

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2017

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THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**

Insolvency Petition No.5 of 2017

M/s.Tekchand Jaichand, H.U.F.,
Rep. By its Manager and
Karthi, Jaichand.

... Petitioning Creditor

.Vs.

K.Sivakumar

... Debtor

PRAYER: Petition filed under Section 9 to 13 of the Presidency Towns Insolvency act, III of 1909 and Order III-A of the Insolvency Rules, 1958 praying (i) to treat this Petition as urgent; (ii) to adjudicate the Debtor as an Insolvent; (iii) to direct that the estate of the Debtor be vested in the Official Assignee of Madras, for the benefit of the general body of creditors of the debtor; (iv) to order that the costs of this petition be paid by the Official Assignee of Madras, from and out of the estate of the Debtor to the Petitioning Creditor.

For Petitioning Creditor : Mr.T.Srikanth

For Debtor : No appearance

J U D G M E N T

This Insolvency Petition is filed under Sections 9 to 13 of the Presidency Towns Insolvency Act, to adjudicate the Debtor as Insolvent and to direct the estate of the debtor to be vested in the Official Assignee for the benefit of the general body of creditors of the debtor.

2. The debtor owed a money to the Petitioning-Creditor, (hereinafter referred to as "Creditor") and a suit in O.S.No.4934 of 2011 was filed on the file of the City Civil Court, Chennai, seeking recovery of money and the suit was decreed on 29.11.2011. Even after the decree passed, the debtor failed to pay the decree amount.

3. Since the decree amount was not paid, the creditor moved this Court for issuance of insolvency notice in I.N.No.27 of 2016. The said I.N.No.27 of 2016 was allowed by this Court and an insolvency notice was issued. Since, the same could not be served on the debtor, publication of the insolvency notice was effected in Tamil Daily 'Malai Murasu' on 08.03.2017. Even after such service, the debtor has not come forward to pay the amount and the period of 35 days mentioned in the insolvency notice has also expired. Therefore, the creditor has come forward with

this petition for adjudicating the debtor as insolvent. As on the date of the filing of this petition, the amount due under the decree is Rs.1,69,082.50. In this application, notices sent to the debtor were repeatedly returned. This Court had ordered substituted service by publication. Pursuant to the said order, publication has been effected in Tamil Daily 'Malai Murasu' dated 01.11.2017. Despite such publication, the debtor has not chosen to appear before this Court. Since, the claim in the insolvency petition is based on decree of the Civil Court, the non payment of the decree amount amounts to an Act of insolvency. Hence, the debtor has rendered himself liable to be adjudicated as an insolvent for having committed an Act of Insolvency within the meaning of Section 9(2) of the Presidency Towns Insolvency Act.

4. The amount due from the debtor to the creditor as per the Insolvency Notice is Rs.1,66,582.50 and the same works out to Rs.1,69,082.50 on the date of filing of the Insolvency Petition. The creditor therefore seeks an order to declare the debtor as insolvent.

5. Hence, the Debtor is adjudicated as insolvent. The estate of the debtor shall vest with the Official Assignee for the benefit of the general

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body of creditors of the debtor. The costs of this petition shall be paid by the Official Assignee from and out of the estate of the debtor to the creditor.

6. In fine, this Insolvency Petition is allowed as prayed for. The insolvent is granted 18 months time to apply for discharge.

21.11.2017

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Index : Yes/ No

Internet: Yes/ No

Speaking Order/ Non-speaking Order

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