guidelines of Property) Rules, 2010 for substantiating the fact with regard to the relevance of considering the guideline value as fixed by the statutorily appointed expert committee. The rates determined by such committee are relevant pieces of evidence in determining the market value.

20. Reliance was also placed on ***Lal Chand Vs Union of India [(2009) 15 SCC 769]***. When the question whether the circle

rates / guideline value rates can be relied upon to determine the market value was considered, the Honourable Supreme Court In paragraph Nos. 41, 42, 43 and 44 had held as follows:

Para 41 : *"It should however be noted that as contrasted from the assessment of market value contained in non-statutory Basic Value Registers, the position may be different, where the guideline market values are determined by Expert Committees constituted under the State Stamp Law, by following the detailed procedure laid down under the relevant rules, and are published in the State Gazette. Such state stamp Acts and the Rules thereunder, provide for scientific and methodical assessment of market value in different areas by Expert Committees.*

Para 42 : *These statutes provide that such Expert Committees will be constituted with officers from the Department of Revenue, Public Works, Survey & Settlement, Local Authority and an expert in the field of valuation of properties, with the sub-registrar of the sub-registration district as the Member Secretary. They also provide for different methods of valuation for lands, plots, houses and other buildings. They require determination of the market value of agricultural* *lands by classifying them with reference to soil, rate of revenue assessment, value of lands in the vicinity and locality, nature of crop yield for specified number of years, and situation (with reference to roads, markets etc.).*

Para 43 : *The rates assessed by the Committee are required to be published inviting objections/suggestions from the members of public. After considering such objections/suggestions, the final rates are published in the Gazette. Such published rates are revised and updated periodically. When the guideline market values, that is, minimum rates for registration of properties, are so evaluated and determined by the Expert Committees as per statutory procedure, there is no reason why such rates should not be a relevant piece of evidence for determination of market value.*

Para 44 : *One of the recognised methods for determination of market value is with reference to opinion of experts. The estimation of market value by such statutorily constituted Expert Committees, as expert evidence can therefore form the basis for determining the market value in land acquisition cases, as a relevant piece of evidence. It will be however open to either party to*

> *place evidence to dislodge the presumption that may flow from such guideline market value. We, however, hasten to add that the guideline market value can be a relevant piece of evidence only if they are assessed by statutorily appointed Expert Committees, in accordance with the prescribed assessment procedure (either street-wise, or road-wise, or area-wise, or village-wise) and finalised after inviting objections and published in the Gazette. Be that as it may.*"

Thus, it is contended that the sale consideration is well above the guideline value published by the Valuation Committee for estimation established by the State.

21. The learned counsel for the applicant also referred to the doctrine of 'lucky purchaser' as held in ***Official Receiver of Salem Vs. Chinna Goundan and Another [1957 (2) MLJ 414]*** wherein it was held that specific evidence of convincing nature must be adduced to show that a sale deed reciting the payment of the consideration was really executed for no consideration and that no consideration was intended to be paid. A careful scrutiny should be made of the circumstances to see whether the purchaser is a "lucky purchaser" or a "fraudulent purchaser". Inadequacy of consideration by itself will not prove any fraud. As the *mala fides* alleged on the applicant for

purchasing the property for a lesser value is not proved, it was prayed that he should be deemed to be a “lucky purchaser” as held in the decision referred supra.

22. To further substantiate his claim that the sale consideration was adequate with respect to the schedule mentioned property, a comparison was done with Ex.A.8 / sale deed, which is 3 kilometres away from the scheduled property. The guideline value of the said property was Rs.20,000/- per sq. ft, whereas, as admitted by P.W.1, sale value of the said property was Rs.29,500/-. From the above, it is also evident that market value is generally above the guideline value and the applicant has paid more than the guideline value over the schedule mentioned property.

23. One another aspect arising for consideration in this regard is that the sale deed dated 27.07.2012 was executed by Arjunlal Sunderdas and S.M.Lal jointly in favour of the applicant. The said S.M.Lal is the brother of the insolvent and in the present proceedings, only the transaction that binds the insolvent is challenged and insofar as the 25% share of S.M.Lal is concerned, the same is not challenged. Reliance was also placed on **A.L.S.P.P.L. Subramanian Chettiar Vs. Subbaraya Goundan [AIR 1935 Madras 246]**.

24. It is the next contention of the learned counsel for the applicant that even assuming that the sale consideration paid by him was not the market value, the same cannot be considered to be an unconscionable bargain. In the absence of any material evidence averred and the transactions with the insolvent entered into good faith, even a prior financial relationship with him may not vitiate the sale as the purchaser was not aware of the insolvent circumstances of the seller. Indeed, the facts are so eloquent that it is impossible to contend that any other intent was present. Therefore, the purchase made by the applicant is consistent with the general policy of insolvency, that at a fair sale he paid the market or very near market value of the property.

25. Though the learned counsel for the Official Assignee contended that the circumstances surrounding the transaction and the conduct of the parties at the time of or after execution of the deal should be taken into account, he could not produce any evidence to state that the act of the applicant was not made in good faith. Admittedly, after purchase, the applicant has developed the property and also sold a portion of undivided share, thus creating a third party liability. Alternatively, the Official Assignee has asked for a direction to pay difference in the sale consideration of the market value as on 27.07.2012 towards the credit of the Insolvency Petition. When the

applicant has clearly demonstrated that he had paid more than the guideline value, which is statutorily satisfied and when the Official Assignee has not produced any evidence to show that there was a difference between market value and the sale value, alternative remedy cannot be granted.

In the above circumstances, **the Application (IP) No. 190 of 2014 under Section 57 of the Act stands allowed** and the other applications, viz., **Application (IP) Nos. 191 to 195 of 2014 are dismissed.**

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