

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 02.09.2016

Pronounced on 23.01.2017

DATED: 23.01.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(PD)No.1730 of 2012
and
M.P.No.1 of 2012

Chinnadurai

.. Petitioner

Vs.

Karuppannan

..Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order of the Principal Subordinate Judge's Court at Salem dated 26.08.2011 in I.A.No.49 of 2010 in I.P.No.44 of 2005.

For Petitioner : Mr.P.Valliappan

For Respondent : Mr.V.R.Rajasekaran

O R D E R

This Civil Revision Petition is filed against the order of dismissal of the Interim Application in IA.No.49/10 in IP.No.44/05 dated 26.08.2011. As the CRP is filed under the Article 227 of Constitution of India, this court by using the power of superintendence, subjects the grounds raised in the CRP for analysis.

2.The present petition is filed based on the question of fact. However, the supervisory Jurisdiction conferred on the High Courts under the Article 227 of Constitution is confined only to see whether an Inferior Court or Tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record much less of an error of Law. It is also not permissible to a High court on a petition filed under Article 227 of Constitution to review or re-weigh the evidence upon which the inferior court purports to have passed the order or to correct errors of law in the decision. Before go into the merits of the case, this court keeps in mind that the judgment of the Hon'ble Supreme Court as reported in 2003 (3 SCC 524).

3.It is the Case on hand that the revision petitioner is the 16th Respondent/Creditor and he filed an application U/s 21(3) (ii) of the

Provincial Insolvency Act and Sec 151 of CPC to issue warrant of arrest on the debtor and keep him in prison till the disposal of Insolvency petition for the reason that the Respondent/Debtor did not include all his properties in the insolvency petition. When the affidavit filed by the revision petitioner before the learned Trial Court is perused, this court noticed that he has stated in Para No.7 "that there are 2 more items of property that the debtor had knowingly omitted to include in the insolvency petition with fraudulent intention and to conceal his property". For the petition filed U/s. 21(3)(ii) the debtor/petitioner filed his counter and refuted the averments of affidavit of the Revision Petitioner. After analyzed the merits of the petition and the counter statement, the learned Trial Court dismissed the petition as there is no merit in the same.

4. Feeling Aggrieved over the order of dismissal, the Instant Revision is filed.

5. First of everything this court is unable to understand the capacity of the parties in the construction of the petition. It is not in dispute that the petitioner in I.A No.49/2010 in I.P.No.44/2005 is the 16th Respondent/Creditor. The aforesaid insolvency petition is

pending before the learned Trial Court concerned. However, when the interim application is filed by the petitioner, who is the 16th Respondent/Creditor in the insolvency petition, he arrayed the debtor as judgment debtor. It is for the trial court to correct the capacity of the parties when the petition is filed. Also it is incumbent on the part of the trial court to ascertain the construction of petition as per law. It is unfortunate to record here that when the counter statement filed by the Debtor/Petitioner is perused, the debtor defined his capacity as Respondent/Petitioner/JD which means judgment debtor. It is no doubt that no person will become judgment debtor, unless he is declared as judgment debtor by a competent court of law that too after a full-fledged trial. So, no one can assume a legal capacity unless by an order of court.

6. Now the issue involved in this Civil Revision Petition is that the 16th Respondent/Creditor, has filed a petition to issue warrant of arrest in an insolvency proceedings for the improper disclosure of properties by a debtor. At this juncture, in the considered opinion of this court is that it is useful to reproduce the proviso clause (ii) of Sub-Section 3 of Section 21 of the Provincial Insolvency Act, 1920. It is as follows:

“that the debtor, with intent to defeat or delay his creditors to avoid any process of court, has failed to disclose or has concealed, destroyed, Transferred (or) Removed from such limits, or is about to conceal, destroy, Transfer, (or) Remove from such limit, any document likely to be of use to his creditors in the course of the hearing or any part of his property other than such particulars as aforesaid”.

7.This court keeps in mind that one of the main purposes of the Insolvency Act is to ensure that one of the several creditors shall not be given undue preference. So, the debtor/petitioner is duty bound to disclose all his property. At the same time if the opposite party feels that the debtor has left some properties while filing the insolvency petition, it is for the creditor to bring necessary information about the properties left out to the notice of the court. As far as the present case is concerned that though the revision petitioner made averments as if the debtor/respondent left out 2 properties, he has not taken any effort to furnish particulars to the court about the properties.

8.Further, some other allegations have also been made that a

property was left out by debtor and for that reason the 13th creditor filed an interim application in I.A.No.34/2010, but the said 13th creditor has not come to this court for proper remedy. The issue involved in this petition is no doubt the debtor is liable to furnish complete particulars about his property, but at the same time it is for the creditor to prove before the concerned court by adducing documentary evidence about the existence of the properties which were intentionally left out. So, the order passed by the learned trial court is correct and no interference is required.

9.Apart from that there is no explanation on the side of revision petitioner that whether he had taken proper legal steps to bring the properties allegedly left out by the debtor before the court.

10.Therefore, this court necessarily comes to the conclusion that the petition filed by the Revision petitioner before the trial court is lack of materials to substantiate his plea. So, the court has no other option except to dismiss the Civil Revision Petition. At the same time this court has also taken notice that since the Insolvency Petition No.44/2005 is filed in the year 2005, in the interest of justice, the learned trial court is directed to dispose of the I.P.No.44/2005 within

a period of 6 months preferably on or before the last working day of July, 2017.

11.In the result:

(a) this Civil Revision Petition is dismissed by confirming the order passed in I.A.No.49 of 2010 in I.P.No.44 of 2005, dated 26.08.2011,on the file of the Principal Subordinate Court, Salem.

(b) the learned Principal Subordinate Judge, Salem is hereby directed to dispose of the Insolvency Petition in I.P.No.44 of 2005 within a period of 6 months from the date of receipt of a copy of this order. All the parties are hereby directed to give their fullest co-operation for early disposal of the I.P.No.44 of 2005.

12.Accordingly, this Civil Revision Petition is dismissed with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

23.01.2017

Index:Yes
Internet:Yes

vs

To
The Principal Subordinate Court,
Salem.

M.V.MURALIDARAN, J.

VS

Pre-Delivery order made in
CRP(PD)No.1730 of 2012
and
M.P.No.1 of 2012

23.01.2017
<http://www.judis.nic.in>