IN THE HIGH COURT OF JUDICATURE AT MADRAS

(IN INSOLVENCY)

TUESDAY, THE 17TH DAY OF DECEMBER 2019

THE HON'BLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

APPLN.6 OF 2019
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.6 OF 2019

S.Manohara Lal@ S.M.Lal
Advika Apartments,
D.No.11, and Old No.6 6B & 7,
First Street, Subbarao Avenue,
Chennai 600 006. ... Applicant/Respondent in
A.Nos.161/16, 62 to 65/2017
& A.No.53 to 56/2017

-VS-

The Official Assignee,
High Court, Madras ... Respondent/Applicant

Application praying that this Hon'ble Court be pleased to direct the Respondent/Official assignee to accept the Claim Form dated 20.12.2018 on the file for verification.

The above application having been heard on 06.12.2019 in the presence of Mr.Santhosh Ukkur, Advocate for M/s.TATVA Legal Chennai, Advocates and Mr.K.V.Ananthakrushnan, Advocate assisted by Ms.A.Janani, Advocate for the Official Assignee of this Court, the Respondent herein; and upon reading the Judges Summon and Affidavit of S.Manohar Lal filed herein and having stood over for consideration till this day and coming on this day before this Court for orders in the presence of the aforementioned advocates,

The Court made the following order:-

Petition has been filed seeking a direction against the Official Assignee to accept the Claim Form dated 20.12.2018 for verification.

2. In the Affidavit filed in support of the said petition S.Manohar Lal @ S.M.Lal, who is the brother of the insolvent Arjunlal Sunderdas, had stated that he came to know about the fact that his brother had been declared as insolvent only when notices were served on him in A.Nos.161 of 2016, 62 to 65 of 2017, 53 to 56 of 2017 etc., seeking to recover a sum of Rs.4,72,38,000/- from him and to cancel the settlement deed dated 20.02.2014 executed by him in favour of his grand daughter. It was stated that he was occupied in defending the said applications. He further stated that he had certain age related health issues and was advised to take treatment for about three months. He thereafter stated that he intended to submit a claim form on 20.12.2018 with Official Assignee to recover a sum of Rs. 8,75,00,000/- from the estate of the insolvent, but since it was filed after considerable delay, he seeks a direction to be issued against the Official Assignee to receive the claim form.

3. The Official Assignee in her report however disputed the claim of the petitioner herein. It was stated that the petitioner herein was a business partner in all the financial endeavours of the Insolvent and was aware of the business and financial dealings of the insolvent. He also held 25% shares in (a) Sunil Anand & Co. (P) Ltd., (b) International Sea Foods (P) Ltd., (c) Manyal Reality (P) Ltd., and (d) Manyal Foundation (P) Ltd. He had also relinquished his shares in favour of the insolvent. He had then contested the applications which were filed to bring for sale the properties of the companies and in fact claimed a share in the property. It is also stated that he is a joint power of attorney, for the property at Door Nos. 33 and 34, College Road, Nungambakkam, Chennai. It is also stated that he had also received several amounts from the insolvent through bank transactions.

4. The claim of the applicant that he was not aware of the insolvency proceedings was specifically denied by the Official Assignee. It was stated that he had three bank accounts wherein huge amounts have been transferred by the insolvent. It was also stated that the matter was pending for the past 5 years and the applicant being the brother of the insolvent was a party to all the proceedings undertaken by the Official Assignee. He had also entered appearance in C.S.No. 121 of 2014 and had also filed counter in O.A.No. 2054 of 2014 in April 2015 and consequently, it was stated that the applicant cannot disclaim knowledge of the insolvency proceedings or that his brother had been declared as insolvent. The statement that he came to be aware of the insolvency proceedings only when notices were served on the mentioned affidavits was denied. It was also stated that as per the schedule of affairs filed by the insolvent on 25.04.2014, the applicant was shown as a debtor to the estates of the insolvent. It was also stated that quite apart from these proceedings, C.S.No. 285 of 2014, C.S.No. 317 of 2014, C.S.No. 121 of 2014 and O.S.A.No. 116 of 2017 are also pending wherein he was also a party. It was also stated that the applicant was hand in glove with the insolvent in all the surreptitious financial dealings. It was therefore stated that the application should be dismissed.

5. Heard arguments advanced.

6. Under Section 48 of the Presidency Town Insolvency Act,read with second schedule, Order 10, Form No. 42 and Form No.43-A of Insolvency Rules 1958, the creditors should file a claim within 90 days from the date

of notice of adjudication. It is seen that the applicant herein is the brother of the insolvent. He was not just a brother but also a **Co-director in four companies, namely, (a) Sunil Anand & Co. (P) Ltd., (b) International Sea Food (P) Ltd., (c) Manyal Reality (P) Ltd., and (d) Manyal Foundation (P) Ltd.** He had subsequently relinquished his shares in favour of the insolvent, but in further proceedings when the properties were sought to be brought on sale, he however participated in the proceedings and claimed a share in the properties. It is clear that the petitioner had sworn to a false affidavit disclaiming knowledge of the insolvency proceedings. He cannot plead ignorance and innocence and seek indulgence from this Court.

