

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(IN INSOLVENCY)

MONDAY, THE 5TH DAY OF MARCH 2018

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

APPLN.NOS.47 to 50 & 52 OF 2018

IN

I.P. No.8 of 2016

I.P. No.8 of 2016

In the matter of the Presidency
Towns Insolvency Act, III 1909
and

In the matter of R.Anandhi

Insolvent

R.Anandhi,
W/o.C.B.Ramesh Kumar,
residing at 8/2, Akshaya Flats,
Vembuliamman Kovil Street,
K.K.Nagar (West), Chennai-600 078.

... Insolvent

APPLN. Nos.47 to 50 & 52 OF 2017

The Official Assignee,
High Court,
Madras.

... Applicant
-VS-

1.R.Anandhi,
8/2, Akshaya Flats,
Vembuliamman Kovil Street,
K.K.Nagar (West),
Chennai-600 078. ... 1st Respondent /Insolvent

2.R.Krishnamoorthy,
Power of Attorney Holder of the insolvent,
R.Anandhi,
No.34, Ramesh Nagar, 4th Street,
Valasaravakkam, Chennai 87.

3.A.Kattu Beevi,
W/o.K.Ahamed mohideen,
No.B/7, South Sivan Koil Street,
Police Quarters, Vadapalani,
Chennai 600 026.

4.Ahamed Mydeen,
S/o.Kachi Mohideen,
No.B/7, South Sivan Koil Street,
Police Quarters, Vadapalani,
Chennai 600 026.

- 5.The Secretary to Government,
Registration and Commercial
Taxes Department,
Secretariat, Fort St.George,
Chennai 9.
- 6.The Inspector General of Registration,
Santhome High Road, Chennai 4.
- 7.The Sub Registrar,
Sub Registrar Office,
Virugambakkam, Chennai 92. ... Respondents

The Application No.47 of 2018 praying that this Hon'ble court be pleased to declare that the property of the insolvent was alienated by 2nd respondent under a sale deed dated 06.03.2017 - 14.03.2017 for a sale consideration of (*) Rs.16,50,000/- in favour of Respondents 3 and 4, which was registered under Document No.1350/2017 is null and void.

The Application No.48 of 2018 praying that this Hon'ble court be pleased to permit the Official Assignee to seize the property from the custody or possession from the 3rd and 4th respondents or any other person, persons, men, agent or servants acting under him with the assistance of police.

The Application No.49 of 2018 praying that this Hon'ble court be pleased to direct the 3rd and 4th respondents his men agent or servants or any other person acting on behalf of the 3rd and 4th respondents to deliver the vacant possession of the said property with all documents of title in their possession to the Official Assignee.

The Application No.50 of 2018 praying that this Hon'ble court be pleased to permit the Official Assignee to sell the property of the 3rd and 4th respondents in public auction for

the benefit of the General Body of Creditors.

The Application No.52 of 2018 praying that this Hon'ble court be pleased to issue suitable directions that may be given to the 6th Respondent to issue necessary instructions to all the Sub Registrar Offices to mandatorily act upon the request made by the Official Assignee, High Court, Madras, in the Encumbrance Certificate with regard to the immovable property of the insolvent to avoid further encumbrance with regard to the immovable properties of the insolvent.

The above applications coming on this day before this court for hearing in the presence of The Official Assignee, the applicant in all applications and the Deputy Official Assignee of this Court herein, Mr.A.Babu, advocate for 1st respondent/insolvent in all Applications and Mr.C.Manishankar, Additional Advocate General assisted by Mr.Dev Narendran, Government Advocate (CS) herein and the order of this Court dated 12.02.2018 made in Appln.No.47 to 52 of 2018

THE COURT MADE THE FOLLOWING ORDER :

This application has been filed seeking to declare the sale effected by the insolvent on 06.03.2017 through her Power Agent one R.Krishnamoorthy, after the order of adjudication.

2. The debtor-R.Ananthi was adjudicated as an insolvent on her application in I.P.No.8 of 2016 on 01.04.2016. Upon adjudication, the property of the insolvent had vested with the Official Assignee. The Official Assignee

had informed the Sub Registrar, Virugambakkam, Chennai by her letter dated 05.05.2016 sent through a Special Messenger, that an order of adjudication has been passed against the debtor and requested the Sub Registrar to provide the Encumbrance Certificate for the property. The Sub Registrar, Virugambakkam had sent a reply on 24.05.2016, stating that the Encumbrances could be found out only on the furnishing of survey number with regard to the said property and it is also stated in the said letter that on a search made in the name of R.Anandhi, no encumbrance is found.

