



Appl.Nos.16 & 198 of 2019 in IP No.49 of 2010

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in I.P.No.49 of 2010

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R.SUBRAMANIAN, J.

Application No.16 of 2019 has been filed seeking to declare the applicant as a *bona fide* purchaser of the property of the insolvent and Application No.198 of 2019 has been filed seeking to set aside the order dated 26.02.2018 made in IP No.49 of 2010, declaring the sale in favour of the applicant by the insolvent as void on the ground that the sale had happened after the adjudication.

2. Facts reveal that the debtor has played a huge fraud on this Court. The debtor on his own application was adjudged an insolvent on 15.04.2010. Subsequently it turned out that the debtor has in fact purchased the property on 30.04.2009 the existence of which was suppressed in the insolvency petition. After the adjudication when the process of administration was on, the debtor had sold the property to the applicant herein on 20.02.2012 for consideration. When this sale was brought to the notice of this Court, the sale having happened after the order of adjudication was declared void and the Official Assignee was directed to proceed with the administration of the estate treating the property purchased by the



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applicant as the property of the debtor.

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3. When the Official Assignee attempted to bring the property for sale, the applicant moved this Court seeking stay of the auction. An interim order was granted subject to the condition, the applicant deposits a sum of Rs.10,00,000/- with the Official Assignee. The administrative expenses incurred by the Official Assignee were also directed to be borne by the applicant. Thereafter, the applicant has come up with these two applications seeking a declaration that he is a *bona fide* purchaser and for recalling the order dated 26.02.2018 declaring the sale in his favour is void.

4. The Official Assignee has filed a Report wherein, it is stated that out of the five creditors who had made a claim against the estate, two had withdrawn their claims, the other three have been settled and the amounts due to them have been paid by the applicant with a view to save the property.

5. From the above narrated facts, it is clear that the debtor has suppressed facts before this Court and had obtained an order of



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adjudication. Therefore the subsequent order declaring the sale in favour of the applicant is void. The object of the law of insolvency is to protect genuine persons, who are unable to pay the debts from being harassed by the creditors, but the law which is enacted with a noble object is often misused by unscrupulous elements like the debtor herein, who had obtained an order of adjudication within a year of having purchased the property and had chosen to sell the property after obtaining the order of adjudication.

6. Section 7 of the Presidency Towns Insolvency Act, empowers the Insolvency Court to pass orders in the interest of justice. It enables this Court to decide all questions of priorities, and all other questions whatsoever, whether of law or fact, and pass orders which the Court may deem it expedient or necessary to do complete justice between the parties or making a complete distribution of property.

7. As the narrated fact would show that the debts have now been settled and they have no claim against the estate. If the sale is set aside or declared void, the property will remain in the hands of the unscrupulous debtor, who had used the machinery to his advantage. It is therefore in the



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fitness of things that the property remains with the applicant who had after all purchased the property by paying valuable consideration. The Law of insolvency does not contemplate unjust enrichment by the debtor. Therefore, I am convinced that this is a fit case where the power of the Court under Section 7 should be exercised in favour of the applicant.

8. Both the applications are **allowed**. It is declared that the applicant is a *bona fide* purchaser of the property and the order dated 26.02.2018 declaring the sale as void is recalled. The debtor shall pay a cost of Rs.1,00,000/- to the applicant which is recoverable from the debtor's estate if any left with Official Assignee or personally from the debtor.

15.09.2022

jv



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