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A.No.168 of 2017 in
I.P.No.25 of 2014

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DR.G.JAYACHANDRAN, J.
and
C.V.KARTHIKEYAN, J.

ORDER

This application had been filed by the Official Assignee representing the estate of insolvent, Arjunlal Sunderdas, who had been impleaded as first respondent and who had unfortunately died pending the proceedings, seeking a direction against the second respondent, K.S.R.M. College of Engineering, Tadigotta Village, Chintakommadinne Mandal, Pulivendola Road, Hostel Road, Andra Pradesh-516 003, to pay a sum of Rs.61 lakhs together with interest at 18% per annum from 30.04.2013 together with costs of the proceedings.

2.In the report of the Official Assignee filed in support of the application, it had been stated that the second respondent, Arjunlal Sunderdas had been adjudicated as an insolvent by an order dated 21.04.2014, pursuant to a Creditor Application filed by Chitra Desai on 10.03.2014 in I.P.No.25 of 2014. It had



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been further stated that the insolvent did not cooperate with the Official Assignee and did not file his schedule of affairs as required under Section 24 of the Presidency Town Insolvency Act, 1909. He also did not produce his books of accounts.

3.During the course of proceedings, his Counsel had produced a letter dated 07.04.2017, in which it had been reflected that the second respondent, K.S.R.M. College of Engineering was due and payable a sum of Rs.61/- lakhs to the insolvent. It is on the strength of such letter, that the Official Assignee had filed the application seeking recovery of the said sum together with interest and costs.

4.The second respondent had filed a counter wherein, the claim of the Official Assignee had been denied and disputed. It had been stated that the second respondent had actually lent amounts for a sum of Rs.5,35,000/- to the insolvent, Arjunlal Sunderdas and a further sum of Rs.5,35,000/- to the brother of the insolvent, Purushotham Sunderdas, and yet another sum of Rs.5,35,000/-



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to another brother of the insolvent, S.M.Lal and a further sum of Rs.5,35,000/- to yet another brother of the insolvent, Vasudev Sunderdas. It had thus been stated that in the year 1995, when all these transactions had taken place, the second respondent had actually lent a sum of Rs.21,40,000/- to the insolvent and his three brothers.

5.It had been further stated that the insolvent, Arjunlal Sunderdas had repaid a sum of Rs.5,50,000/- by demand draft dated 21.10.2005 and his other brother, Purushotham Sunderdas, had repaid a sum of Rs.5,50,000/- by demand draft dated 21.10.2005 and his other brother, S.M.Lal had returned a sum of Rs.5,50,000/- again by demand draft dated 21.10.2005 and finally, the third brother, Vasudev Sunderdas had returned a sum of Rs.3,50,000/- by demand draft dated 21.10.2005. It had thus been stated that the insolvent and his three brothers had repaid a sum of Rs.20 lakhs against a borrowal of Rs.21.40 lakhs and that it was the second respondent, who has to recover money from the estate of the insolvent and his other three brothers. It had therefore been stated that the application should be dismissed.



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6.The parties were then directed to tender evidence. On behalf of the applicant, R.Padma, Sub Assistant Registrar, Office of the Official Assignee, Madras High Court, was examined as PW-1 and she marked Ex-A1 to Ex-A3. Ex-A1 was the relevant page in the report given by the Auditor of the insolvent, Ranga Ramanujam, Ex-A2 was the list of debtors given by the Counsel for the insolvent, dated 07.04.2017 and Ex-A3 was the notice issued by the Official Assignee. On behalf of the second respondent, K.Jaya Narasimhulu, the Accounts Manager of the second respondent College was examined as RW-1. He filed audit report dated 06.03.1997, as Ex-R1 and the audit report dated 14.02.2006, as Ex-R2.

7.Heard arguments advanced by Mr.K.V.Ananthakrushnan, learned Counsel appearing for the Official Assignee and Mr.C.Ramesh, learned Counsel appearing for the second respondent.

8.The point to be determined is whether the claim of the Official



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WEB COUNCIL Assignee should be granted or not?

9.A perusal of the records and the evidence shows that the Official Assignee has placed reliance on the letter of the Counsel of the insolvent dated 07.04.2017 wherein, it had been stated that the second respondent was due and payable a sum of Rs.61/- lakhs to the estate of the insolvent. But however, no further statement relating to the manner of the loan transactions had been produced. On the other hand, the second respondent produced Ex-R1 and Ex-R2, audit reports dated 06.03.1997 and 14.02.2006. The originals had been produced in Court and the copies had been marked after comparison.

10.A perusal of these documents show that the second respondent had lent to each one of Arjunlal Sunderdas, Purushotham Sunderdas, S.M.Lal and Vasudev Sunderdas, a sum of Rs.5,35,000/- in the year 1995. Each one of them had received the aforementioned amount of Rs.5,35,000/- which totally amounted to Rs.21,40,000/-. Ex-R2 which is the audit report dated 14.02.2006 reflects the repayment by the four brothers. It is seen from the said record that



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the each one of the four brothers had returned back by demand drafts, dated 21.10.2005, a total sum of Rs.20,00,000/- alone. Arjunlal Sunderdas, Purushotham Sunderdas and S.M.Lal had returned back a sum of Rs.5,50,000/- each and the fourth brother, Vasudev Sunderdas, had returned a sum of Rs.3,50,000/-. All these transactions were of the year 2005. There are no other transactions with the second respondent by the insolvent.

11.It is thus seen that the applicant had failed to establish the claim made in the application.

12.On the other hand, the second respondent had produced documents to show the actual borrowal and the actual discharge. It is seen that the insolvent and his three brothers were the borrowers and the second respondent was actually the lender of money and not the borrower of money.



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WEB COPY13.In view of these facts, which had been established during the course of trial and which have not been controverted in manner known to law, we hold that the application has to fail and accordingly, it is dismissed. However, there is no order as to costs.

(DR.G.J.J.) & (C.V.K.J.)
04 .09.2024

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