IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.01.2025

Pronounced on : 24.01.2025

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

AND

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

Application (IP) No.89 of 2017
and
IP.No.25 of 2014

The Official Assignee,
High Court, Madras ... Applicant

Vs

1.The Arjunlal Sunderdas
23, Anderson Road,
Nungambakkam, Chennai – 600 006 .. 1st Respondent / Insolvent

2.J.Muruganandhan .. 2nd Respondent / Third Party / Debtor

This Application has been filed under Order IX and Rule XIV Rule 2 and 3 of Insolvency Rules 1956 r/w Sections 7, 36, 68 and 90 of the Insolvency act, for a judgment and decree against the 2nd respondent directing the 2nd respondent to pay a sum of Rs.65,00,000/- with interest a 18% per annum from 23.12.2013 till the date of realization.

For Applicant : Mr.K.V.Ananthakrushnan

For R2 : Mr.Adaikala Arockiaraj

ORDER

This application has been filed by the Official Assignee under Sections 7, 36, 68 and 90 of the Insolvency Act, seeking judgment and decree against the 2nd respondent, J.Muruganandhan, Tools & Machine Tools Engineering, SIDCO Industries Estate, Ambattur, Chennai, to pay a sum of Rs.65,00,000/- together with interest at 18% per annum from 23.12.2013 till date of realization and also for costs of the proceedings.

2.In the report of the Official Assignee, it had stated that on an application filed by one Chitra Desai on 10.03.2014 the 1st respondent, Arjunlal Sunderdas was declared as insolvent. The insolvent was engaged in finance and real estate business. During the course of investigation, the insolvent disclosed some of the assets but not the liabilities. The Official Assignee had taken control of the estate of the insolvent. During the pendency of the Insolvency Petition, the insolvent died on 07.05.2018. It had been further stated in the report that the 2nd respondent, had received a sum of Rs.50/- Lakhs by online transfer on 22.11.2012 from the insolvent and a further sum of Rs.15/- Lakhs again by online tranfer from the insolvent on 23.11.2012. Both these amounts had been credited to the account of the 2nd respondent in State Bank of India, Poonamallee Branch in Account No.20079046230. It had been stated that no records had been produced to show discharge of the said amount. It is under those circumstances that the Official Assignee had filed this application seeking a judgment and decree against the 2nd respondent for recovery of the said amount together with interest and costs.

3.A counter affidavit had been filed on behalf of the 2nd respondent, wherein, he had claimed that he was not liable to pay any amount to the insolvent. It had been further stated that the insolvent had issued a promissory note for a sum of Rs.15/- Lakhs for borrowal from the 2nd respondent which had not been repaid. He claimed that the original promissory note is still available with him. He had further stated that there was no acknowledgment of the debt and that therefore, the claim was barred by limitation.

4.On adjudication of the rival assertions made by the Official

Assignee and by the 2nd respondent, that the issues which arise for adjudication are as follows:

i).Whether the claim of the Official Assignee is barred by the law of limitation?;

ii).Whether the Official Assignee is entitled for a judgment and decree as prayed for?; and

iii).To what other reliefs are the parties entitled to?

5.Both the Official Assignee and the 2nd respondent were permitted to adduce oral and documentary evidence. On the side of the Official Assignee, P.Mangaiyarkkarasi, Assistant Section Officer in the Office of the Official Assignee was examined as PW-1. She filed her proof affidavit and marked Exs.A1 to A4. Ex.A1 was the relevant page in the report of the auditor Ranga Ramanujam relating to the payment of Rs.50/- Lakhs and Ex.A2 was the relevant page in the report of the auditor Ranga Ramanujam for payment of Rs.15/- Lakhs. Ex.A3 was the relevant page in the report of the auditor, Annamalai Associates for payment of total amount of Rs.65/- Lakhs. Exs.A4 and A5 were the relevant entry in the schedule of affairs. Ex.A6 was the extract of the statement of accounts of the insolvent in Indian Bank, Ethiraj Salai (Chennai) Branch for Account No.6072364585 for debit of a sum of Rs.50/- Lakhs on 22.11.2012 and a sum of Rs.15/- Lakhs on 23.11.2012. Ex.A7 was the copy of letter from the State Bank of India, Poonamallee Branch enclosing the Statement of Accounts of the 2nd respondent with respect to Account No.20079046230, wherein, the credit of a sum of Rs.50/- Lakhs on 22.11.2012 and Rs.15/- Lakhs on 23.11.2012 by transfer from the account of the insolvent were reflected. Ex.A8 was the copy of the letter issued by the Official Assignee to the Manager, State Bank of India, Poonamallee.

