

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2017

CORAM :

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
And

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

O.S.A.No.281 of 2017

M.G.Purushotham (Deceased)
carried on business under the
Name and style of M.G.Home Needs

1. P.Vasantha
2. G.P.Koteswari ... Appellants

Vs.

1. Renuka S.Jain
2. The Official Assignee
Madras High Court, Chennai. ... Respondents

Prayer : Appeal filed under Order 36, Rule 9 on the Original Side Rules read with Clause 15 of the Letters Patent, against the decretal order dated 09.11.2016, made in Application No.11 of 2016 in I.P.No.101 of 2006.

Application No 11/2016: Application praying that this court be pleased to pass on annulling the order dated 8/9/2006 adjuncating M.G.Purushotham, the Ist applicant deceased husband & insolvent and directing the re-vesting of the assests to the applicants.

For Appellants : Mr.J.Balagopal

For Respondents : Ms.C.B.Meena, Official Assignee
and Mr.M.Vasanthakumar,
Deputy Official Assignee for R2

J U D G E M E N T

[Judgement of the Court was delivered by RAJIV SHAKDHER, J.]

1. This is an appeal preferred against the order dated 09.11.2016, passed in A.No.11 of 2016 filed in I.P.No.101 of 2006.

1.1. Application No.11 of 2016 was filed by the wife and daughter of the deceased insolvent, i.e., Mr.M.G.Purushotham.

2. The record shows that the insolvent/Mr.M.G.Purushotham expired on 06.01.2013. The insolvent/Mr.M.G.Purushotham, however, was declared insolvent on 18.09.2006, based on a petition filed by the petitioner, one, Ms.Renuka S.Jain/respondent No.1 herein. This petition was numbered as : I.P.No.101 of 2006.

2.1. The appellants before us, that is, the wife and the daughter of late Mr.M.G.Purushotham, having become aware of the fact that he had been declared insolvent before his death, moved the aforementioned application, i.e., A.No.11 of 2016, for annulment of the adjudication order.

2.2. The learned Single Judge, however, vide the impugned order dated 09.11.2016, dismissed the aforesaid application.

3. The Official Assignee has filed a report before us, which is indicative of the fact that all creditors of Late M.G.Purushotham have been satisfied, albeit, without the intercession of her office. This aspect is also reflected in the impugned order passed by the learned Single Judge. The learned Single Judge has, however, come to the conclusion that payments and/or settlements with the creditors could not have been carried out privately, once, the estate of the insolvent vested in the Official Assignee.

3.1. It is on this basis that the learned Single Judge dismissed the application filed by the appellants herein.

4. As indicated in our proceedings dated 30.11.2017, the insolvent/Mr.M.G.Purushotham, prior to his death, as required by the provisions of the Presidency Town Insolvency Act, 1909, (in short, "the Act") had failed to file a schedule pertaining to his affairs.

4.1. It is in this background that vide order dated 30.11.2017, we had directed the Official Assignee to take out a public notice in two newspapers so as to call for claims, if any, qua the estate of the deceased insolvent, i.e., Mr.M.G.Purushotham.

4.2. Accordingly, as recorded by the Official Assignee in her report dated 15.12.2017, advertisements were taken out, as directed by us, whereby, claims were called from the general public with regard to the estate of the deceased insolvent, i.e., Mr.M.G.Purushotham.

4.3. We are told by the Official Assignee that no claims have been received, despite the public notice. The report is also indicative of the fact that the appellants paid the cost for taking out the advertisements.

4.4. In this background, we put to the Official Assignee, given the fact that all creditors had been paid and/or settled and no fresh claims had been lodged, would she have any

objection to the annulment of the order of adjudication dated 18.09.2006.

4.5. In response, the learned Official Assignee says that, since, there are no creditors, who seek to press the claims against the estate of the deceased insolvent/Mr.M.G.Purushotham, the adjudication order dated 18.09.2006, could be annulled.

4.6. We may also note that during the course of proceedings pending before us, the appellants have deposited, in addition to the advertisements costs, a sum of Rs.10,000/- towards the administrative expenses undertaken by the Official Assignee.

4.7. The Official Assignee, we are told, in terms of our directions, has already deposited the said sum in the Contingency Fund account. We are also told by the Official Assignee that after the order of annulment is passed, she is required to take out another advertisement informing the general public with regard to the factum of annulment.

5. Thus, having regard to the aforesaid circumstances, we are inclined to allow the appeal. Accordingly, the order of adjudication dated 08.09.2006, is set aside, subject to the appellants depositing another sum of Rs.8,190/- (Rupees eight thousand one hundred and ninety only) for enabling the Official Assignee to take out a public notice in two newspapers; one, in English (News Today) and the other in vernacular language, i.e., Maalaisudar (Tamil) informing the public at large that the order dated 18.09.2006, has been annulled.

6. The needful will be done by the appellants within one week from today.

7. The appeal is disposed of, in the aforesaid terms.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Official Assignee high court, chennai.
- 2.The Sub Assistant Registrar (O.S.),Madras High Court.

+1cc to Mr.J.Balagopal, Advocate, S.R.No.90888

O.S.A.No.281 of 2017

EV(CO)

RRK(29/01/2018)