

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2016

CORAM

The HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND

The HON'BLE MR.JUSTICE R.MAHADEVAN

O.S.A.No.370 of 2012

R.Ramesh Kumar
S/o.V.R.Ramalinga
Proprietor, Sri Venkatesh & Co.
No.28, Karpagambal Nagar
Mylapore, Chennai - 600 004. ... Appellant

Vs.

1. S.Gowtham Chand
2. S.Mahaveer Chand ... Respondents

PRAYER: Appeal against the order and decretal order dated 16.8.2012 in Application No.136 of 2011 in Insolvency Notice No.2 of 2011.

For Appellant : Mr.R.Thiagarajan

For Respondents : Mr.P.L.Narayanan

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

The respondents hold an ex parte decree dated 24.4.2002 against the appellant for Rs.19,48,383.56 together with interest at 24% per annum on principal amount.

2. In the execution proceedings, the appellant sought to file objections. It is the say of the respondents that those objections amount to going behind the decree, which is not permissible. The question, i.e., the issue of maintainability should be determined first or along with the disposal of the objections, is something which has been agitated both before the learned Single Judge and the

Division Bench and the matter went back to the Master with certain directions.

3. The claim of the respondents is that Application No.3813 of 2012 is still pending consideration before the learned Single Judge, where the respondents aver that the Master is not proceeding in accordance with the directions passed by the Division Bench. It appears that that application has been deferred before the learned Single Judge ostensibly on the ground of pendency of the present appeal.

4. Insofar as the present appeal is concerned, it arises from the claim of the respondents that on account of failure to pay the decretal amount, the appellant has committed an act of insolvency in terms of the provisions of the Presidency Towns Insolvency Act, 1909, and thus I.N.No.2 of 2011 for issuance of Insolvency Notice under Section 9(2) of the said Act was filed. On notice being so ordered on 6.1.2011, the appellant came up with Application No.136 of 2011 seeking to set aside the insolvency notice. A similar application was also filed by another debtor being Application No.158 of 2011.

5. The learned Single Judge in terms of the impugned order has been pleased to dismiss Application Nos.136 and 158 of 2011, as the executability of the decree in question in the application under Section 47 of the Code of Civil Procedure was no ground to set aside the insolvency notice.

6. We may take note of the fact that the allegation of the appellant under Section 47 of the Code of Civil Procedure was that the decree was obtained on the basis of fabricated documents and that the decree is unexecutable.

7. In the present appeal, notice was issued and interim stay was granted on 4.10.2012 on the condition that the appellant shall provide security of immovable property to the tune of Rs.14,00,000/- to the satisfaction of the Assistant Registrar-II, Original Side. This order was modified by the subsequent order dated 12.12.2012 permitting security of movable property in the form of fixed deposit receipts of Rs.14,00,000/-.

8. On hearing the learned counsel for the parties, we are of the view that Application No.3813 of 2012 filed by the respondents needs to be addressed by the learned Single Judge, as the execution proceedings itself are getting delayed because of the pendency of the application. That application goes to the root of the question as to how the Master has to proceed in the matter and, thus, the pendency has resulted in the Master not proceeding with the execution proceedings.

9. Insofar as the impugned order is concerned, we are of the view that the interests of justice have been subserved by furnishing of the security by the appellant to the tune of Rs.14,00,000/-. The rationale for this amount being specified at the stage of interim relief is stated to be that the principal claim was for about Rs.13.79 Lakhs and, thus, the insolvency notice need not proceed further in view of the security having been furnished.

10. The impugned order, thus, stands set aside to the aforesaid extent as substituted by the interim arrangement arrived at in appeal. The appeal, accordingly, stands disposed of. No costs. Consequently, M.P.No.1 of 2012 is closed.

Application No.3813 of 2012 be listed before the learned Single Judge on 18.10.2016.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

sasi

To

The Sub Assistant Registrar
Original Side,
High Court, Madras.

2 ccs to Mr.R.Thiagarajan, Advocate, sr.52456
1 cc to Mr.P.L.Narayanan, Advocate, sr.52455

O.S.A.No.370 of 2012

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