3. The Official Assignee by a letter dated 06.10.2016 had requested the Sub Registrar, Virugambakkam not to entertain any transfer by the insolvent or by any other person with regard to the property of the insolvent. The said letter was acknowledged by the O/o.The Sub Registrar, Virugambakkam on 17.10.2016.

4. Thereafter on 16.03.2017, the Official Assignee had again written a letter to the Sub Registrar, Virugambakkam, furnishing the schedule of property as well as the boundaries to the property. This letter has been received by the Sub Registrar, Virugambakkam on 20.03.2017. In the interregnum, it appears that the Power Agent of the insolvent R.Krishnamoorthy had sold the property on 06.03.2017, and the said document has been registered on 14.03.2017. The Official Assignee had again on 26.07.2017, wrote to the Sub Registrar, Virugambakkam stating that despite the Official Assignee having informed the Sub Registrar about the

adjudication order and requested the Sub Registrar, Virugambakkam not to entertain any transfer of property by the insolvent. Despite the same a sale deed has been registered on 06.03.2017. This letter has been received by the Sub Registrar, Virugambakkam on 27.03.2017. Hence, the Official Assignee has come forward with the present application seeking to declare the Sale Deed dated 06.03.2017 registered on 14.03.2017 as Document No.1350 of 2017 in the Office of the Sub Registrar, Virugambakkam as invalid and not binding on the Official Assignee. The Power of Attorney as well as the purchasers have been served in this application. Their names are also printed in the cause list today. Despite such service, they have not chosen to appear. On an order of adjudication being made the properties of the insolvent vest with the Official Assignee as per Section 17 of the Presidency Towns Insolvency Act, 1909. Any alienation made by the insolvent after the order of adjudication is null and void and the same cannot bind the Official Assignee. In view of the legal as well as the factual position, it is clear that the debtor herself had obtained an order of adjudication, and thereafter, chosen to alienate the property.

5. A.No.47 of 2018 is allowed, the Sale Deed dated 06.03.2017 registered on 14.03.2017 as Document No.1350 of 2017 is held to be void and not binding on the Official Assignee.

A.No.48 of 2018

This application has been filed to permit the Official Assignee to seize the property from the custody or possession of the 3rd and 4th respondents or any other persons, men, agent or servants acting under him with the assistance of Police.

2. Once the property vested with the Official Assignee under Section 17 of the Presidency Towns Insolvency Act, 1909, the Official Assignee has got the power who seize the property. In view of the fact that the sale made by the insolvent on 06.3.2017 has been declared to be void. The Official Assignee is permitted to seize the property and a warrant is granted to the Official Assignee for seizure of the property and to take possession of the property from the 3rd and 4th respondents or any other person who are found to be in the possession of the property. A.No.48 of 2018 is allowed.

A.No.49 of 2018

This application has been filed to direct the 3rd and 4th respondents to deliver the vacant possession of the said property with all documents of title in their possession to the Official Assignee.

2. In view of the order passed in A.No.47 of 2018 declaring the Sale Deed dated 06.03.2017 executed by the insolvent in favour of the 3rd and 4th respondents as null and

void, this application is ordered. There will be a direction to the 3rd and 4th respondents to hand over the possession of the property along with all documents in their possession to the Official Assignee forthwith.

A.No.50 of 2018

This application has been filed to permit the Official Assignee and to sell the property of the 3rd and 4th respondents in Public Auction for the benefit of the General Body of Creditors.

2. In view of the orders passed in A.Nos.48 & 49 of 2018, the Official Assignee is directed to sell the property which is subject matter of this application on Public Auction and to release the proceeds for the benefit of the General Body of Creditors. A.No.50 of 2018 is allowed.

A.No.52 of 2018

This application has been filed by the Official Assignee seeking to issue suitable directions to call the Sub Registrar Offices to Mandatorily Act upon the request made by the Official Assignee to incorporate the Statutory vesting rights of the official Assignee in the Encumbrance Certificate with regard to the immovable property of the insolvent to avoid further encumbrance with regard to the said immovable properties after the order of adjudication.

2. Under Section 17 of the Presidency Towns

Insolvency Act, 1909, once the order of adjudication is made, the property of the insolvent is vest with the Official Assignee only and the insolvent is deprived of the powers to deal with the said properties.

3. It is often found that the communication from the Office of the Official Assignee informing the Registering Authorities of such orders of adjudication is not taken seriously by the Registration Department which resulted the properties being sold after adjudication. This case is a classic example of such lack of seriousness resulting in sale of the property by the insolvent to various persons creating third party rights which obstructs the process of realisation of the estate of the insolvent for the benefit of the General Body of the Creditors.

4. Since the Official Assignee in the report had stated that the Registration Department as such does not take the intimations given by the Official Assignee regarding the adjudication orders and the Statutory effect of Section 17 of the Presidency Towns Insolvency Act, 1909, I had issued notice to the learned Government Pleader (CS). The learned Additional Advocate General Sri.C.Manishankar assisted by Mr.Dev Narendran, Government Advocate (CS) appeared along with the Inspector General of Registration.

