IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 15.11.2019

JUDGMENT DELIVERED ON : 28.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

O.S.A.NO.101 OF 2019
AND
C.M.P.NOS.9569, 13806 AND 13807 OF 2019

S.Dayanidhi .. Appellant

Vs.

1. Visesh Cargo & Travels Pvt. Ltd.,
Rep. by its Managing Director,
Mr.M.Gangadharan,
having office at
No.6, Avvaiyar Street,
Meenambakkam, Chennai-600 027.

2. The Official Assignee,
High Court Buildings,
Chennai-600 104. .. Respondents

Original Side Appeal filed under Order XXXVI Rule 1 of the Original Side Rules of this Court, read with Clause 15 of the Letters Patent, read with, under the Presidency Town Insolvency Act III of 1909, against the order dated 13.03.2019 passed by the learned Single Judge in Appln.No.182 of 2018 in I.P.No.18 of 2017 on the file of this Court.

For appellants : Mr.K.Elango

For respondents : Mr.R.Ramanlal for R-1
Mr.M.Vasantha Kumar,
Deputy Official Assignee for R2

JUDGMENT

R.SUBBIAH, J

This Original Side Appeal (OSA) is filed against the order dated 13.03.2019 passed by the learned Single Judge in Appln.No.182 of 2018 in I.P.No.18 of 2017 on the file of this Court, annulling the order of adjudication dated 23.11.2017 passed in the abovesaid I.P.

2. The appellant was adjudged as an insolvent on his own petition, by order of the learned Master of this Court, dated 23.11.2017 passed in I.P.No.18 of 2017. It is the case of the appellant in the said I.P. that his total liabilities are to the tune of Rs.8,66,78,000/- and his assets are of the value of Rs.3,27,53,664/-. He was dealing with marine products such as fish, crab, shell and prawn. He had started to work as working partner in the said business in the year 2001 in the name and style of M/s.HL Marine Foods. Thereafter, he started another trading company in the name and style of Almash Fish Trading LLC in the year 2014 at Dubai and was successfully running it till January 2017. Suddenly, due to recession in the trade, he could not collect money from various clients. The appellant was also doing the abovesaid business locally by having tie-ups with the local fishermen (vendors). His customers at abroad also had purchased huge quantity of marine products from him on credit basis and most of them have not repaid the money for purchase of such marine products. Hence, he had to sustain severe loss which resulted in shortage of funds.

3. It is the further case of the appellant (insolvent) that the business was running smoothly till January 2017. Since the customers have not repaid the dues, the troubles started. Thereafter, he could not run the business in a profitable manner and he had started borrowing loans from the private financiers and money lenders at a high rate of interest. The appellant could not repay the amount to the creditors, since he was not able to collect the amounts due from his customers. He has filed I.P.No.18 of 2017 praying to adjudicate him as an insolvent and to direct the Official Assignee to take care of the assets for administration in a regular manner.

4. In the said I.P., the appellant had annexed List-A, containing 69 unsecured creditors/companies/parties and in List-D, he had given 3 names as his debtors. In the said List-A, the first respondent herein, namely Visesh Cargo and Travel Private Limited was shown as first unsecured creditor.

