

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Transfer C.M.P.No.1045 of 2019

and

C.M.P. No.27845 and 27849 of 2019

S.Srinivasan

...Petitioner

vs.

1.Raju

2.Saravanan

...Respondents

Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., to withdraw Insolvency Petition in I.P. No.1 of 2019, from the file of Subordinate Judge's Court at Mettur and transfer the same to be tried along with the suit in O.S. No.149 of 2019, on the file of Additional District Court at Mettur.

For Petitioner : Mr.P.Valliappan

For Respondent : Mr.S.Shanmugaraja for R1
Mr.S.T.P.Kuilmozhi for R2

O R D E R

Transfer Civil Miscellaneous Petition filed under Section 24 of the Civil Procedure Code, to withdraw Insolvency Petition in I.P. No.1 of 2019, from the file of Subordinate Judge's Court at Mettur and transfer the same the file of Additional District Court, Mettur, to be tried along with the suit in O.S. No.149 of 2019.

2. Learned counsel for the second respondent has taken a defence that the competent court to deal with the matter is only the Sub Court and not the District Court and that the relief sought for by the petitioner, cannot be granted and that the petition may be dismissed at the threshold.

3. The learned counsel appearing for the petitioner drew the attention of this court to the Provincial Insolvency Act, 1920, wherein District Court defined under Section 2(1)(b), which reads as follows:

(b) "District Court" means the principal Civil Court of original jurisdiction in any area outside the local limits for the time being of the Presidency-towns."

4. A reading of the provision is very clear that the District Courts will have the jurisdiction to deal with the case. As could be seen from Section 3 of the said Act, which deals with insolvency jurisdiction, it is the district court having jurisdiction under this Act. Section 3 of the Act reads thus:

" 3. (1) The District Courts shall be the Courts having jurisdiction under this Act:

Provided that the State Government may, by notification in the Official Gazette, invest any Court subordinate to a District Court with jurisdiction in any class of cases, and any Court so invested shall within the local limits of its jurisdiction have concurrent jurisdiction with the District Court under this Act.

(2) For the purposes of this Act, a Court of Small Causes shall be deemed to be subordinate to the District Court."

5. District Court has delegated its powers to subordinate courts, to exercise the powers of the District Court with regard to the provisions of the Provincial Insolvency Act, 1920, to give a quietus to the dispute between the parties at the earliest. Hence I find much force in the contention of the learned counsel for the petitioner that the District Court has got original jurisdiction, which has delegated the powers to Sub Court. Hence I have no hesitation in holding that the District Court has got powers and the matter can be transferred from Sub Court, Mettur to District Court, Mettur.

6. With regard to various objections raised by the first respondent, touching the merits of the matter, even though, they have no objection to transfer the matter, this court cannot delve into the merits and the contentions raised by the first respondent, as the matter has got to be decided, factually and legally and this court, cannot render any finding on that aspects, touching the merits of the matter, which will affect the rights of the parties, when the matter is taken up for hearing by the District Court for deciding the issues. Hence, leaving it open to first the respondent, to raise all his objections, touching the merits of the matter to put-forth before the District Court to which court, the matter is transferred and it is open to the other parties to put-forth their objections, to those points that may be raised by the first respondent, before the said District Court, which court, shall consider the case on merits and in accordance with law.

7. In view of the same, Insolvency Petition in I.P. No.1 of 2019, pending on the file of Sub Court, Mettur, is withdrawn from the said court and transferred to the Additional District Court at Mettur, to be tried along with the suit O.S. No.149 of 2019, pending on the file of the said court. The Additional District Court, Mettur, is expected to

conclude the trial in both the matters, as expeditiously as possible, in order to bring the issue to a logical end.

7. The Transfer Civil Miscellaneous Petition is allowed as indicated above. No costs. Consequently, the connected Civil Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

Asr

To :

- 1) The Additional District Court,
Mettur.
- 2) The Sub Court,
Mettur.

+1cc to Mr.P.Valliappan, Advocate, S.R.No. 10348
+1cc to Mr.S.T.P.Kuilmozhi, Advocate, S.R.No. 9886
+1cc to M/s.Chennai Law Firm, Advocate, S.R.No. 9821

Tr.C.M.P.No.1045 of 2019 and
C.M.P. Nos.27845 & 27849 of 2019

SPD(CO)
GN(17/03/2020)

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