6.On the side of the 2nd respondent, J.Muruganandam was examined as RW-1. He filed his proof affidavit but did not mark any document.

7.In the proof affidavit of PW-1, it had been very categorically stated that the insolvent had transferred two amounts of Rs.50/- Lakhs and 15/- Lakhs to the 2nd respondent by bank transfer on 22.11.2012 and 23.11.2012 respectively. It had been further stated that the extract of the account of the insolvent had been produced and marked as Ex.A6. Similarly, the corresponding entry in the account of the 2nd respondent in State Bank of India, Poonamallee Branch had been marked as a document in Ex.A7. It had been further stated that the insolvent, 1st respondent had been adjudicated as insolvent on 21.04.2014 and the application had been filed on 22.02.2017 within a period of three years from the date of adjudication and that therefore, the application was filed within the period of limitation.

8.In the proof affidavit of RW-1, the 2nd respondent stated that the statement of accounts maintained by the insolvent was not binding on him. He further stated that there were mutual dealings between him and the insolvent. He further stated that the insolvent had issued a promissory note for a sum of Rs.15/- Lakhs, which sum the insolvent had still not repaid. But the promissory note had not been marked as a document. He further stated that there has been no admission of liability and that therefore, the claim is barred by the law of limitation.

9.Mr.K.V.Ananthakrushnan, learned counsel appearing for the Official Assignee pointed out the documents filed on behalf of the Official Assignee, particularly the bank statements which reflected a debit entry on

22.11.2012 and on 23.11.2012 in the account of insolvent and a corresponding credit entry in the bank account of the 2nd respondent and therefore, contended that the fact that the insolvent had transferred the sum to the 2nd respondent cannot be denied or disputed by the 2nd respondent. With respect to the allegation that the claim is barred by limitation, the learned counsel pointed out that the 1st respondent was adjudicated as insolvent on 21.04.2014 and the application was filed on 22.02.2017 within a period of three years from the date of adjudication. The learned counsel stated that during the course of investigation, the insolvent never cooperated and details had to be gathered from the auditor, Ranga Ramanujam who was also not cooperative and therefore, another auditor, Annamalai Associates had to be appointed. It had been further stated that the bank account of the 2nd respondent was obtained after a communication had been issued to the Manager, State Bank of India, Poonamallee Branch and therefore, asserted that the application should be allowed as prayed for.

10.The learned counsel for the 2nd respondent in his arguments pointed out that the 2nd respondent had never admitted the liability and therefore argued that the claim was barred by law of limitation. The learned counsel further stated that the insolvent was due and payable to the 2nd respondent a sum of Rs.15/- Lakhs and had also issued a promissory note in this regard. However, the said document had not been marked as exhibit during trial. The learned counsel asserted that the application should be dismissed.

11.We have carefully considered the arguments advanced.

Issue Nos.1 and 2:

12.The claim of the Official Assignee is based on transfer of amount through online transactions from the account of the insolvent to the account of the 2nd respondent. In this connection, the witness for the Official Assignee had produced as a document, the extract of the bank account of the insolvent, which had been marked as Ex.A6. A perusal of Ex.A6 shows that from Indian Bank Ethiraj Salai (Chennai) Branch, from the account of the insolvent, Arjunlal Sunderdas, from Account No.6072364585 a sum of Rs.50/- Lakhs had been transferred on 22.11.2012 to the account of J.Muruganandhan and a sum of Rs.15/- Lakhs had been transferred on 23.11.2012 to the account of J.Muruganandhan.

13.It is not in dispute that J.Muruganandhan is the 2nd respondent.

Similarly, a careful perusal of the statement of accounts forwarded by the Manager, State Bank of India, Poonamallee Branch by a covering letter, Ex.A7 would show that there has been a corresponding credit to the account of J.Muruganandhan in State Bank of India, Poonamallee Branch in Account No.20079046230 of an amount of Rs.50/- Lakhs from the account of Arjunlal Sunderdas on 22.11.2013 and another sum of Rs.15/- Lakhs from the account of Arjunlal Sunderdas on 23.11.2012. It is thus evident that there has been transfer of a total sum of Rs.65/- Lakhs from the account of the insolvent to the account of the 2nd respondent. There is no document produced by the 2nd respondent to prove discharge of this debt to the insolvent. A strong presumption can therefore be raised that the 2nd respondent was the recipient of total sum of Rs.65/- Lakhs from the insolvent and had not repaid the same.

