

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2020

CORAM :

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R. SURESH KUMAR

O.S.A.No.401 of 2018

C. Heeralal Joshi alias C.H.Joshi .. Appellant
-vs-

1. Praveen Kumar Pukhraj
son of Pukhraj
No.23, Amman Koil Street,
Chennai 600 003.
2. The Official Assignee,
Office of Official Assignee
High Court, Madras .. Respondents
appeals

Original Side Appeal filed under Order 36, Rule I of O.S.Rules r/w.Clause 15 of the Letters Patent against the order dated 08.01.2018 passed in Appln.No.95 of 2017 in I.P.No.99 of 2010 on the file of Original Side jurisdiction of this Court.

For Appellant	Mr.H. Adaikala Arockiaraj
For Respondents	Mr.T.S.Kandhakumaar for R1 Mr.M. Vasanthakumar Deputy Official Assignee for R2

JUDGMENT

(Judgment of the Court was made by R. SURESH KUMAR, J.)

This intra court appeal has been directed against the order passed by the learned Single Judge in A.No.95 of 2017 in IP.No.99 of 2010 by order dated 8.1.2018 .

2. The said application was filed by the Debtor to annul the insolvency proceedings made in IP.No.99 of 2010 on the ground that as per the said insolvency proceedings, the total claim of Rs.3,12,876/-, which is already available in the estate of the insolvent, was enough to discharge the claim whatsoever,

therefore, there is no need to retain the insolvency proceedings, hence it can be annulled.

3. However, the learned Single Judge, having considered the facts, has rejected the application on the ground that, there seems to be four civil court decrees, wherein, father and son were the decree holders, therefore they filed four insolvency petitions in IP.Nos.99, 100, 101 and 102 of 2010 before the Insolvency Court. Insofar as I.P.Nos. 100 to 102 of 2010 are concerned, those insolvency petitions were dismissed on 14.11.2011 for the reason that the son, without the power of attorney, wanted to maintain the insolvency petition and to depose before the Court. However I.P.No.99 of 2010 is still pending, where adjudication process is already over and the debtor, who is the present appellant, has already been adjudged as insolvent.

4. In this context, it is to be noted that, the learned official assignee in his report dated 10.11.2017 filed before the insolvency Court, has stated that, only a sum of Rs.3,12,876/- alone was available in the estate of the insolvent. While that being so, the father who was also a decree holder jointly with the son, had filed some claim petitions, wherein, altogether, they have made a claim for a total sum to the tune of Rs.13,97,705/-. Since out of the said claim, the official assignee has admitted Rs.9,12,412/-, the fact remains that even the admitted claim as against the debtor/appellant herein is more than 9 lakhs rupees, whereas, the amount available in the estate as stated above, is only Rs. 3,12,876/- .

5. Therefore, in order to meet the other claims, the proceedings has to be kept pending and process has to be continued by exploring the possibility of unearthing any other property of the debtor, i.e., insolvent, in order to meet the admitted claim. Therefore under these circumstances, whether the prayer sought for by the present appellant/debtor to annul the insolvency proceedings can be accepted or not, has been answered by the learned Single Judge in the order impugned, which, for the ready reference is quoted hereunder.

'7. I am inclined to agree with the submissions made by the learned counsel for the Creditor. After all dismissal of IP does not wipe out the debt, it can at best be stated that there is no act of insolvency. The applicant debtor having been adjudicated in another IP, it is always open to the creditors to file claim petitions. The adjudication order passed is an order in rem and not an order in personam. I find that the Official Assignee is right in admitting

the claims of the father, who was the petitioner in I.P.Nos.100 to 102 of 2010.

8. A perusal of the report of the Official Assignee dated 10.11.2017 shows that the debt is more than the assets available with the Official Assignee. I do not see any reason to annul the order of adjudication.

9. Hence, this Application is dismissed.'

6. We have heard the learned respective counsel appearing for the parties including the official assignee.

7. There is no much controversy on the aforesaid facts. As of now since there are admitted claim more than a sum of Rs.9 lakhs which has to be settled, of course, on the available sources in the estate of the appellant/debtor and according to the official assignee, the amount which is available in the estate is only Rs.3,12,876/-, it become obvious that still more process is required to be made and therefore, at this juncture, the insolvency proceedings cannot be annulled. Therefore the said plea raised by the appellant/debtor before the learned Single judge by filing the present application in Appln.No.95 of 2017 to annul the insolvency proceedings was rightly rejected by the insolvency court. Therefore, we are not inclined to interfere with the same, accordingly, the appeal is dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

msr

To

The Sub Assistant Registrar,
Original Side,
High Court, Madras

+1cc to Mr.Adaikala Arockiaraj, Advocate, Sr.No.20946

O.S.A.No.401 of 2018

GS(01/06/2020)