5. The learned Master, by order dated 23.11.2017 in I.P.No.18 of 2017, passed an order of adjudication, adjudging the appellant as an insolvent. Thereafter, the first respondent-Company, namely Visesh Cargo and Travels Private Limited, which was shown as first unsecured creditor in I.P.No.18 of 2017 filed by the appellant, has filed an application in A.No.182 of 2018 in I.P.No.18 of 2017 to annul the order of adjudication, dated 23.11.2017 passed in I.P.No.18 of 2017. In the affidavit filed in A.No.182 of 2018, the first respondent herein has stated that the appellant has filed the Insolvency Petition (IP) by playing fraud upon the Court. The proceedings under the Presidency Towns Insolvency Act III of 1909 are proceedings-in-personam and hence, the personal debts due by the appellant/debtor can alone be adjudicated, but in the I.P., the appellant/debtor showed the debts incurred by his wife and got himself adjudicated as an insolvent. In this regard, it has been further stated in the said affidavit that the appellant/debtor's wife is running a business in the name of M/s.H.L.Marine Foods and she is the sole proprietrix of the said business. She had borrowed money from M/s.RBL Bank Limited. The wife of the appellant owes the first respondent-Company a sum of Rs.3,09,02,496/- and hence, the first respondent-Visesh Cargo and Travels Private Limited has filed a suit in C.S.No.585 of 2017 before this Court as against (i)appellant/insolvent, (ii) wife of the appellant and (iii) M/s.H.L.Marine Foods. In the said suit, the first respondent had filed O.A.No.4187 of 2017 to produce security in respect of the suit claim or on failure to furnish security, to order attachment of two immovable properties belonging to appellant/debtor's wife. In the said O.A., by order dated 28.07.2017, this Court issued a direction to the appellant/debtor's wife to furnish security to the suit claim. Since the appellant/debtor's wife has failed to furnish security, this Court, on 18.09.2017, had passed an order of attachment of the two immovable properties belonging to the debtor's wife. Now, in order to evade payment, the appellant/debtor and his wife colluded together and filed I.P.No.18 of 2017 seeking an order only to defraud the creditors. The first respondent does not have any business association with the appellant/debtor, and the debtor's wife Mrs.D.Manjula is running M/s.H.L. Marine Foods, which alone is the borrower liable to discharge the amount due to the first respondent-Company. In the above suit, the first respondent has shown the appellant/debtor's wife and the appellant/debtor as parties in their individual capacity, because, the appellant/ debtor's wife is the sole proprietrix of M/s.H.L.Marine Foods, and the appellant/debtor's wife and the appellant are jointly and severally liable to discharge the amount due to the first respondent. In order to defeat the claim of the first respondent with M/s.H.L.Marine Foods and the appellant/debtor's wife, the appellant/debtor included the liability of his wife in the

present I.P. Thus, the debtor played fraud on the Court and obtained adjudication order from this Court. Hence, the first respondent herein sought for annulling the order dated 23.11.2017 passed in I.P.No.18 of 2017.

6. When the said application in A.No.182 of 2018 came up for hearing on 29.01.2019, this Court granted time to the insolvent to file an affidavit accepting the factors regarding the debts payable by his wife, as she was the sole proprietrix of the firm M/s.H.L.Marine Foods, and also with regard to the other connected factual aspects of the matter and directed the matter to be listed on 04.02.2019. When the application came up for hearing on 11.02.2019, since the said affidavit was not filed, this Court granted time to file such affidavit by the insolvent by imposing costs of Rs.5,000/- to be paid to the Official Assignee and the application was directed to be listed on 25.02.2019 with an observation that on the next hearing date, if no progress is made and the affidavit is not filed, adverse orders would be passed against the insolvent. On 25.02.2019, the said costs of Rs.5,000/- was stated to have been paid to the Official Assignee. The time was again granted at request, to file such affidavit and the application was directed to be listed on 06.3.2019. Ultimately, by order dated 13.03.2019, A.No.182 of 2018 was allowed and the insolvency petition was closed, thus annulling the order adjudicating/adjduging the appellant herein as an insolvent. The relevant portion of the said order dated 13.03.2019 reads as follows:

> "4. Thereafter, when the case came up for hearing on 07.03.2019, none appeared for the first respondent and therefore, the matter has been directed to be posted on 11.03.2019 under the caption "for passing appropriate orders". Accordingly, the case is posted today under the caption "for orders". However, when the case is called today, there is no appearance on the side of the first respondent/insolvent and therefore, this Court has no other option and is inclined to pass the following order.
>
> 5. In view of the above observations, this application is allowed and consequently, the Insolvency Petition is closed."

Challenging the said order dated 13.03.2019, the present O.S.A. has been filed by the insolvent/debtor.

7. The learned counsel for the appellant submitted that the appellant was dealing with marine products, such as, fish, crab, shell and prawn. He was doing business in the year 2001 in the

name and style of H.L.Marine Foods, in which the appellant's wife was sole proprietrix. Subsequently, the appellant had started another trading Company in the name and style of Almash Fish Trading LLC in the year 2014 at Dubai and he was successfully running it till January 2017. Suddenly, due to demonetisation and Vardha Cyclone, at the end of 2016, he could not collect money from various clients. Furthermore, his clients at abroad, who had purchased huge quantity of marine products on credit basis, most of whom, have not paid the money for purchase of such marine products. On account of this non-payment, the appellant sustained severe loss, which ultimately resulted in shortage of funds. Since the appellant was facing financial crisis, on 30.05.2017, his wife had filed divorce petition in No.1892 of 2017 before the First Additional Family Court, Chennai, on the grounds of cruelty and adultery.

