



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10 .04.2017  
(Reserved on 05.04.2017)

WEB COPY

CORAM :

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN**

CRP(PD) (MD) No.2233 of 2015

and

MP(MD) No.1 of 2015

1) M.K.Seetharaman

2) S.Jayavel

... Petitioners

vs.

1) M.K.Jeganathan

2) M.K.Parthasarathy

3) V.Jayalakshmi

4) B.K.S.Ramachandran

... Respondents

Petition filed under Article 227 of the Constitution of India, to call for the records pertaining to I.A.No.189/2011 in O.S.No.206/2007 on the file of the Additional Subordinate Judge, Karur, and set aside the fair and decreetal order dated 31.08.2015 therein and consequently strike off the plaint as being barred by law and the same is an abuse of law or in alternative stay further proceedings or impose such conditions necessary for protection of creditors in I.P.7/1981 on the file of the Subordinate Judge, Karur.

|                 |                     |
|-----------------|---------------------|
| For Petitioners | : Mr.V.Anand        |
| For R1 & R2     | : Mr.K.Govindarajan |
| For R4          | : Mr.V.Karuna       |

ORDER

This revision petition is directed against the dismissal of the interlocutory application filed by the defendants 1 and 2, under Order 7 Rule 11 and Section 151 CPC and Section 29 of the Provincial Insolvency Act.

2.The suit has been filed by the respondents 1 to 3 herein/plaintiffs against the revision petitioners/defendants 1 and 2 and the 4<sup>th</sup> respondent/3<sup>rd</sup> defendant, for partition and permanent injunction. The 3<sup>rd</sup> respondent/3<sup>rd</sup> plaintiff is the daughter and the respondents 1 and 2/plaintiffs 1 and 2 and the 1<sup>st</sup> petitioner/1<sup>st</sup> defendant are the sons of one Kulanthaivel Konar.



The suit has been contested by the defendants by filing written statement and the matter was taken up for trial after framing issues.

3. At that juncture, the revision petitioners herein who are the defendants 1 and 2, have taken out an application under Order 7 Rule 11 and Section 151 CPC and Section 29 of the Provincial Insolvency Act, alleging that the plaintiffs, 1<sup>st</sup> defendant and one Annalakshmi Ammal have filed a petition to declare themselves as insolvents and in the Insolvency Petition No.7/81, they were declared as insolvents and till date, they are not discharged from insolvency. While so, the suit filed for partition without the leave of the Court is not maintainable. Hence, the plaint has to be rejected.

4. The Trial Court, after considering the submission made by the revision petitioners, dismissed their application, on the ground that the application is not maintainable, since it has been filed after the commencement of trial and held that the proceedings in I.P.No.7/81 has already been closed and therefore, there is no merit in entertaining the application.

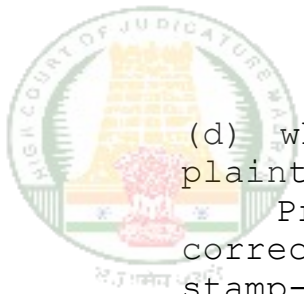
5. Aggrieved by the said order, the present revision petition is filed, on the ground that the lower Court failed to appreciate the facts of the case in the light of Section 29 of the Provincial Insolvency Act and failed to consider that non joinder of the official receiver as a party to the proceedings, is fatal to the case. Apart from the above legal issues, several other grounds of facts have also been agitated by the revision petitioners.

6. For the sake of considering this revision petition, it is suffice to consider whether Order 7 Rule 11 CPC and Section 29 of the Provincial Insolvency Act are applicable to the facts of the case.

7. It is the admitted fact that the present application has been filed when examination of PW2 was under way. Order 7 Rule 11 CPC reads as under:-

'11. Rejection of plaint- The plaint shall be rejected in the following cases:-

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;



(d) where the suit appears from the statement in the plaint to be barred by any law.

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.'

8. According to this provision, a plaint can be rejected, if no cause of action is disclosed or the relief claimed is under-valued or the suit itself is barred by any law in force. So far as this case is concerned, none of the above grounds is available to reject the plaint. The Trial Court has found sufficient cause of action in the suit and has framed issues and has also commenced trial by examination of witnesses. While so, the plea of the revision petitioners that the plaint has to be rejected is unsustainable and the Trial Court has rightly rejected it.

9. The second limb of submission of the revision petitioners is that even if the plaint is not rejected under Order 7 Rule 11 CPC, as per Section 29 of the Provincial Insolvency Act, all further proceedings have to be stayed or allowed to continue on such terms as such Court may impose. The Trial Court has not applied this provision for the case on hand.

10. It is also submitted by the learned counsel for the petitioners that under Section 28(2) of the Provincial Insolvency Act, no suit can be filed without the leave of the Court in respect of any property acquired by or devolved on the insolvent. The above submission of the revision petitioners is also unsustainable, because, Section 28 shall be applied only when the insolvency proceedings is pending and any suit or other legal proceedings to be initiated in respect of the insolvent's property, leave of the Court is required. In this case, the insolvency proceedings is not pending. Therefore, the question of obtaining the leave of the Court does not arise. Section 28(2) of the Provincial Insolvency Act reads as under:-

''(2) On the making of an order of adjudication, the whole of the property of the insolvent shall vest in the Court or in a receiver as hereinafter provided, and shall become divisible among the creditors, and thereafter, except as provided by this Act, **no creditor to whom the insolvent is indebted** in respect of any debt provable under this Act shall **during the pendency of the insolvency proceedings** have any remedy against the property of the insolvent in respect of the debt, or



commence any suit or other legal proceeding, except with the leave of the Court and on such terms as the Court may impose.''

11. Section 29 of the Provincial Insolvency Act reads as under:-

''29. Stay of pending proceeding.- Any Court in which a suit or other proceeding is pending against a debtor shall, on proof that an order of adjudication has been made against him under this Act, either stay the proceeding, or allow it to continue on such terms as such Court may impose.''

12. From the reading of Sections 28(2) and 29 extracted above, it is clear that the bar or pre-condition to seek the leave of the Court is only in respect of the creditors who intend to proceed against the insolvents during the pendency of insolvency proceedings. The plaintiffs in the suit are not creditors of the defendants/insolvents. There is no material to show the suit was instituted when insolvency proceedings was pending. Therefore, looking at any angle, the plaint cannot be rejected under Order 7 Rule 11 nor all further proceedings can be stayed under Section 29 of the Provincial Insolvency Act. Therefore, the order of the Trial Court rejecting the application is legal and sustainable under law.

Hence, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1) The Additional Subordinate Judge,  
Karur.

2) The Subordinate Judge,  
Karur.

+1cc to M/s. V. ANAND Advocate in SR. No. 51117

+1cc to M/s. K. GOVINDARAJAN Advocate in SR. No. 51533

NBI

JS/SKN.RSK/17.04.2017/4P-5C

Pre-Delivery Order made in  
CRP (PD) (MD) No. 2233 of 2015  
10.04.2017