

A.Nos.152, 71 to 74 of 2016

IN

I.P.No. 138 of 2003

C.V.KARTHIKEYAN ,J.

I.P.No. 138 of 2003 had been filed under Section 9(f), 10, 11, 14, 15 of the Presidency Town Insolvency Act 1909 and Order III Rule 1 of Insolvency Rules 1958, by the petitioner seeking to adjudicate herself as an insolvent.

2. The petitioner had stated that she was working as Tamil Pandit in the Corporation Higher Secondary School, Old Washermanpet, Chennai and retired from service in 1994. Subsequently, in 1996, on the advise of an Engineer Mr.Kannan, she wanted to promote her property into a shopping complex. She requested the tenants to vacate the premises. She obtained loan from Park Town Benefit Fund. The tenants refused to vacate and the petitioner had to pay a sum of Rs.3,00,000/- to get vacant possession. After obtaining permission from the statutory authorities, construction work commenced. However costs escalated. The Park Town Benefit Fund had initially promised to finance a sum of Rs. 40,00,000/-, but they did not lend any further amount after Rs.15,00,000/-. The petitioner had to borrow from third parties and consequently her liabilities increased. The petitioner's total liability towards unsecured creditors came to a

sum of Rs.9,00,000/- and with the secured creditors came to Rs.8,00,000/-.

Availing these facts, I.P.No. 138 of 2003 was filed.

3. After following due procedure, this Court by order dated 28.08.2003 had adjudicated the petitioner as an insolvent. Subsequently, the Official Assignee filed a report under Section 41 and 23(1) of the Insolvency Act 1909, stating that the order of adjudication was published in Makkal Kural newspaper on 29.04.2004. The insolvent did not file any application for discharge within the stipulated period. It had been stated that the order of adjudication dated 28.08.2003 may be annulled under Section 41 of the Presidency Town Insolvency Act 1909 and the property of the insolvent be vested with the Official Assignee as provided under Section 23(1) of the said Act. This Court by order dated 16.12.2015 had also annulled the adjudication made on 28.08.2003 and directed that the assets of the insolvent to be continued to vest with the Official Assignee.

4. Subsequently A.No. 71 of 2016 had been filed by the third parties under Order II Rule 1 of Insolvency Rules 1958 read with Section 7 of the Presidency Town Insolvency Act 1909 for a direction that records pertaining to File No. 87/2003-B, in I.P.No. 138 of 2003 dated 08.03.2016 on the file of the

Official Assignee to be quashed. The same petitioners also filed A.No. 72 of 2016 to grant ad-interim stay of all further proceedings in pursuant to the order in file No. 87/2003-B in I.P.No. 138 of 2003 (Insolvency of T,Radha) dated 08.03.2016 on the file of the Official Assignee pending disposal of the petition filed under Section 21 of the PTI Act. The same petitioners also filed A.No. 73 of 2016 for a direction that the order of adjudication dated 28.08.2003 in I.P.No. 138 of 2003 be annulled. They also filed A.No. 74 of 2016 for a direction to recall the S.41 Annulment order dated 16.12.2015 in I.P.No. 138 of 2003.

5. The insolvent filed A.No. 151 of 2016 for a direction to pass an order annulling the order dated 28.08.2003 adjudicating the applicant as insolvent and directing the revesting of the assets in the name of the applicant. By endorsement dated 21.11.2016, the counsel for the insolvent withdrew the application, and it was consequently dismissed.

6. The insolvent also filed A.No. 152 of 2016 for a direction to set aside the order dated 16.12.2015 annulling the adjudication of the applicant under Section of the Presidency Towns Insolvency Act.

7. In all these matters, the Official Assignee also filed report.

8. A.Nos. 71 to 74 of 2016 had been filed as stated above by the third parties claiming that they, being mother and son, had purchased the property bearing Door No. 33 (part) of Ramanuja Iyer Street, Old Washermenpet, Chennai by a sale deed dated 01.12.2004, registered as Document No. 3832 of 2004 in the Office of the Sub Registrar, Royapuram to an extent of 1620 sq.ft., out of the total extent of property measuring 4230 sq.ft., from 1) Smt. T.Radha, 2) Smt Rajakumari @ Nalini and 3) Smt. Usha Rani, all of whom had 1/3rd undivided share over the property. It had been stated that the petitioners had been in possession and patta, property tax, water service charge, tax card and Electricity Board consumer card are in the name of the petitioners. They are running a small textile shop.

9. The petitioners had further stated that they received a letter dated 08.03.2016 from the Official Assignee informing that a communication had been addressed to the Sub Registrar, Royapuram, to create an Encumbrance over the said property, including the portion purchased by them, in pursuance of the order of adjudication as insolvent of T.Radha in I.P.No. 138 of 2003, dated 28.08.2003. In the said notice, it had been stated that the property would be sold after valuation.

10. In the said circumstances, A.Nos. 71 to 74 of 2016 had been filed for the reliefs mentioned above on the ground that the value of the property would be not less than Rs.60 lakhs and the share of the insolvent would be Rs.40 lakhs and that in the insolvency petition, the insolvent had given a lesser value mentioning fictitious persons as if she owes monies to them. They further stated that the secured creditor M/s.Park Town Benefit Fund Ltd., had issued a discharge receipt dated 04.10.2004.