8. The learned counsel for the appellant further submitted that among other 69 unsecured creditors, on 24.07.2017, the first respondent has filed suit in C.S.No.585 of 2017 claiming Rs.3,09,02,496/- against (i) appellant, (ii) M/s.H.L. Marine Foods and (iii) appellant's wife D.Manjula. In the said suit, the first respondent has alleged that the appellant and his wife are personally liable to discharge the suit claim. That is the reason why the appellant had added the first respondent as an unsecured creditor in the Insolvency Petition. In the said I.P., in list-A, the appellant had shown 69 unsecured creditors for the total liability of Rs.8,66,78,000/- and shown the asset value of Rs.3,27,53,664/- in List-D.

9. The learned counsel for the appellant further submitted that on 23.11.2017, the appellant was declared as an insolvent, after competing all formalities and procedures contemplated under the Presidency Towns Insolvency Act. While so, the first respondent filed A.No.182 of 2018 alleging that he does not have any business association with the appellant/debtor and that the appellant's wife Mrs.D.Manjula is running M/s.H.L.Marine Foods, which alone is the borrower liable to discharge the amount due to the first respondent. In this regard, the learned counsel for the appellant submitted that in the said suit filed by the first respondent against (i) M/s.H.L. Marine Foods, (ii) appellant and (iii) appellant's wife, the first respondent has stated that the appellant is also liable to pay the amount due to the first respondent by M/s.H.L.Marine Foods, jointly along with his wife.

10. The learned counsel for the appellant also submitted that A.No.182 of 2018 was adjourned from time to time to enable the appellant to file an affidavit. While so, on 13.03.2019, the appellant's erstwhile counsel did not appear before the Court and hence, the impugned order had been passed. It is further submitted that his earlier counsel put him in darkness and he

did not inform the appellant that he has to file an affidavit as directed by the learned Single Judge. But the learned Single Judge, without appreciating the said aspect, had passed the order on the ground of default on the part of the appellant. It is only because of the misconduct on the part of the appellant's earlier counsel that he suffered the said order dated 13.03.2019. In fact, the appellant had also lodged a complaint against his former counsel before the Bar Council of Tamil Nadu and Puducherry.

11. The learned counsel for the appellant further contended that pending the O.S.A., the learned Official Assignee has filed a report, wherein the learned Official Assignee had stated that he had issued notice to all the creditors mentioned in the Insolvency Petition and the creditors' meeting was scheduled on 07.02.2018, on which date, only 15 creditors had attended the meeting. Most of the creditors were represented in person and some of the creditors were present along with the counsels. All the creditors unanimously held that they are not the creditors of the individual, namely S.Dayanidhi/insolvent and they are all the creditors of M/s.H.L. Marine Foods. Further, during the creditors' meeting, it had been informed by the creditors that the wife of the insolvent, i.e. P.Manjula alone is the owner of M/s.H.L.Marine Foods, which is a sole proprietary Company and the insolvent has wrongly projected them as creditors. Only on seeing this report of the learned Official Assignee, the appellant came to know that the notice has been sent to his earlier office address bearing No.4, Swami Naickent Street, Chinthadripet, Chennai-600 002 and it was returned undelivered. Even the notice sent to the appellant's earlier counsel, was received by him, but he has failed to pass on the information to appear before the learned Official Assignee.

12. It is further submitted by the learned counsel for the appellant that the mistaken inclusion of the unsecured creditors of the appellant's wife (proprietrix of M/s.H.L.Marine Foods) in the list of creditors in the said I.P., will not stand in the way of those creditors seeking relief against M/s.H.L.Marine Foods before any legal forum. Moreover, such inclusion of the unsecured creditors of the appellant's wife could not be called as fraud, collusion or perjury. Further, the first respondent-Company is not the appellant's creditor and therefore, he has no locus-standi to maintain the application to annul the order of adjudication of insolvency of the appellant. Therefore, on the ground of locus-standi also, the learned Single Judge ought to have dismissed the application filed by the first respondent herein in A.No.182 of 2018. Moreover, the first respondent has failed to establish before this Court as to how such inclusion of the appellant's wife's unsecured creditors in the appellant's Insolvency Petition, obstructed the course of justice. The

learned counsel for the appellant also submitted that in a catena of judgments, the Supreme Court and this Court had held that the interest of innocent party should not suffer for misdemeanour or inaction on the part of the counsel. In support of his submissions, the learned counsel for the appellant relied on the decisions of the Supreme Court reported in 1981 (2) SCC 788 (Rafiz and another Vs. Munshilal and another) and 2014 (13) SCC 539 (Kishorbhai Gandubhai Pethani Vs. State of Gujarat). Thus, the learned counsel for the appellant prayed for setting aside the impugned order passed by the learned Single Judge.

