



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

C.M.S.A.No.35 of 2015

Palanimuthu,
S/o.Kandappa Gounder

.. Appellant

-vs-

1.E.Rajamanickam
2.A.Krishnaveni

.. Respondents

Appeal filed under Section 75(1) of the Provincial Insolvency Act read with Section 100 of the Code of Civil Procedure against the order dated 26.06.2015 made in C.M.A.No.8 of 2014 on the file of the Principal District Court, Namakkal, confirming the fair and final order dated 24.02.2014 made in I.P.No.3 of 2010 on the file of the Sub Court, Tiruchengode.

For Appellant : Ms.D.Sathya
for Ms.Zeenath Begum

For R1 : Refused

For R2 : No appearance

JUDGMENT

This Civil Miscellaneous Second Appeal is filed challenging the fair and decretal order dated 26.06.2015, passed in C.M.A.No.8 of 2014 on the file of the Principal District Court, Namakkal, confirming the fair and final order dated 24.02.2014, made in I.P.No.3 of 2010 on the file of the Sub Court, Tiruchengode.

2.The insolvency petition in I.P.No.3 of 2010 was originally filed by the appellant under Section 9 of the Provincial Insolvency Act, 1920 (hereinafter referred to as "the Act") to pass an order to adjudge the first respondent as an insolvent and permit him to take steps to set aside the Sale Deed dated 26.08.2009, subsequent to the adjudication of insolvency petition.

3.The substantial question of law raised in this Civil Miscellaneous Second Appeal is, whether the judgment of the Courts below are vitiated on the ground that they failed to see that the date of presentation of Insolvency Petition was on



23.11.2009 and therefore, well within the period of limitation prescribed under Section 9(1)(c) of the Act.

4. The very substantial question of law raised is with reference to the limitation, as the appellant claims that he filed the petition within the period of limitation and the Court passed an order dismissing the petition as 'time barred'.

5. In this context, when the matter is taken up for final hearing, this Court verified page 6 of the typed set of papers filed by the appellant, which is the xerox copy of the docket sheet of I.P.No.3 of 2010. This Court could not see that there was some discrepancy in affixing the court seal. The seal of Sub Court, Tiruchengode was affixed on 23.11.2009 and under the said seal, the original seal was found, which was dated 26.08.2010. The 23.11.2009 seal was affixed above the seal dated 26.08.2010 and therefore, this Court raised a doubt regarding the genuinity and reliability of the seal dated 23.11.2009 for the purpose of reckoning the period of limitation. This Court passed an order on 01.03.2021 directing the learned Sub Judge, Tiruchengode to send the original files pertaining to I.P.No.3 of 2010 along with a report regarding the date of filing of the Insolvency Petition by the appellant. Pursuant to the orders passed by this Court, the learned Sub Judge, Tiruchengode sent the original files along with a report dated 16.03.2021. The learned Sub Judge, in his report, has stated as hereunder:-

"I further humbly submit that on careful perusal of the records, which reveals that the I.P.No.3/2010 was originally filed before the Sub Court, Tiruchengode on 23.11.2009. The same was returned for mistakes on 27.11.2009. Subsequently, the petition was once again filed before the Sub Court, Tiruchengode on 21.6.2010 after rectifying the mistakes. I humbly submit that the same was once again returned on 25.6.2010 as the previous returns had to be complied. I further humbly submit that the said I.P. petition was once again re-presented in the court after rectifying the errors on 25.8.2010 and the court seal was affixed on 26.8.2010. The petition was taken on file by the court on 8.9.2010 and I.P.No.3/2010 was assigned. I most humbly submit that the petition was dismissed after full trial on 24.2.2014.

I most humbly submit the report, along with necessary enclosures, for my Lord's kind perusal and consideration, and I beg to pray that the same may be accepted and recorded."



6. This Court was not satisfied with the report submitted by the learned Sub Judge, Tiruchengode, as the discrepancy pointed out by this Court was not clarified. The report of the learned Sub Judge, Tiruchengode reveals that he has not verified the original records properly and prepared the report. Contrarily, the report reflects the facts stated by the appellant for saving the period of limitation. Thus, the said report is not reliable and the learned Sub Judge, Tiruchengode has not applied his mind, nor verified the original records and submitted a report. Such a conduct of the Judicial Officer is not appreciable, when the High Court has pointed out the discrepancy specifically in its order and directed the learned Sub Judge, Tiruchengode to verify the original records and submit a report.

7. On 18.03.2021, this Court directed the learned Principal District Judge, Namakkal to conduct an enquiry with reference to the seal affixed in the original case papers as well as the other documents and submit a report within fifteen days. Pursuant to the directions, the learned Principal District Judge, Namakkal submitted his report on 05.04.2021 clearly stating that there was a manipulation and falsification of records. The detailed report of the learned Principal District Judge, Namakkal concludes by enumerating as follows:-

"On the whole, I am of the view that CFR 19 Register No.4953 was allotted to receiving of written statement of D1 in O.S.61/2009 on 21.11.2009 itself. It could not be possible to allot to such number to receive IP petition on 23.11.2009 which would have been inserted with ulterior motive purposely as if it had been filed on 23.11.2009. This activity shall be deprecated with iron hand.

I am of the view that for the abovesaid action, stringent departmental action has to be initiated against the concerned court staff. The suitable direction has been given to the Sub Judge, Tiruchengode to call for the explanation from the concerned erring staff and to initiate departmental enquiry in this regard. I further humbly submit that since the matter is pending before the Hon'ble High Court of Judicature, Madras in CMSA No.35/2015, I am soliciting instructions from the Hon'ble High Court of Judicature, Madras for further course of action.

Thus, I submit this for favour of Honour's kind consideration and soliciting instructions to proceed further in this regard."

8. The above findings of the learned Principal District Judge, Namakkal are sufficient to form an opinion that the appellant, in collusion with the staff of the Court concerned,



manipulated the seal in order to save the limitation and accordingly, filed this appeal. Thus, the appeal is not entertainable and accordingly, is dismissed.

9. With reference to the report dated 05.04.2021, the learned Principal District Judge, Namakkal is directed to initiate all further actions including criminal action and departmental action against all the persons involved in such falsification of records, fraudulent activities, etc., and proceed against them by following the procedures contemplated under law and the relevant Service Rules in force.

10. The Registrar (Judicial), High Court of Madras, Chennai is directed to send back the original records relating to the Insolvency Petition in I.P.No.3 of 2010 immediately to the learned Principal District Judge, Namakkal.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

abr

To

1. The Sub Judge,
Tiruchengode,
Namakkal.

2. The Principal District Judge,
Namakkal District.

3. The Registrar (Judicial),
High Court of Madras,
Chennai.

Copy to:

The Section Officer,
VR Section, High court, Madras.

+1cc to M/s. Zeenath Begum, Advocate SR.No. 30345

C.M.S.A.No.35 of 2015

RP(CO)
B.VC(22.07.2021)