



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **01.02.2017**

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBBIAH**
AND
THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

W.P. [MD].No.24551 of 2016
and
W.M.P (MD) .No.17702 of 2016

Magesh : Petitioner

Vs.

The Registrar,
Debts Recovery Tribunal,
Madurai. : Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondent to forthwith receive the petition filed by the petitioner under the provisions of the Insolvency and Bankruptcy Act 2016 and consequently number the same, if it is in order.

For Petitioner : Mr.S.Gokulraj

For Respondent : Mr.G.R.Swaminathan
Assistant Solicitor General of India

O R D E R

[Order of the Court was made by **R.SUBBIAH, J.**]

This Writ Petition has been filed for the issue of a Writ of Mandamus directing the respondent to forthwith receive the petition filed by the petitioner under the provisions of the Insolvency and Bankruptcy Act 2016 and consequently number the same, if it is in order.

2. The case of the petitioner is that one Mrs.S.Punitha, W/o.Mr.K.Sankar had borrowed a sum of Rs.2,50,000/- from the petitioner and had executed a promissory note on the same day in respect of the said loan amount. However, he did not repay the said amount. Therefore, the petitioner issued a legal notice dated 24.10.2016, demanding for re-payment of the loan amount with interest.



3. It is the submission of the learned counsel for the petitioner that the Civil Court is not receiving the Creditor Insolvency Petition, since the Provincial Insolvency Act, 1920, was repealed by the Insolvency and Bankruptcy Code 2016. Hence, in order to protect the interest of the petitioner, he had filed a Creditor Insolvency Petition on 14.12.2016, before the Debts Recovery Tribunal, Madurai. However, the Registry, Debts Recovery Tribunal, Madurai, refused to receive the said petition on the ground that no notification or instruction has been received from the Ministry of Finance, Government of India, instructing them to receive the petitions under the said statute. Under the above stated circumstances, the petitioner is now before this Court with this Writ Petition.

4. Today, when the Writ Petition is taken up for consideration, it is reported by the learned Assistant Solicitor General of India, by producing a communication from Ministry of Finance, Department of Financial Service dated 31.01.2017, that as-on-date, the Provincial Insolvency Act, 1920 and the Presidential Towns Insolvency Act, 1909, continue to remain intact. Hence, the submission of the learned counsel for the petitioner that he is unable to go before the regular Insolvency Court is incorrect.

(*)5. In view of the above, the Writ Petition is disposed of giving liberty to the petitioner to approach the Civil Court for appropriate relief. If any application or petition is filed by the petitioner before the Civil Court, the Civil Court is directed to compute the period of limitation from the date on which the petitioner has presented the application before the respondent/Debt Recovery Tribunal, since the petitioner has approached the wrong forum. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(P&A)

(*)AMENDED AS PER ORDER OF THIS
HON'BLE COURT DATED 03/07/2017
AND MADE HEREIN

/True Copy/

Sub Assistant Registrar

(*)TO BE SUBSTITUTED TO THE ORDER ALREADY DESPATCHED ON 07/03/2017
To

The Registrar, Debts Recovery Tribunal, Madurai.

+One cc to Mr.S.Gokulraj, Advocate, SR.No.63226

SMA/SV-MMS/28.02.2017:2P/2C

RL/3C/2P/KP/SAR2/26/7/2017

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ORDER MADE IN

W.P. [MD].No.24551 of 2016

01.02.2017