7. The learned counsel for the petitioner had relied on a Judgement of the Bombay High Court reported in ***(1927) 29 BOMLR 1167 (Ramchandra Ganuji Waikar Vs. Unknown) dated 9.10.1922*** and more particularly, the following passage in the said Judgment:-

> *"Now, according to my experience of bankruptcy practice, there never has been any doubt as to the right of a creditor, whether he is a secured creditor or whether he is an unsecured creditor, to come in and prove at any time during the administration,* ***provided only that he***

does not by his proof interfere with the prior distribution of the estate *amongst the creditors, and subject always in cases in which he has to come in and ask for leave to prove, to any terms which the Court may think it just to impose.*

8. The said Judgment can actually be cited to disallow the claim of the applicant since even according to the ratio laid down, a creditor whether secured or unsecured can enter and prove at any time during the administration his right, but a caveat had been imposed that **he should not by his proof interfere with prior distribution of the estate**. In the present case, the only object of the application is to protract the proceedings and the affidavit sworn by him has to be rejected as false to the knowledge of the deponent.

9. In this connection, the Hon'ble Supreme Court ***State of A.P. Vs. T.Suryachandra Rao, (2005) 6 SCC 149***, had occasion to examine the concepts of misrepresentation or false representation and suppression of material fact or document and held that they amount to fraud.

*"**9.** A "**fraud**" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage.* ***(S.P.***

***Chengalvaraya Naiduv. Jagannath [(1994) 1 SCC 1]** .)*

***10. "Fraud"** as is well known vitiates every solemn act. **Fraud and justice never dwell together.** Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. **It is a fraud in law if a party makes representations, which he knows to be false,** and injury enures therefrom although the motive from which the representations proceeded may not have been bad. **An act of fraud on court is always viewed seriously.** A collusion or conspiracy with a view to deprive the rights of others in relation to a property would render the transaction void ab initio. **Fraud and deception are synonymous.** Although in a given case a deception may not amount to fraud, fraud is* *anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. (**Ram Chandra Singh v. Savitri Devi [(2003) 8 SCC 319]** .)*

***11.** .....*

***12.** .....*

***13.** ....*

***14.** Suppression of a material document would also amount to a fraud on the court. (**Gowrishankar v. Joshi Amba Shankar Family Trust [(1996) 3 SCC 310]** and **S.P. Chengalvaraya Naidu** case **[(1994) 1 SCC 1]** .*

***15.** "**Fraud**" is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. Although negligence is not fraud but it can be evidence on fraud; as observed in **Ram Preeti Yadav case [(2003) 8 SCC 311]** .*

16.** In **Lazarus Estates Ltd. v. Beasley [(1956) 1 QB 702 : (1956) 1 All ER 341 : (1956) 2 WLR 502 (CA)] Lord Denning observed at QB pp. 712 and 713: (All ER p. 345 C)

"No judgment of a court, no order of a minister, can be allowed

to stand if it has been obtained by fraud. ***Fraud unravels everything.****"*

In the same judgment Lord Parker, L.J. observed that fraud "vitiates all transactions known to the law of however high a degree of solemnity". [***[Ed.: (1956) 1 All ER 341 at p. 351 placitum E-F]****]"*

(Emphasis supplied)

10. It is clear that the applicant has sworn to a false affidavit only to deny the rightful claims of the creditors. We have no hesitation to hold that the petitioner's claim of innocence and ignorance will have to be rejected by this Court.

11. Consequently, this Application is dismissed.

WITNESS, THE HON'BLE THIRU AMRESHWAR PRATAP SAHI, CHIEF JUSTICE, HIGH COURT AT MADRAS, AFORESAID THIS THE 17TH DAY OF DECEMBER 2019.

SD/-
ASSISTANT REGISTRAR
Original Side - I

//CERTIFIED TO BE TRUE COPY//
DATED THIS THE DAY OF 2020

MANAGER

INSOLVENCY OFFICE

cns-30.12.2019

HIGH COURT, MADRAS

APPLN. No.6 OF 2019
IN
I.P.NO.25 of 2014

THE HON'BLE DR.JUSTICE
G.JAYACHANDRAN
AND
THE HON'BLE MR.JUSTICE
C.V.KARTHIKEYAN

ORDER DATED: 17.12.2019

FOR APPROVAL:02/01/2020
APPROVED ON :02/01/2020

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High Court, Madras.

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IT IS ORDERED AS FOLLOWS:-

That the Application No.6 of 2019 in IP.No.25 of 2014 be and is hereby dismissed.

WITNESS, THE HON'BLE THIRU AMRESHWAR PRATAP SAHI, CHIEF JUSTICE, HIGH COURT AT MADRAS, AFORESAID THIS THE 17TH DAY OF DECEMBER 2019.

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