



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:06.04.2016

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.1336 of 2013 (NPD)

and

M.P (MD) No.1 of 2013

M.Ramdoss

.. Petitioner/Respondent/
Respondent/Defendant

Vs.

Sermathai

.. Respondent/Petitioner/
Petitioner/Plaintiff

PRAYER: Civil Revision Petition is filed, under Article 227 of Constitution of India, to set aside the docket order, dated 18.03.2013 and consequential proceedings in E.A.No.168 of 2012 in E.P.No.56 of 2011 in O.S.No.98 of 2000 on the file of the Sub Court, Periyakulam.

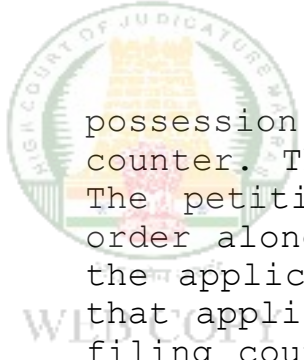
For Petitioner : Mr.G.Muruggan

For Respondent : Mr.R.Velmurugan

ORDER

This petition has been filed by the petitioner to set aside the docket order, dated 18.03.2013 and consequential proceedings in E.A.No.168 of 2012 in E.P.No.56 of 2011 in O.S.No.98 of 2008 passed by the Sub Judge, Periyakulam.

2.The petitioner is the defendant. The respondent is the plaintiff. The respondent filed the suit in O.S.No.98 of 2008, before the Sub Court, Periyakulam, for specific performance of agreement of sale. The petitioner did not contest the suit and he was set ex-parte. The respondent proceeded with suit and an ex-parte decree, dated 09.11.2011 was passed. The petitioner filed I.P.No.9 of 2009 for declaring him as insolvent. In the insolvency petition in I.P.No.9 of 2009, the respondent herein was shown as 18th respondent. She has also filed counter affidavit in March 2010 in I.P.No.9 of 2009 filed by the petitioner. The respondent prayed for excluding the suit property from the insolvency proceedings. Based on the ex-parte decree, dated 09.11.2009, the respondent filed E.P.No.56 of 2011 for execution of sale deed by respondent as per decree dated 09.11.2009, failing which, the respondent did not execute the sale deed. The petitioner did not execute the sale deed and therefore, on 21.11.2011 the Court executed the sale deed. The respondent filed E.A.No.63 of 2013 for delivery of



possession of suit property. The petitioner did not file any counter. Therefore, E.A.No.168 of 2012 was ordered on 18.03.2013. The petitioner filed an application to set aside the ex-parte order along with E.A.No.63 of 2013 to condone the delay in filing the application to set aside the ex-parte order of delivery. In that application. Notice was ordered and posted to 12.08.2013 for filing counter. He also filed an application for stay of delivery by five months. Along with these applications, the petitioner filed counter affidavit in E.A.No.168 of 2012. In addition to this application, the petitioner had filed the present C.R.P., to set aside the ex-parte delivery order dated 18.03.2013 made in E.A.No.168 of 2012.

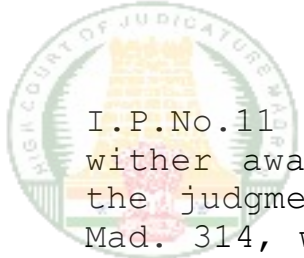
3.The learned counsel for the petitioner contended that the petitioner has filed I,P.No.9 of 2009 and the same was brought to the notice of the lower court on 01.03.2013. In spite of the same, the learned Judge erred in ordering the delivery of the suit property. The respondent was shown as 18th respondent in I.P.No.9 of 2009. She has entered appearance and filed counter and is contesting the Insolvency Petition. Suppressing this fact, the respondent obtained sale deed and order of delivery of possession of suit property. In view of insolvency proceedings, the suit property has to be taken possession and sold and sale proceeds must be distributed to all the creditors. The respondent is not entitled to have absolute right over the petition property.

4.The learned counsel for the respondent submitted that the averments made in the Insolvency Petition are not correct. The petitioner has inflated quantum of his debt. He has mentioned his friends and relatives as creditors and many of the persons mentioned in the Insolvency Petition as creditors are not creditors. The learned counsel for the respondent relied on the judgment reported in 2005(5) CTC 617 (Sudhandiran Vs. S.Krishnan)

"2.The learned counsel appearing for the revision petitioner relied on the decision rendered in Mahendrakumar Baishya Shaha v. Deeneshchandra Ray Chaudhurai, AIR 1933 Cal. 561, to say that filing of petition before the Insolvency Court is sufficient to stay the proceedings pending before the executing Court.

