

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(IN INSOLVENCY)

MONDAY, THE 8TH DAY OF JANUARY 2018

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

APPLN.NO.95 OF 2017

IN

I.P. No.99 of 2010

In the matter of the Presidency
Towns Insolvency Act, III of 1909
and In the matter of C.Heeralal
Joshi @ C.H.Joshi

... Debtor

IP NO. 99 of 2010

Pravin Kumar Pukhraj
S/o. Pukhraj
residing at No.23, Amman Koil Street,
Chennai - 600 003.

... Petitioning Creditor

-VS-

C.Heeralal Joshi @ C.H.Joshi
residing at NO.49,
Walltax Road, Chennai - 600 003.

... Debtor

APPLN. NOS.95 OF 2017

C.Heeralal Joshi alias C.H.Joshi
No.49/119, Wall Tax Road,
Chennai - 600 003.

... Applicant / Debtor

1.Praveen Kumar Pukhraj,
S/o.Pukhraj,
No.23, Amman Koil Street,
Chennai - 600 003.

... 1st Respondent /
Petitioning Creditor

2.The Official Assignee,
Office of the Official Assignee,
High Court,
Madras.

... 2nd Respondent

Application No.95 of 2017 praying that this Hon'ble
court be pleased to Annul the order of Adjudication dated
14.11.2011.

This Application coming on this day before this Court
for hearing in the presence of Mr.Ashok Menon, advocate for

the Applicant/Debtor, Mr.T.Srikanth, advocate for the 1st Respondent/Petitioning Creditor, the Official assignee, the 2nd respondent herein; and upon reading the Judges Summon and affidavit of C.Heeralal Joshi alias C.H.Joshi, filed herein and

it is ordered:

That the Application No.95 of 2017 in IP No.99 of 2010 be and is hereby dismissed.

WITNESS, THE HON'BLE MS. INDIRA BANERJEE, CHIEF JUSTICE, HIGH COURT AT MADRAS, AFORESAID THIS THE 8TH DAY OF JANUARY 2018.

SD/-
ASSISTANT REGISTRAR
Original Side - I

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DATED THIS THE DAY OF 2018

MANAGER
INSOLVENCY OFFICE
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cns - 07.02.2018

HIGH COURT, MADRAS

APPLN.NO.95 OF 2017

IN

I.P. No.99 of 2010

ORDER DATED: 08.01.2018

THE HON'BLE MR.JUSTICE

R.SUBRAMANIAN

FOR APPROVAL:12/02/2018

APPROVED ON :13/02/2018

COPY TO:-

THE OFFICIAL ASSIGNEE
HIGH COURT, MADRAS.

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This Application coming on this day before this Court

for hearing in the presence of Mr.Ashok Menon, advocate for the Applicant/Debtor, Mr.T.Srikanth, advocate for the 1st Respondent/Petitioning Creditor, the Official assignee, the 2nd respondent herein; and upon reading the Judges Summon and affidavit of C.Heeralal Joshi alias C.H.Joshi, filed herein and

THE COURT MADE THE FOLLOWING ORDER :

This Application has been filed seeking annulment of the adjudication order dated 14.11.2011.

2. The Applicant Debtor was adjudged Insolvent by an order dated 14.11.2011 in I.P.No.99 of 2010, along with the said Insolvency Petition there were three other Insolvency Petitions in I.P.Nos.100, 101 and 102 of 2010. While adjudging the Applicant as Insolvent in I.P.No.99 of 2010, the other three I.P.'s were dismissed by this Court on the ground that the petitioner therein did not have registered power of attorney authorizing him to appear on behalf of his father.

3. Admittedly no appeal has been filed against the order dismissing the I.P.Nos.100 to 102 of 2010. As per the order of adjudication made in I.P.No.99 of 2010, the estate of the Insolvent has vested in the Official Assignee. The other creditors who had filed I.P.Nos.100 to 102 of 2010 which were dismissed on 14.11.2011 had filed claim petitions before the Official Assignee and the claims have been admitted by the Official Assignee as per the report of the Official Assignee dated 10.11.2017.

4. As per the order of the Official Assignee the value of the admitted claims are Rs.9,12,412.50/-. This order admitting the claims have been passed by the Official Assignee taking interest at 6% p.a. It is also stated in the report that only a sum of Rs.3,12,876/- is available in the estate.

5. According to the learned counsel for the Applicant viz., the Debtor once the I.P.Nos.100 to 102 of 2010 have been dismissed the debt is wiped out and the Official Assignee is not right in admitting these claims. He would also contend that he has deposited a sum of Rs.3,12,876/- with the Official Assignee for payment to the petitioning creditor in I.P.No.99 of 2010. Therefore, according to the learned counsel there is no debt. Hence, the order of adjudication dated 14.11.2011 is to be annulled.

6. Mr.T.Srikanth, learned counsel appearing for the petitioning creditor would submit that the dismissal of IP does not have the effect of the debt being wiped out. The IP.Nos.100 to 102 of 2011 have been dismissed on the technical ground that the Applicant did not have a power of attorney to represent his father who is the creditor. The Official Assignee has rightly admitted the claims of the father also and unless the estate is sufficient for discharging the debts of the father which are based upon the decrees obtained in the Civil Court, there cannot be an order of annulment.

7. I am inclined to agree with the submissions made by

the learned counsel for the Creditor. After all dismissal of IP does not wipe out the debt, it can at best be stated that there is no act of insolvency. The applicant debtor having been adjudicated in another IP, it is always open to the creditors to file claim petitions. The adjudication order passed is an order in rem and not an order in personam. I find that the Official Assignee is right in admitting the claims of the father, who was the petitioner in I.P.Nos.100 to 102 of 2010.

8. A perusal of the report of the Official Assignee dated 10.11.2017 shows that the debt is more than the assets available with the Official Assignee. I do not see any reason to annul the order of adjudication.

9. Hence, this Application is dismissed.

WITNESS, THE HON'BLE MS. INDIRA BANERJEE, CHIEF JUSTICE, HIGH COURT AT MADRAS, AFORESAID THIS THE 8TH DAY OF JANUARY 2018.

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