14.It is to be pointed that on an application filed by the petitioning creditor, Chitra Desai, on 10.03.2014 seeking to adjudicate the 1st respondent as insolvent, an order was passed on 21.04.2014 in I.P.No.25 of 2014 adjudicating the 1st respondent, Arjunlal Sunderdas as an insolvent. On and from that date, the assets of the insolvent stood vested with the Official

Assignee.

15.It is further seen that the insolvent had also filed a schedule of affairs. Further, the Official Assignee had to collect details from the auditor of the insolvent Ranga Ramanujam. Since complete details were not furnished, the Official Assignee had to also collect details from the auditor nominated for this purpose, Annamalai Associates. Thereafter, the bank accounts were also verified. It was observed from the bank account of the insolvent in Indian Bank Ethiraj Salai (Chennai) Branch that on 22.11.2012 and on 23.11.2012 two amounts of Rs.50/- Lakhs and Rs.15/- Lakhs had been transferred to the account of J.Muruganandhan. A perusal of Ex.A7, shows that this amount had also been credited to the account of J.Muruganandhan in his State Bank of India Account at Poonamalle. Both these documents have not been denied by the 2nd respondent. Therefore, their veracity cannot be questioned or challenged.

16.During cross-examination of RW-1 / 2nd respondent, he had stated that he knew the insolvent from the year 2008 to 2009. With respect to specific questions about transfer of Rs.50/- Lakhs and Rs.15/- Lakhs, he had answered as follows:

> *"Q:Is it correct to say that Mr.Arjunlal Sunderdas has transferred Rs.50/- Lakhs on 22.11.2012 and Rs.15/- Lakhs on 23.11.2012?*
>
> *A:I do not remember the dates and it is correct.*
>
> *Q:(Ex.A7 shown to the witness) As per Ex.A7 a sum of Rs.50/- Lakhs on 22.11.2012 and Rs.15/- Lakhs on 23.11.2012 were credited in your account by Mr.Arjunlal Sunderdas?*
>
> *A:Yes. But the amount that I received was the money that I lent to Mr.Arjunlal Sunderdas."*

17.It is thus seen that there has been an admission of receipt of the sum of Rs.50/- Lakhs and Rs.15/- Lakhs by the 2nd respondent. Once there has been admission of receipt of the amount, the onus shifts to the 2nd respondent to prove discharge. The 2nd respondent has failed miserably to prove discharge. He has not even pleaded discharge. We therefore hold that the applicant has proved transfer of a total sum of Rs.65/- Lakhs to the 2nd respondent by the insolvent.

18.The only issue to be now examined is whether the claim is barred by law of limitation. The 1st respondent, insolvent had adjudicated as insolvent on 21.04.2014 in I.P.No.25 of 2014. The present application had been filed by the Official Assignee on 22.02.2017 within a period of three years from the date of such adjudication. The only conclusion that can be reached is that the claim by the applicant is not barred by the law of limitation.

19.In view of the above discussions, Issue No.1 is answered that the claim is not barred by law of limitation and Issue No.2 is answered that the Official Assignee is entitled for the claim as prayed for together with interest and costs. So far as the interest is concerned, the transfer of fund to the 2nd respondent is a business transaction. The insolvent was carrying on business in finance. He was lending money as business transactions. We therefore hold that the amount would invite interest at the rate of 18% per annum.

<u>Issue No.3:</u>

20.In the result, this Application stands allowed with costs.

21.A judgment and decree is passed against the 2nd respondent (i) for a sum of Rs.50/- Lakhs together with interest at 18% per annum from 22.11.2012 till the date of payment; (ii) for a sum of Rs.15/- Lakhs together with interest at 18% per annum from 23.11.2012 till the date of payment; (iii) for costs of this application.

(G.J.,J.) (C.V.K.,J.)

24.01.2025

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Index: Yes/No
Internet: Yes/No
Speaking order: Yes/No

DR.G.JAYACHANDRAN,J.

and

C.V.KARTHIKEYAN,J.

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Pre-delivery order in

Application (IP) No.89 of 2017
and
IP.No.25 of 2014

24.01.2025