13. Countering the above submissions, the learned counsel appearing for the first respondent-Company, which was shown as first unsecured creditor in the Insolvency Petition filed by the appellant, submitted that the appellant himself admitted that the list of unsecured creditors including in the IP, is not of his, but that of his wife's business concern, namely M/s.H.L.Marine Foods. The said admission of the appellant amounts to perjury and hence, the appellant is not entitled for any defence. Further, the appellant has deliberately included the debts of his wife in the I.P., based on which, the appellant was adjudicated as an insolvent and this act of the appellant is nothing but fraud played upon the Court. The learned counsel appearing for the first respondent invited the attention of this Court to the suit filed by the first respondent in C.S.No.585 of 2017, in which, the first respondent has clearly averred that the appellant and his wife are personally liable to discharge the suit claim, because, they have assured the first respondent that they will discharge the suit claim personally. The fact that the appellant was assisting his wife in the business, is admitted by the appellant in paragraph 1 of the response filed against the report of the second respondent-Official Assignee. Since the appellant himself had admitted that he was assisting his wife, the claim of the appellant cannot be accepted for the reason that the I.P. is filed after the suit and the debts of the appellant's wife are deliberately included by the appellant with his knowledge.

14. The learned counsel appearing for the first respondent further submitted that in order to defraud the creditors of the appellant's wife, the debts of the appellant's wife are included in List-A of the unsecured creditors in the I.P. The first respondent found out the fraud played by the appellant and filed A.No.182 of 2018 to annul the order of adjudication before the learned Single, in which, the appellant was asked to file an affidavit stating that he has got nothing to do with the amount due to the first respondent. The affidavit was not filed deliberately by the appellant, which could be seen from the order passed by the learned Single Judge on 13.03.2019. Further, on 29.01.2019, there was a direction to file the affidavit and

the learned Single Judge posted the matter on 04.02.2019, but when the matter was listed on on 11.02.2019, since no affidavit was filed, two weeks' time was granted to file the affidavit on condition that the appellant shall pay costs of Rs.5,000/- to the second respondent/Official Assignee. The learned counsel appearing for the first respondent further submitted that when the application was listed on 25.02.2019, it was reported that the said costs of Rs.5,000/- was paid and the appellant has not filed any affidavit and sought time, and hence, the application was directed to be listed on 06.03.2019. When the application was listed for hearing on 07.03.2019, there was no representation for the appellant and hence, the matter was directed to be listed under the caption "for orders" on 11.03.2019. When the matter was taken up for hearing on 13.03.2019, there was no representation for the appellant and hence, A.No.182 of 2018 filed by the first respondent was allowed by order dated 13.03.2019.

15. With regard to the submission made by the learned counsel for the appellant that the first respondent has no locus-standi to file a petition under Section 21 of the Presidency Towns Insolvency Act, to annul the order of adjudication passed against the appellant, it is submitted by the learned counsel appearing for the first respondent that a bare reading of Section 21(1) of the said Act would clearly show that where, in the opinion of the Court, a debtor ought not to have been adjudged insolvent, or where it is proved to the satisfaction of the Court that the debts of the insolvent are paid in full, the Court, shall, on the application of any person interested, by order, annul the adjudication and the Court may, of its own motion or on application made by the Official Assignee or any creditor, annul any adjudication made on the petition of a debtor who was, by reason of the provisions of sub-section (2) of Section 14, not entitled to present such petition.

16. The learned counsel appearing for the first respondent also submitted that as per the report of the Official Assignee, there is another suit in C.S.No.515 of 2017, which was filed prior to the filing of the suit in C.S.No.585 of 2017 by the first respondent. In this regard, the learned counsel appearing for the first respondent submitted that in C.S.No.585 of 2017, two immovable properties were attached by the order of this Court, and one of the property was sold in public auction by M/s.RBL Bank for the amounts borrowed by the appellant's wife and in respect of the second property, the appellant's wife sold the property irrespective of the order of this Court to attach the property. Therefore, it is clear that the appellant wanted to carry the tag of "insolvent" to shield the debts of his wife.