5. The learned Additional Advocate General had assured the Court that the suitable instructions would be issued by the Inspector General of Registration to all the Sub Registrars to the effect that whenever orders of adjudication

passed by this Court, and such orders brought to the notice of the registering authorities, the registering authorities shall make note of the same in their records and refuse registration of any document relating to those properties which are covered by the orders of adjudication communicated by the Official Assignee. However, the following directions have issued to the Inspector General of Registration in order to avoid any failure on the part of the registering authorities to make note of orders of adjudication which resulted in property being sold by the insolvents, after the orders of adjudication.

6. The Inspector General of Registration is directed to issue a circular informing all the Sub Registrars within the City that any letter or communication received from the Official Assignee regarding passing of orders of adjudication under the Presidency Towns Insolvency Act, shall be treated with utmost seriousness so that the registering authorities do not register any documents with reference to those properties after the order of adjudication.

7. The Inspector General of Registration is also required to direct the Sub Registrars ensure that the request of the Official Assignee for granting Encumbrance Certificates are also treated with utmost seriousness and on priority. Encumbrance Certificates should be issued at the earliest free of cost to the Official Assignee whenever such request is made by the Official Assignee.

8. In cases arising under the Provincial of Insolvency

Act, the property of the insolvents vest with the Official Receiver of the concerned District. Whenever the Official Receiver/s bring to the notice of the registering authorities about the orders of adjudication, that are made under the said Act, the authorities shall follow the same procedure as indicated above. (*) The Inspector General of Registration, Chennai, is directed to issue Circulars to all the Registrars in the State directing them to make notice of the orders of adjudication passed **by this Court** or the District Courts or the concerned Sub Courts, so as to enable them to refuse registration of documents executed by the insolvents or their agents, after the orders of adjudication made by the Competent Courts.

9. The Inspector General of Registration is directed to issue Circulars as stated above and place a copy of the same before this Court on 26.03.2018. The Registry is directed to issue copy of this order to Government Advocate (CS), who shall communicate the order to the Inspector General, Registration forthwith.

SCHEDULE OF PROPERTY

Residential Flat bearing (Corporation Old Door No.12/5 and new Door No.14/5, Zone No.08, Division No.128, Bill No.3582, Sub No.000000 situated in the First Floor at No.12, Vembuliamman Koil Street, Virugambakkam, Chennai 600 092 with

a built up area of 500 sq.ft., which is inclusive of the share in the common built up area together with 10/100 (notional extent of 258 Sq.ft.) undivided share in the land of extent of 2574 sq.ft., "PAARTHA APARTMENTS" or thereabouts, the land comprised in Survey No.206/1 of "VIRUGAMBAKKAM VILLAGE", Mambalam-Guindy Taluk, Chennai District the land bounded on the

North by : Pitchandi's Land

South by : Sivalinga Nadar's Land

East by : Land belonging to Mrs.Andalamman
and Mr.Thomas

West by : Vembuliamman Koil Street

WITNESS, THE HON'BLE MS. INDIRA BANERJEE, CHIEF JUSTICE, HIGH COURT AT MADRAS, AFORESAID THIS THE 5th DAY OF MARCH 2018.

SD/-
ASSISTANT REGISTRAR
Original Side - I

(*) Para 8 Modified and prayer in A.No.47 of 2018 Amount corrected as per order of this Court dated 12/03/2018 made in A.No.47 to 50 and 52 of 2018 in I.P.No.8 of 2016.

SD/- 13.03.2018
ASSISTANT REGISTRAR
Original Side - I

//CERTIFIED TO BE TRUE COPY//
DATED THIS THE DAY OF 2018

MANAGER

OFFICE

INSOLVENCY

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

cns- 13.02.2018

HIGH COURT, MADRAS

APPLN. Nos.47 to 50 & 52/2018

IN

I.P.NO.8 of 2016

THE HON'BLE MR.JUSTICE

R.SUBRAMANIAN

ORDER DATED: 05.03.2018

FOR APPROVAL: 08/03/2018

APPROVED ON : 08/03/2018

COPY TO:-

1.THE OFFICIAL ASSIGNEE,
HIGH COURT, MADRAS.

2.THE ADDL.ADVOCAGE GENERAL
HIGH COURT, MADRAS

3.THE GOVERNMENT ADVOCATE, (CS)
HIGH COURT, MADRAS.

4.THE INSPECTOR GENERAL OF
REGISTRATION

THROUGH

THE GOVERNMENT ADVOCATE, (CS)
HIGH COURT, MADRAS.