11. It had been stated that the Official Assignee did not discharge duty according to law and after a period of 12 years had issued the said letter dated 08.03.2016. It had been stated that the insolvent had not filed any schedule and the named creditors had also not lodged any claim. It had been stated that for no fault of the petitioners, the property had been seized by the Official Assignee.

12. In A.No. 152 of 2016, the insolvent stated that her brother-in-law V.Srinivasan had settled both secured and unsecured creditors and had filed receipts for the same. It had been stated that in March 2016, she came to know that since she did not file discharge application, this Court had annulled her Insolvency Petition under Section 41 of the Presidency Towns Insolvency Act by order dated 16.12.2015. She stated that she would be put to much loss and

hardship and consequently, filed the application No. 152 of 2016 as stated above.

13. The Official Assignee in the common report filed in A.Nos. 71 to 74 of 2016 stated that after the order of adjudication dated 28.08.2003, the property of the insolvent vested with the Official Assignee for realisation and distribution among the general body of creditors. The insolvent is prohibited by law from dealing with the property and third party purchasers from an insolvent cannot get valid title. It had been stated that the insolvent never assisted the Official Assignee. She failed to submit schedule of affairs. She did not submit herself for public examination. She did not filed discharge application within 18 months. Consequently, annulment was sought under Section 41 of the Presidency Town Insolvency Act and Order was also passed on 16.12.2015. Notices were sent to the creditors and two creditors by name Ganapathy and Padmanaban were served with notice. It had been further stated that the insolvent is a Co-owner of the property and the purchase by the petitioners in A.Nos. 71 to 74 of 2016 is void in so far as the share of the insolvent is concerned. It had been stated that both Limitation Act and Presidency Towns Insolvency Act do not prescribe time limit for filing claims by the creditors. The insolvency commences on the commission of the act of insolvency. It had been further stated that the Official Assignee discharged official duty by issuing the letter dated 08.03.2016 to the Sub Registrar Office. It had been stated that the applicants have no valid title. It had been

therefore stated that the A.Nos. 71 to 74 of 2016 must be dismissed.

14. In the report filed with respect to A.No. 152 of 2016, the Official Assignee stated that the insolvent had not submitted herself for public examination, had not filed schedule of affairs, had not served notices to the creditors and did not file discharge application within 18 months. Consequently, the order of adjudication was annulled by this Court. It had been stated that the applicant, after being adjudicated as insolvent on her own petition had sold the property. She had not impleaded any of the persons shown in the receipts filed along with the application as respondents. It had been stated that the application must be dismissed.

15. I have carefully considered the arguments advanced.

16. It is seen that on her own application and out of her own volition, the petitioner in I.P.No. 138 of 2013 had been adjudicated as insolvent. She had stated that she had borrowed money for developing her property from M/s. Park Town Benefit Fund Ltd., and to pay the interest therein, had further borrowed from various unsecured creditors. On the date of the petition, she stated that she had a debt of Rs.9,00,000/- towards unsecured creditors and Rs.8,00,000/-

towards the secured creditors. After obtaining the order of adjudicating her as insolvent, the applicant/insolvent did not file the schedule of affairs under Section 24 of the Act within the period of 30 days. She did not service notice to the creditors. She did not submit herself for public examination. She did not file discharge application under section 38 within 18 months. Therefore, the order of adjudication was annulled under Section 41 by this Court on 16.12.2015 and the property continued to vest with the Official Assignee under Section 23. However, the insolvent had generated further amounts of money by selling the property to the petitioners in A.Nos. 71 to 74 of 2016. On the date of the sale, the property had vested with the Official Assignee. It had so vested on her filing I.P.No. 138 of 2003 seeking to adjudicate herself as an insolvent. Without disclosing this fact, she had sold the property to the petitioners in A.Nos. 71 to 74 of 2016. In fact, this Court can also reasonably suspect that the applicants in A.Nos. 71 to 74 of 2016 are not bona fide purchasers since they had purchased from a person who had been declared as insolvent. Claims of innocence and ignorance are rejected and I hold that both the insolvent and the applicants in A.Nos. 71 to 74 of 2016 have acted in collusion to defraud the creditors and in this venture have utilised the judicial system for unlawful gain. The property had vested with the Official Assignee as and from 28.08.2003 and the third party purchasers cannot claim any title to the said property. In fact, the Official Assignee had also issued a paper

publication dated 29.04.2004 giving the list of debtors adjudicated as insolvents during the year 2003 by the High Court, Madras and in Serial No. 79, it had been clearly mentioned that in I.P.No. 138 of 2003 by order dated 28.08.2003 T.Radha daughter of T.V.Krishnan No.33 Ramanuja Iyer Street, Old Washermenpet, Chennai -21 had been adjudicated as insolvent. The petitioners have to face the fact that they had purchased the property which had already vested with the Official Assignee. A transferee post adjudication as insolvent cannot challenge the order of adjudication. If a challenge is permitted, it would lead a break down of the scheme of the Insolvency Act itself. I therefore hold that the applicants in A.Nos. 71 to 74 of 2016 have not made out any case to grant the reliefs sought by them. The applications are dismissed. Similarly A.No. 152 of 2016 filed by the insolvent is also dismissed.

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06.01.2017

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C.V.KARTHIKEYAN ,J.

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Pre-delivery order in

A.Nos.152, 71 to 74 of 2016

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