3.The learned counsel appearing for the respondent relied on the decision Pothuganti Venkateshwarulu and another v. Yangala Mallaiah, AIR 2001 A.P.358, to say that mere filing of an application before the Insolvency Court is not sufficient to stay the proceedings of the execution Court. It is relevant to extract paragraphs 3 and 4 of the said decision, which runs as follows:

"3.On the other hand, the learned counsel appearing for the respondent/deed holder submitted that no doubt I.P.No.11 of 2000 was filed but there was no order passed by the Court before which the Insolvency proceedings are pending exercising power under Section 52 of the Provincial Insolvency Act, 1920. Therefore, the properties are still covered by the order of attachment passed by the Court below. He further submitted that merely because



I.P.No.11 of 2000 was filed the right of the creditor would not wither away. In support of his contention he placed reliance on the judgment rendered in Kuppu Boyan v. Sengottaiyan, AIR 1983, Mad. 314, wherein it was held as follows

"Just because the judgment-debtor has filed an insolvency petition before the insolvency Court, it cannot be said that the execution proceedings should be stayed. In this case it was not stated that the properties of the petitioners were taken by the official liquidator in pursuance of the order of the Insolvency Court nor the order of the Insolvency Court was brought to the notice of the executing Court.

4.The said Judgment was rendered relying upon a decision in Ponnudurai V.Kumaraswami Mudaliar, 1971 (2) MLJ 252, wherein it was held as:

"Section 52 will have no application when a Receiver had not been appointed in respect of the insolvent's properties. So an executing Court while executing a decree passed against the insolvent need not stay its hands merely on the admission of an insolvency petition."

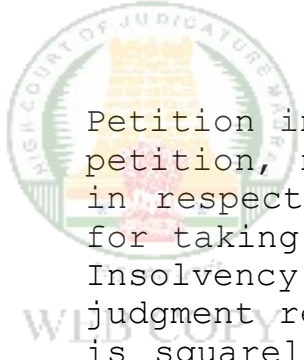
4.I have carefully perused the decisions relied on by the counsel on either side. In the decision relied on by the learned counsel for the petitioner Mahendrakunar Baishya Shaha v.Deeneshchandra Ray Chaudhuri, AIR 1933 Cal.561, a receiver was appointed by the Insolvency Court after the application for insolvency was filed at the instance of another creditor. Hence, the said judgment is not applicable to the facts and circumstance of the case, on hand.

5.Considering the facts and circumstances of the case, this Court is of the view that the judgment relied on by the counsel for the respondent can be made applicable to the facts of the case on hand/Just because of an application has been filed by the petitioner himself before the Insolvency Court, in the absence of any order or adjudication by the said Court, the executing Court need not stay its proceedings. Considering the above said facts as well as the oral and documentary evidence, the trial Court has rightly refused to stay the execution proceedings and dismissed the application filed by the revision petitioner herein. I do not find any reason to interfere with the order passed by the Court below, hence, the civil revision petition is dismissed. No costs. Consequently, connected C.M.P. As well as V.C.M.P are closed."

5.The learned counsel for the respondent submitted that mere filing of the petition before the insolvency Court is not sufficient ground to set aside the ex-parte order.

6.I have heard the learned counsel appearing for the petitioner and the respondent and also perused the entire materials on record.

7.From the materials and contention of the learned counsel for the parties, it is clear that the petitioner has filed Insolvency



Petition in I.P.No.9 of 2009 on 18.09.2009. In the said Insolvency petition, no order has been passed by appointing Official Receiver in respect of properties of petitioner. No order has been passed for taking possession by the Official Receiver pending disposal of Insolvency proceedings. In the circumstances, the ratio in the judgment reported in 2005(5) CTC 617 (Sudhandiran Vs. S.Krishnan) is squarely applicable to the facts of the present case. As held by this Court in the said Judgment mere filing of Insolvency proceedings will not automatically stay the execution proceedings. The learned Judge has exercised the power properly and dismissed the application. There is no illegality or irregularity warranting interference by this Court.

8.In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar

/True Copy/

Sub-Assistant Registrar

To

The Subordinate Judge ,
Periyakulam.

+One cc to Mr.R.Saravanan, Advocate, SR.No.19256\

+One cc to Mr.R.Velmurugan, Advocate, SR.No.19212

am
RL/4C/4P/GSV/PM/28/4/2016

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06/04/2016