

A.No.230 of 2018
in
I.P.Nos.115 & 134 of 1999

R.SURESH KUMAR, J.

The prayer sought for herein is to direct the Official Assignee to release the applicant's property morefully described in the Schedule to the Judge's Summons purchased by the applicant by way of a Sale Deed dated 28.03.2002 registered with Sub Registrar, North Chennai as Document No.285 of 2002 as a bonafide transaction as per Section 57(c) of the Presidency Town Insolvency Act 1909, which is binding on the first respondent herein.

2. Heard Mr.K.V.Anantha Krishnan, learned counsel appearing for the Official Assignee as well as Mr.A.Babu, learned counsel appearing for the petitioning creditor in the main application.

3. Against the second respondent / insolvent, the petitioning creditor filed two IP's i.e., I.P.Nos.115 & 134 of 1999, some time in July and October 1999. In the main IP, ex-parte order was passed on 08.10.2001. Thereafter, on 10.03.2002, the petition to set aside the ex-parte order filed by the second respondent / insolvent was dismissed and thereafter, ex-parte adjudication order was passed declaring the second respondent / insolvent as Insolvent, by order of

this Court dated 26.03.2002. Thereafter, the petition to set aside the ex-parte adjudication was filed by the insolvent, which was allowed on 15.04.2002.

4. In the meanwhile, i.e., after the declaration of the Insolvent, by order of this Court dated 26.03.2002, knowing very well that, he is declared as Insolvent, the second respondent / insolvent sold the property, morefully described in the application herein, to the third party purchaser on 28.03.2002.

5. Thereafter, the main IP's were heard on merits and ultimately, by order dated 08.11.2010, this Court by adjudication, declared the second respondent as Insolvent, thereby all the properties of the insolvent estate, shall vest with the Official Assignee and the said order of adjudication made against the second respondent / insolvent has become final and has been continuing.

6. When that being the factual matrix, the present application has been filed by the third party purchaser seeking direction to the Official Assignee to release the property morefully described in the schedule to the applicant / third party purchaser.

7. As has been rightly pointed out by the learned counsel appearing for the Official Assignee as well as the learned counsel appearing for the petitioning creditor, on the date the alleged sale had taken place i.e., on 28.03.2002, admittedly, the second respondent was declared as Insolvent, since the order of declaration to that effect was made by this Court on 26.03.2002 and the said order was set aside only on 15.04.2002.

8. It is to be noted that, prior to the said orders passed by this Court, infact, as against the ex-parte order dated 08.10.2001, the second respondent / insolvent filed a petition to set aside the ex-parte order, which was also dismissed on 10.03.2002, therefore, the second respondent / insolvent, did have knowledge about the declaration made by this Court by way of adjudication, declaring the second respondent / insolvent, despite the fact that, he has already been declared as Insolvent on 26.03.2002, hurriedly, the insolvent seems to have sold the property to the present applicant / third party purchaser on 28.03.2002. Therefore, the third party purchaser also cannot claim the reason of bonafide purchaser as, knowing very well that, the insolvent having been declared the said transaction of sale has been taken place. Therefore, this Court is not inclined to accept the prayer sought for by the applicant.

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9. Since the property in question has been sold on 28.03.2002 i.e., after the second respondent having been adjudicated as Insolvent, the said sale was only to be construed as void sale. Moreover, the said factor has also been considered by this Court by passing subsequent order and final adjudication on merits dated 08.11.2010. Therefore, the property already been vested with the Official Assignee, the moment the Insolvent was declared so on 26.03.2002, has been continuously vested with the Official Assignee, therefore, the sale said to have been taken place on 28.03.2002, by the insolvent in favour of the present applicant / third party purchaser shall not have any effect and therefore, on that ground also, this Court is not inclined to accept the prayer sought for herein.

Accordingly, this application is dismissed.

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Note: Issue copy of the order on 16.04.2019.

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