



Appln.Nos.254 to 257 of 2018
and
Appln.Nos.30 to 34 and 95 of 2019
in
I.P.No.8 of 2016

C.SARAVANAN, J.

By this common order, these applications are being disposed of. Appln.No.95 of 2019 has been filed by one Mr.R.Krishnamoorthy, the Power of Attorney holder with whom the insolvent R.Anandhi had signed a lease agreement dated 14.11.2014. Appln.No.95 of 2019 has been filed to annul the order dated 01.04.2016 adjudicating the petitioner in I.P.No.8 of 2016 as an insolvent. The said property had been leased to one Mrs.Dhanabakkialakshmi. There is no dispute that the aforesaid sale agreement and the Power of Attorney was executed by the insolvent R.Anandhi on 14.11.2014 and 08.12.2014.

2. It appears that the applicant in Appln.No.95 of 2019 Mr.R.Krishnamoorthy discharged the mortgage of the insolvent by paying the amount to the mortgagor one Mrs.Dhanabakkialakshmi.

3. Meanwhile, after the property was discharged from the



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mortgage, the insolvent filed I.P.No.8 of 2016 on 21.03.2016. By an adjudication order dated 01.04.2016 in I.P.No.8 of 2016 the petitioner was adjudicated as an insolvent.

4. The insolvent had suppressed that she owed a sum of Rs.43,40,000/- to one Gubba Suresh. Pursuant to the aforesaid adjudication on 01.04.2016, the said Gubba Suresh filed a Claim Statement No.44 of 2017 for a sum of Rs.48,40,000/- giving the particulars of the amounts paid to the insolvent.

5. Arguing the case on behalf of the applicant in Appln.No.95 of 2019, Mr.J.Balagopal, learned counsel for the applicant would submit that the applicant has filed Appln.No.95 of 2019 to annul the order dated 01.04.2016 adjudging the 1st respondent/insolvent as an insolvent as it was not a bonafide petition. It is submitted that the applicant in Appln.No.95 of 2019 Mr.R.Krishnamoorthy has subsequently sold the property to the applicant in Appln(IP).Nos.255 to 257 of 2018.



Appln(IP).Nos.255 to 257 of 2018 have been filed for the following relief:

<i>Sl. Nos</i>	<i>Application Nos.</i>	<i>Relief</i>
1	Appln(IP)No.255 of 2018	To set aside the ex-parte order dated 05.03.2018 passed in application No.50 of 2018 in I.P.No.8 of 2016 directing to sell the property which is the subject matter of the application on public auction and to release the proceeds for the benefit of the general body of creditors.
2	Appln(IP)No.256 of 2018	To set aside the ex-parte order dated 05.03.2018 passed in application No.47 of 2018 in I.P.No.8 of 2016 declaring sale deed dated 06.03.2017 registered on 14.03.2017 held to be void.
3	Appln(IP)No.257 of 2018	To set aside the ex-parte order dated 05.03.2018 passed in application No.49 of 2018 in I.P.No.8 of 2016 directing the 3 rd and 4 th respondents to deliver the vacant position of said property with all documents of title in their possession to the official assignee.

6. The learned counsel for the applicant in Appln(IP).Nos.255 to 257 of 2018 would submit that the applicant is a



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bonafide and an innocent purchaser who has purchased the property on the strength of the power of attorney given by the insolvent to the applicant in Appln.No.95 of 2019. It is therefore submitted that the order adjudicating the debtor as an insolvent on 01.04.2016 is liable to be recalled.

7. Defending the stand of the debtor (petitioner in I.P.No.8 of 2016), the learned counsel for the respondent/insolvent (the petitioner in I.P.No.8 of 2016) would submit that petitioner in I.P.No.8 of 2016 was filed on 21.03.2016. It is submitted that I.P.No.8 of 2016 that was filed on 21.03.2016 was within the four corners of Section 14 of the Presidency Town Insolvency Act, 1909. It is submitted that there is no dispute that the insolvent owes a sum of Rs.43,40,000/- to the said Gubba Suresh who has later filed a claim statement for a sum of Rs.48,40,000/-.

8. It is therefore submitted that the Court has correctly exercised its power under Section 21 of the Presidency Town Insolvency



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Act, 1909. Hence, the order of adjudication made on 01.04.2016 is not required to annulled. It is submitted that there are no circumstances which would warrant invocation of Section 21 of the Presidency Town Insolvency Act, 1909.

9. The learned Official Assignee would submit that the claim statement of the creditors namely Mr.Gubba Suresh has been examined and out of 10 cheques only one cheque has been issued in the name of the insolvent and therefore the same can be adjudicated. It is further submitted that the applicant in these applications have also offered to pay a sum of Rs.16.50,000/- to the Official Assignee which stood recorded, in order dated 18.02.2019 passed in Appln.Nos.30 to 34 of 2019 in A.Nos.47 to 50 of 2019 filed by the Official Assignee. It is therefore submitted that after giving an undertaking to pay the amount, these applications have been filed.

10. I have considered the arguments advanced by the learned counsel for the applicant/debtor.



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11. The Power of Attorney/agreement holder, the applicant in Appln.No.95 of 2019 and the subsequent purchaser purchaser of the property on 14.03.2017 from the applicant in Appln.No.95 of 2019. There are overwhelming the records that are available before this Court to indicate that the petition filed by the insolvent was intended to defeat the rights of the applicant in Appln.No.95 of 2019. The purchaser has purchased the property on the strength of Power of Attorney executed by the Insolvent. The creditor Mr.Gubba Suresh has issued a cheque for Rs.5,00,000/- to the insolvent/debtor before the date of adjudication. The rest of the cheques were issued either in the name of the Trust of which the debtor/insolvent was a trustee or after the date of adjudication. Thus, it is clear that the I.P.No.8 of 2016 was filed with an intention only to defeat the rights of the applicant in Appln.No.95 of 2019 who discharged the mortgage which was subsisting on the date of the agreement on 14.11.2014 with one Mrs.Dhanabakkialakshmi.



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12. Therefore, Appln.No.95 of 2019 was allowed. Thus, the order of adjudication stands annulled. Consequently, connected applications filed by the purchaser also stands allowed.

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