17. The learned counsel appearing for the first respondent invited the attention of this Court to page 33 of the typed set filed by the first respondent, and submitted that the appellant's wife had signed as a Proprietrix of M/s.H.L.Marine Foods in the cheque as Authorised Signatory. Therefore, it is clear that the list of unsecured creditors annexed to the Insolvency Petition, pertains to the appellant's wife. Further, under Section 7 of the Presidency Towns Insolvency Act, this Court has got power to decide all questions arising in insolvency. By exercising the power under Section 7, this Court can see as to whether the appellant ought to have been or ought not to have been adjudicated as an insolvent, considering the fraud committed by the appellant upon the Court. Thus, the learned counsel appearing for the first respondent submitted that the impugned order passed by the learned Single Judge annulling the order adjudicating the appellant as an insolvent, may be upheld. In support of his submissions, the learned counsel for the first respondent relied upon the following judgments:

(i) 2011 (15) SCC 111 (District Primary School Council Vs. Mritunjoy Das);

(ii) 2003 (8) SCC 319 (Ram Chandra Singh Vs. Savitri Devi), and

(iii) 1930 (Vol.XXXI) LW 229 (Viswanatha Chetty Vs. The Official Assignee of Madras).

18. The learned Deputy Official Assignee appearing for the second respondent-Official Assignee, by filing a report, invited the attention of this Court to paragraph 4 of the affidavit filed in support of C.M.P.No.9569 of 2019 by the appellant and submitted that the appellant started to work as working partner in M/s.H.L.Marine Foods, which is a sole proprietary concern, in which, the appellant's wife is the Proprietrix. In fact, as per the list furnished by the appellant, the learned Official Assignee had issued notice to all 69 creditors mentioned in the Insolvency Petition and in the meeting held on 07.02.2018 by the learned Official Assignee, totally 15 creditors have attended and all the creditors have unanimously informed that they are not the creditors to the individual, namely the appellant-S.Dayanidhi and they are all the creditors of M/s.H.L.Marine Foods, which is the sole proprietary concern of the appellant/debtor's wife.

19. With regard to the locus-standi of the first respondent to file application under Section 21 of the Presidency Towns and Insolvency Act to annul the order of adjudication adjudging the appellant as an insolvent, it is submitted on behalf of the

Official Assignee that the first respondent is an interested person who can maintain the said application to annul the order of adjudication passed against the appellant/debtor.

20. The learned Deputy Official Assignee further submitted that the appellant/insolvent admitted that out of 69 creditors as shown in List-A of the Insolvency Petition, only 10 creditors are his own creditors and the remaining creditors are the creditors of the wife of the appellant. Out of the above 10 creditors, 3 creditors are at Dubai and only remaining 7 creditors are at Chennai. The overall amount liable to be paid by the appellant towards the abovesaid 10 creditors amounts to Rs.72,60,198.97. In the insolvency petition in List-D of debtors, the appellant has shown debtors for a total sum of Rs.3,27,53,664/-. Apart from that, in the additional typed set filed by the learned counsel for the appellant/insolvent, in page Nos.7 and 8, the appellant has shown 58 debtors for a sum of Rs.4,81,598/-. So, the overall debtors' amount payable to the estate of the insolvent is Rs.3,32,35,262/-, which is much more than the amount payable to the creditors. Thus, the amount payable to the creditors is less than the amount to be collected from the debtors of the appellant/insolvent. Hence, for the above reasons, the learned Deputy Official Assignee prayed for dismissal of the O.S.A.

21. Heard both sides and perused the materials available on record. Though very many contentions have been raised by either side with regard to the factual aspects of the matter, it is seen that the following three questions are to be decided in this appeal:

> (i) Whether the appellant has obtained the order of adjudication, adjudging him as an insolvent, by playing fraud upon the Court ?
>
> (ii) Whether inclusion of creditors of the appellant's wife, is deliberate act of the appellant, or it is a mistake committed by the counsel ? and
>
> (iii) Whether the first respondent has locus-standi to file application under Section 21 of the Presidency Towns and Insolvency Act to annul the order of adjudication passed against the appellant ?

If the above questions are answered, that would suffice to dispose of the present appeal.

22. It is the assertive submission of the learned counsel appearing for the first respondent that by including the list of unsecured creditors of M/s.H.L.Marine Foods, in which the appellant's wife is the Proprietrix, the appellant/debtor has

obtained the order of adjudication adjudging him as an insolvent in the Insolvency Petition and it is a deliberate act on the part of the appellant in getting adjudication order in the Insolvency Petition.

