Application No. 164 of 2016
in
I.P. No. 25 of 2014

Dr. G.JAYACHANDRAN, J.
and
C.V.KARTHIKEYAN, J.

This application had been filed by the Official Assignee seeking a judgment and decree against the second respondent to pay a sum of Rs.2,28,00,000/- together with interest at 18% per annum from 03.08.2013 till the date of realization and also for cost.

2. It had been stated that the first respondent, viz., S.Arjunlal Sunderdas, had been adjudicated as 'Insolvent' by an order dated 21.04.2014 in I.P. No. 25 of 2014. He was engaged in Finance and Real-Estate business. It had been further stated that the second respondent, viz., Green Valleys Shelters P Ltd were found to have received a sum of Rs.2,28,00,000/- from the insolvent and this was shown as outstanding as on 03.08.2013. It is stated that therefore, the second defendant was due to pay to the Estate the aforesmentioned sum. It had

been stated that the petition had been filed within 3 years from the date of adjudication of S.Arjunlal Sunderdas as insolvent. Notice had been directed and counter had been filed on behalf of the second respondent. In the counter-affidavit, the second respondent admitted the receipt of the said sum of Rs.2,28,00,000/-

3. It was further informed that the total amount received that the amount together with interest came up to Rs.4.81 crores and was stated that they have repaid a sum of Rs. 2.53 crores to the insolvent before he was declared insolvent. With respect to the balance amount, it was stated that on purchase orders raised by the insolvent, construction materials had been supplied on various dates. It has therefore been stated that the amount had been discharged.

4. Heard arguments advanced by Mr. K.V.Ananthakrushnan, learned Counsel assisted by Ms. A.Janani for the Applicant/Official Assignee and Mr. B.Aravind Srivatsa, learned Counsel for the Second Respondent.

5. On behalf of the Official Assignee, R.Padma, Sub Assistant Registrar, High Court, Madras was examined as PW-1. She marked the relevant pages from the report of the auditor, Ranga Ramanujam as Ex.A1 and the relevant pages in the report of the auditor, namely, Annamalai Associates as Ex.P2. Notices exchanged between the parties were marked as Ex.A3 and Ex.A4.

6. The main thrust of the arguments of Mr. B.Arvind Srivatsa, learned Counsel for the second respondent was that though the amount had been received, there had been discharge by supply of construction materials, consequent to the purchase orders raised by the insolvent. However, only xerox copy of the purchase orders have been produced and originals had not been produced. Further there is no correlation between the corresponding purchase orders and the invoices for supply of materials.

7. It must be mentioned that if the loan is admitted and discharge is pleaded, then the onus shifts on the borrower to establish and prove discharge.

8. In this connection, reference can be made to ***Anita Rani -vs- Ashok Kumar and ors.*** reported in **2021 SCC OnLine SC 1265**, wherein the Hon'ble Supreme Court had held as follows:-

> " 25. Once the plea of gratuitous prayment falls to the ground, Section 70 of the Indian Contract Act, 1872 will come into play. Section 70 reads as follows:-
>
> " ***70. Obligation of person enjoying benefit of non-gratuitous act***.—*Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.* "

26. *As held by this Court in the* ***State of West Bengal -vs- B.K.Mondal & Sons****, Section 70 is based on the premise that something was done by one party for another and that the work so done voluntarily, was accepted by the other. Therefore, as a corollary, the plea that there was a subsisting contract in the nature of business transactions, is antithetic to the very essence of section 70. This is why section 70 forms part of Chapter V of the Indian Contract Act, which is titled as "Of certain relations resembling those created by contract".*

27. As pointed out earlier, the respondents have admitted that the moneys as claimed by the appellant-plaintiff were either paid by the plaintiff or flown out of the plaintiff's account into their own account. Therefore, the onus was actually on the respondents to prove either a discharge by way of settlement of accounts or the gratuitous nature of the payment. The respondents miserably failed to discharge the onus of proof so cast upon them."

It is seen that in the instant case, the amount was not advanced for a gratuitous purpose. The ratio laid above would directly apply.

9. In view of the fact that the documents produced by the respondent do not stand the scrutiny of this court, we hold that the respondent had not established discharge to the satisfaction of the Court.

10. It must also be mentioned that in the documents produced, namely, the purchase orders, even before the materials have been supplied, the tax component had been calculated. The tax component had been calculated alternatively under the Sales Tax Act and as Value Added Tax.

11. It is clear that the documents had been created for the purpose of this case. We hold that the documents produced by the second respondent does not advance the case of the respondent that they had discharged the amount borrowed. The second respondent had admitted borrowal. Naturally since discharge had not been proved, decree follows.

12. This application stands allowed with costs.

[Dr. G.J., J.] [C.V.K., J.]
11.10.2022

Maya

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Dated : 11.10.2022