

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(IN INSOLVENCY)

THURSDAY, THE 28TH DAY OF FEBRUARY 2019

THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

AND

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

APPLN.238 OF 2016

IN

I.P. No.25 of 2014

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

...Debtor

I.P.NO.25 OF 2014

Smt.Chitra Desai
Residing at 3A-302, Oakland Park,
Yamuna Nagar, Lokhandwala Complex,
Andheri (West), Mumbai.

... Petitioning Creditor

-VS-

Mr.Arjunlal Sunderdas
23, Anderson Road, Nungambakkam,
Chennai-600 006.

... Respondent / Debtor

APPLN.NO.238 OF 2016

The Official Assignee,
High Court, Madras

... Applicant

-VS-

1.Arjunlal Sunderdas
23, Anderson Road, Nungambakkam,
Chennai-600 006.

... 1st Respondent /
Insolvent

2.Peer Moideen Tanners,
No.23, 1st Floor,
Perianna Maistry Street,
Periamet, Chennai 600 003.

... 2nd Respondent/3rd Party

Application praying that this Hon'ble Court be

<https://hcservices.ecourts.gov.in/hcservices/>

pleased to direct the 2nd respondent to pay a sum of

Rs.50,00,000/- with interest at 18% p.a. From 21.04.2014 till date of realization with cost of the recovery proceedings.

This above application coming on this day before this court for hearing in the presence of the Official Assignee of this Court, the applicant herein; and Mr.A.Babu, advocate for the 2nd respondent herein; and upon reading the Judges Summon and Report of the Official Assignee filed herein; and

The Court made the following order:-

This application had been filed by the Official Assignee seeking a Judgment and Decree against the second respondent to pay a sum of Rs.50,00,000/- together with interest at 18% p.a., from 21.04.2014 till date of realisation together with costs.

2. The Official Assignee had stated in the application that the second respondent Peer Moideen Tanners, having Office at No.23, 1st Floor, Perianna Maistry Street, Periamet, Chennai - 600 003, had received a sum of Rs. 50,00,000/- from the first respondent/insolvent Arjunlal Sunderdas which is reflected in the accounts as on 21.04.2014 payable to the estate of the insolvent. It had been stated that there are no further subsequent transactions to prove discharge. The Official Assignee had issue a notice dated 16.03.2016 calling upon the second

respondent to pay the amount.

3. Notice had been directed to second respondent and proof of service had been filed. Counsel had also entered appearance on behalf of the second respondent. The parties were then directed to adduce evidence to prove the claim.

4. Accordingly, A.S.Velumani, Sub Assistant Registrar attached to the office of the Official Assignee was examined as PW-1. He filed proof affidavit reiterating the averments made by the Official Assignee in support of the application. He also filed Ex. A-1 which is the true copy of the relevant page in the report of the auditor Ranga Ramanujam for the period between 01.04.2013 to 31.03.2014; Ex.A-2 which was the true copy of the extract of the relevant page in the report of the auditor, Annamalai Associates; Ex.A-3 is the true copy of the notice dated 16.03.2016 and Ex.A-4 is the true copy of the relevant entries in the schedule of affairs filed on 24.05.2014 by the insolvent in Court. Subsequently, the insolvent was also examined as RW-1. He filed his proof affidavit and reiterated that as on 21.04.2014, the second respondent was liable to pay a sum of Rs.50,00,000/- which he had paid to the second respondent through RTGS/cheque. It was stated that the amount is also reflected in the statement of accounts and in the schedule of affairs.

5. On 08.02.2019, the learned counsel for the

second respondent had submitted that the second respondent would settle the dues within a period of two weeks. However, it is seen that he had not settled the dues till date. Consequently, the evidence of PW-1 and RW-1 stand rebutted. The loan is proved and the second respondent had not produced any evidence to show discharge.

6. In view of these circumstances, this Application is allowed and the decree is passed accordingly against the second respondent as prayed for.

WITNESS, THE HON'BLE SHRIMATI, VIJAYA KAMLESH
TAHILRAMANI, CHIEF JUSTICE, HIGH COURT AT MADRAS, AFORESAID
THIS THE 28TH DAY OF FEBRUARY 2019.

sd/-

ASSISTANT REGISTRAR
Original Side - I

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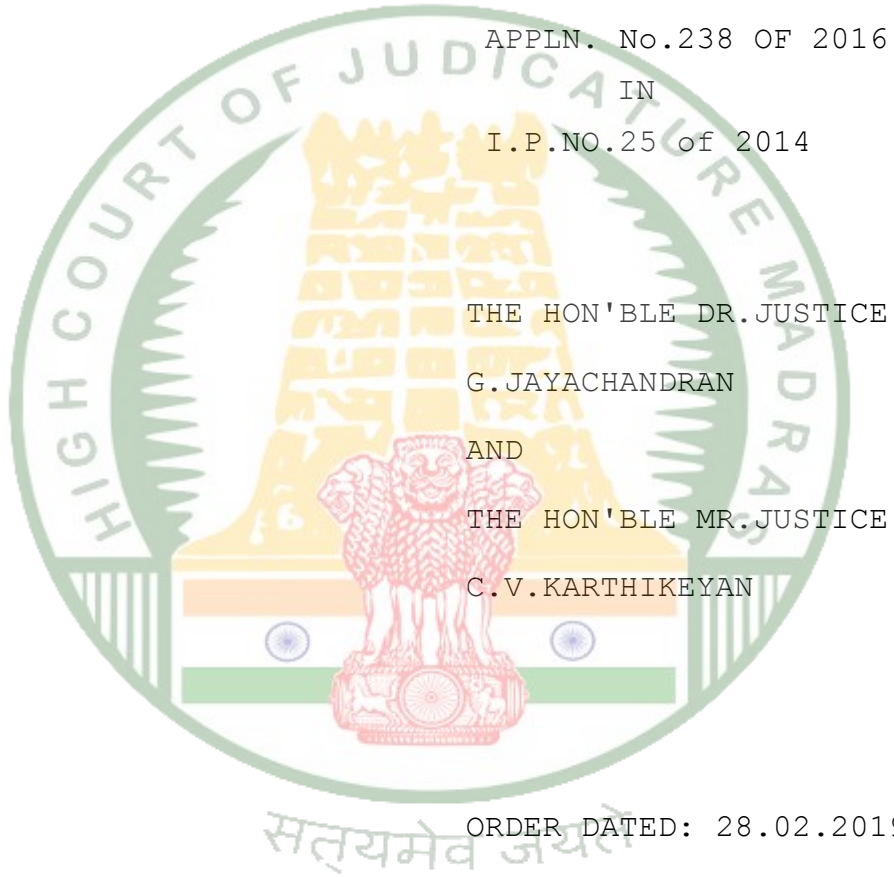
DATED THIS THE DAY OF 2019

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cns-11.03.2019

HIGH COURT, MADRAS



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FOR APPROVAL: 11/03/2019
APPROVED ON : 13/03/2019

COPY TO:-

The Official Assignee,
High Court, Madras.