

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2018

CORAM

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**

Insolvency Petition No.20 of 2016

K.Gnanaraj

... Petitioning Creditor

Vs.

R.Sathyanarayanan

... Debtor

PRAYER: Petition filed under Section 9 to 13 of the Presidency Towns Insolvency Act, 1909 and Order III of the Insolvency Rules, 1958 praying (i) to treat this Petition as urgent; (ii) to adjudicate the Respondent as Insolvent in a regular manner; (iii) to direct the Official Assignee to take charge of assets for administration;

For Petitioning Creditor : Mr.C.T.Mohan

For Debtor : No appearance

JUDGMENT

This Insolvency Petition is filed under Sections 9 to 13 of the Presidency Towns Insolvency Act, to adjudicate the Debtor as insolvent and to direct the Official Assignee to take charge of assets for administration.

2.The debtor has borrowed money by the Petitioning Creditor. Petitioning Creditor has filed a suit in C.S.No.622 of 2006 in this Court for recovery of a sum of Rs.10,40,000/- with interest at 18% per annum from the date of plaint till the date of realisation. On the enhancement of the pecuniary jurisdiction of the City Civil Court, the said suit was transferred to the City Civil Court, Chennai, and re-numbered as O.S.No.12788 of 2010. It is seen that the said suit was decreed ex-parte on 24.08.2011, the decree has become final. Despite the decree, the debtor has not paid the decree amount. The Petitioning Creditor sought for issuance of insolvency notice against the debtor in IN.No.34 of 2015 which was ordered and steps were taken on 28.01.2016. Despite service of the said insolvency notices, and expiry of 35 days period specified in the insolvency notice, the debtor has not come forward to pay the decree amount. Therefore, the debtor has committed Act of insolvency within the meaning of Section 9(2) of the

Presidency Towns Insolvency Act III of 1909. The amount due in payable as per insolvency notice is Rs.21,78,844.50, and the same is to the tune of Rs.22,25,645.58 on the date of filing of the Insolvency Petition.

3. Notice was ordered in this Insolvency Petition. Since the notice sent was unserved, publication was ordered. It is seen from the records that a publication was effected by publishing a notice in one issue of "Makkal Kural" on 16.02.2017. Since, the debtor did not enter appearance, pursuant to such service, the debtor was set ex-parte on 21.07.2017. The matter was posted for evidence before the Master, and evidence has been recorded. The Petitioning Creditor has examined himself as PW-1, and Exs.P-1 to P-5 has been marked. From the averments in the Insolvency Petition, the evidence of PW-1 and the documents filed it is seen that the debtor committed an act of insolvency within the meaning of Section 9(2) of the Presidency Towns Insolvency Act III of 1909, thus rendering himself liable to be adjudicated as insolvent.

4. In view of the fact that the debtor in question is found to have committed an act of insolvency, the debtor is adjudicated as insolvent. The estate of the debtor shall vest with the Official Assignee for the benefit of the general body of the Creditors of the debtor. The costs of this petition shall be paid by the Official Assignee from and out of the estate of the debtor to the Creditor. The insolvent is granted 18 months time to apply for discharge.

5. In fine, the Insolvency Petition is allowed.

08.01.2018

KP

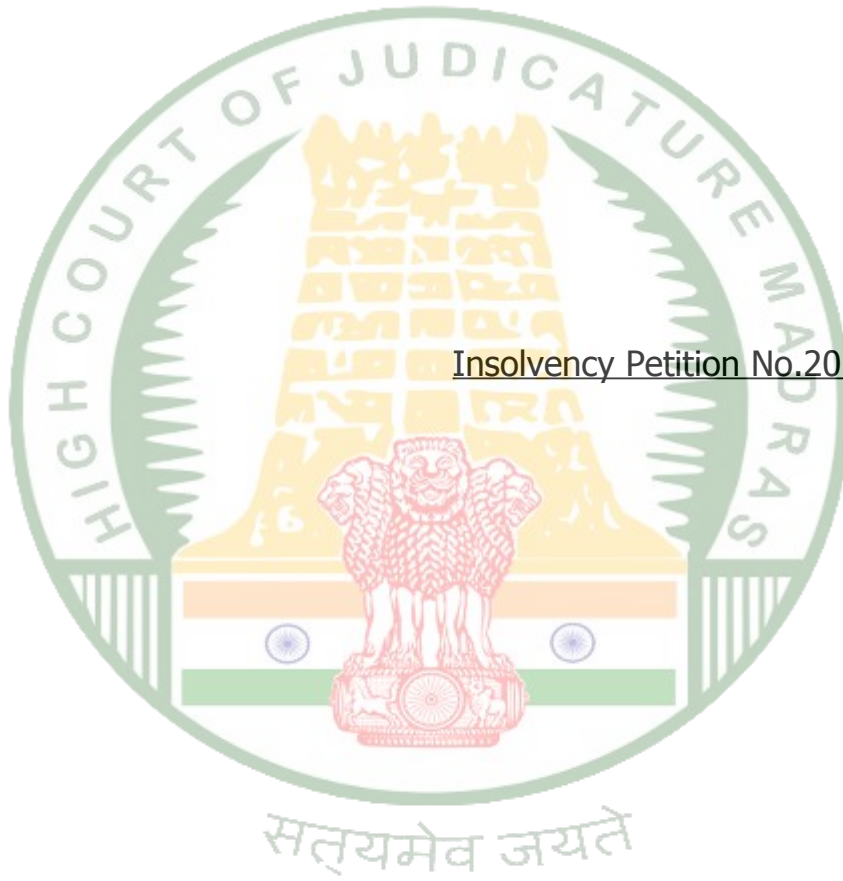
Index : Yes/ No

Internet : Yes/ No

Speaking Order/ Non-speaking Order

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R.SUBRAMANIAN, J.



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