23. In view of the above submission made by the learned counsel appearing for the first respondent, it is appropriate to see the stand of the learned Official Assignee (second respondent). According to the second respondent-Official Assignee, the appellant has not approached the Court with clean hands and he has shown the debtors of his wife as if his debts and obtained the order of adjudication and thereby, given a wrong projection to the creditors stating that the debts are all the subject matter of claims before the Official Assignee. Further, as per the list furnished by the appellant/insolvent, the Official Assignee had issued notice to all 69 creditors mentioned in the Insolvency Petition and the creditors meeting was scheduled on 07.02.2018, in which, totally 15 creditors have attended the meeting and most of the creditors represented in person and some of the creditors were present along with the counsels. All the creditors have unanimously mentioned that they are not the creditors to the individual, namely S.Dayanidhi (insolvent) and they are all the creditors of M/s.HL Marine Foods. Further, during the creditors meeting, it was informed by the creditors that the wife of the insolvent, namely P.Manjula alone is the owner of M/s.HL.Marine Products, which is a sole proprietary concern and the insolvent had wrongly projected them as creditors.

24. It is further stated by the learned Deputy Official Assignee that one of the creditor, by name M/s.Samudra Exports, attended the meeting and had stated that they are not the creditor of Dayanidhi (appellant) and the couples have colluded between themselves and in order to cheat the creditors, they had taken the shield under the insolvency law and the appellant (husband) had filed the Insolvency Petition and projected the debts belonging to the sole proprietary concern, namely M/s.H.L.Marine Foods, run by his wife P.Manjula, which is not maintainable according to the creditor(s). The said creditor, by letter dated 22.02.2018 informed the Official Assignee that he has filed a separate suit against M/s.HL.Marine Foods, represented by its sole proprietrix Mrs.Manjula, for recovery of money in C.S.No.515 of 2017 and obtained an order of injunction in respect of the property situated at Anna Nagar, Chennai, with a direction not to alienate the property till the disposal of the suit.

25. In fact, the learned counsel for the appellant himself during the course of his arguments, submitted that out 69 creditors mentioned in List-A of the Insolvency Petition, 51

creditors belong to his wife and only the remaining 18 creditors are his creditors. But is the contention of the appellant that those creditors were included by the appellant's erstwhile counsel and hence, the appellant may not be blamed for it. Moreover, we find that the Advocate cannot implead the unsecured creditors of the appellant's wife on his own accord, unless the particulars about the wife's unsecured creditors are given by the appellant. It is apparent from the records that, deliberately, the appellant has included the unsecured creditors of the appellant's wife and obtained an order of adjudication by playing fraud upon the Court, by knowing fully well that he is doing so. The question (i) and (ii) are answered in the above terms.

26. With regard to question (iii), it is the submission of the learned counsel for the appellant that the first respondent has no locus-standi to maintain the application filed by him under Section 21 of the Presidency Towns Insolvency Act. This submission is made on the ground that the first respondent is not the creditor of the appellant. In this regard, it is appropriate to extract Section 21(1) of the said Act as follows:

> "Section 21: Power for Court to annul adjudication in certain cases: (1) Where, in the opinion of the Court, a debtor ought not to have been adjudged insolvent, or where it is proved to the satisfaction of the Court that the debts of the insolvent are paid in full, the Court shall, on the application of any person interested, by order annul the adjudication and the Court may, of its own motion or on application made by the official assignee or any creditor, annul any adjudication made on the petition of a debtor who was, by reason of the provisions of sub-section (2) of section 14, not entitled to present such petition."

27. The appellant herein, in the affidavit filed in support of the Insolvency Petition, annexed List-A containing unsecured creditors, in which Sl.No.(1) is the first respondent. By obtaining the order of adjudication, the appellant is trying to make an attempt to defeat the claim of the first respondent made in C.S.No.585 of 2017. Therefore, in our opinion, as per Section 21(1) of the said Act, the first respondent, as an interested person, is entitled to file the application to annul the order of adjudication passed against the appellant and hence, we are of the opinion that the first respondent has locus-standi to file such application seeking to annul the order of

adjudication, since the adjudication order was obtained by playing fraud upon the Court. Question (iii) is answered accordingly.

28. The decisions relied on by the learned counsel appearing for the parties are distinguishable on facts and hence, it is not necessary to delve into the same.

29. Thus, for the reasons stated above, we find no merit in the O.S.A., which is accordingly dismissed. No costs. Consequently, C.M.Ps. closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

cs

To

1. The Sub-Assistant Registrar,
Original Side,
High Court, Madras.

2. The Official Assignee,
High Court Buildings,
Chennai-600104.

+1cc to Mr.K.Elango, Advocate, S.R.No.100101
+1cc to Mr.R.Ramanlal, Advocate, S.R.No.99821

O.S.A.No.101 of 2019

AD(CO)
CS/06/12/2019