

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2017

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

Application (IP) No.261 of 2016
in IP No.2 of 2009

Sreelakshmi Herle,
No.749-C, 59th Street,
10th Sector, K.K.Nagar,
Chennai 600 078.

...Applicant

Vs

Official Assignee.
High Court, Chennai.

...Respondent

Prayer: Application filed under Order II Rule 1 of the Insolvency Rules, 1958 r/w Section 38 of the Presidency Town Insolvency Act, 1909 r/w, praying to unconditionally discharged the applicant from adjudication.

For applicant : No representation

For respondent : Ms.S.Hermies
Official Assignee (I/c)

ORDER

The application has been filed under Section 38 of the Presidency Town Insolvency Act, 1909 seeking unconditional discharge post adjudication by the

petitioning debtor. In the affidavit filed in support of the judges summons, it has been stated that the petitioner/debtor had been adjudicated an insolvent on 22.01.2009. Subsequently, she had disclosed the entire movable and immovable properties. She had also filed schedule of affairs.

2. The learned Official Assignee has determined the amount available for distribution to the secured and unsecured creditors. The petitioner also participated in all enquiries. Consequently, further stating that she had not committed any offence under the Presidency Town Insolvency Act, 1909 or under Sections 421, 422, 423, 424 of Indian Penal Code, this application has been filed seeking discharge.

3. By order dated 24.10.2016 in application No.254 of 2016, this Court has condoned the delay of 2037 days in filing the application seeking discharge.

4. In the report filed by the learned Official Assignee, it has been stated that the petitioner is the widow of late P.R.Herle, who was running Automobile business under the name of "Cutwell Tools" at No.79A, MKN Road, Subba Reddy Lane, Guindy, Chennai 32, and in the course of said business, debts were incurred. Consequently she was forced to file this application in IP No.2/2009 seeking to declare herself as insolvent. It has been further stated that pursuant

to the order of this Court, the Official Assignee had taken inventory of the movables and machineries in “Cutwell Tools” belonging to her and brought the same for sale in public auction on 08.04.2009 and 03.12.2009 and they realised a the sum of Rs.6,08,000/- and Rs.3,30,000/-. The locker in the Canara Bank, Ashok Nagar Branch was inspected to note down the jewels inside. Public examination was also conducted. The liability towards 28 unsecured creditors was Rs.84,89,000/-. Notices were served. Creditors filed claim applications. None of the creditors filed application under Order VIII Rule 7 of the Insolvency Rules. The insolvent assisted the Official Assignee in assets investigation. The insolvent did not commit any offence under Sections 421, 422, 423 and 424 of IPC or under Section 103 of the Presidency Town Insolvency Act, 1909. It has been further stated that a total sum of Rs.12,40,802/- is available in this estate. Out of the assets available in the estate, 0.52p in a rupee could be given to the unsecured creditors who have proved their claims.

5. Taking all the above facts into consideration and the particular fact that the petitioning debtor, after adjudication as insolvent had co-operated in all aspects of the enquiries conducted by the learned Official Assignee and also owing to the fact that a clean disclosure of all debts which had accrued to the estate had been made and there being no suppression of any fact and also no evidence of commission of offence under Sections 421, 422, 423 and 424 of IPC

C.V.KARTHIKEYAN ,J.

jv

or under the provision of the Presidency Town Insolvency Act, 1909, I deem to discharge the petitioning debtor, Sreelakshmi Herle, unconditionally. Application is allowed.

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Internet: Yes/No

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