

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2021

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

AND

THE HONOURABLE MR. JUSTICE P.D.AUDIKESAVALU

O.S.A. Nos. 295 & 301 of 2019

&

C.M.P. Nos. 24551 & 24797 of 2019

A. Sardarbasha

..Appellant in both the
O.S.As

Vs.

1. The Official Assignee
High Court, Madras 600 104.

2. K. Kalavathy ..Respondents in both
O.S.As

Prayer: Original Side Appeals filed as against the order and decretal order
dated 15.04.2019 passed in Application No. 230 of 2018 & Application No.145 of

2015 in I.P. Nos. 115 &134 of 1999.

For Appellant in
both OSAs :: Mr.J. Balagopal

For Respondents
in both OSAs :: Mr.K.V. Ananthakrushnan
for R1
Mr.A. Babu for petitioning
creditors

COMMON JUDGMENT

The matters are heard through videoconferencing.

2. O.S.A. Nos. 295 & 301 of 2019 have been filed challenging the order dated 15.04.2019 dismissing Application Nos. 230 of 2018 & 145 of 2015 in I.P. Nos. 115 & 134 of 1999.

3. The appellant, who is a third party purchaser, had filed Application No. 230 of 2018 to release his property purchased by way of sale deed dated 28.03.2002 registered as Document No. 285 of 2002 with the Sub Registrar, North Chennai as a bonafide transaction as per Section 57(c) of the Presidency Town Insolvency Act 1909 and binding on the 1st respondent/Official Assignee while Application No. 145 of 2015 was filed seeking stay of public auction sale of the appellant's property fixed on 22.06.2015 by the Official Assignee.

4. The factual matrix of the case is briefly stated infra:

As against the 2nd respondent herein, I.P. Nos. 115 and 134 of 1999 were filed by petitioning creditors, namely, M.V. Loganathan and A.N. Srinivasan respectively for non-payment of the amount due to them towards supply of goods. In the main I.Ps., an ex parte order was passed on 08.10.2001 and the petition to set aside the ex parte order, filed by the 2nd respondent was dismissed on 10.03.2002. Thereafter, an ex parte adjudication order was passed declaring the 2nd respondent herein as an insolvent by order dated 26.03.2002. Subsequently, though the petition to set aside the ex parte adjudication order filed by the 2nd respondent was allowed on 15.04.2002, in the interregnum, i.e, after the declaration of the 2nd respondent as an insolvent by order dated 26.03.2002, the 2nd respondent had sold the property in question to a third party purchaser, i.e, the appellant herein on 28.03.2002, in order clear the mortgage decree obtained in O.S. No. 8726 of 1998 on the file of IV Additional City Civil Court, Chennai, dated 30.03.2001. Thereafter, the main I.Ps were heard on merits and finally, by order dated 08.11.2010, the 2nd respondent was adjudicated as an insolvent by this Court and all the properties of the 2nd respondent/insolvent vested with the Official Assignee. The Official Assignee sent a notice to the purchaser informing that the property is going to be brought for auction sale, soon after which the purchaser/the appellant herein filed

an application in A.No. 145 of 2015 seeking stay of public auction sale and another application in A.No. 230 of 2018 for declaring that he is a bona fide purchaser. Since both the applications were dismissed, the present appeals, at the instance of the appellant.

5. When the matters are called, Mr.J. Balagopal, learned counsel for the appellant, Mr. K.V. Ananthakrushnan, learned counsel for Official Assignee and Mr.A. Babu for the petitioning creditors are present before this Court today.

6. The appellant has filed an affidavit stating that he would pay a sum of Rs.18 lakhs (Rupees Eighteen Lakhs only) on or before 31st May, 2021 for which the Official Assignee and Mr.A. Babu, learned counsel for the petitioning creditors, namely, M.V. Loganathan and A.N. Srinivasan would also agree and be satisfied with the payment of Rs.18 lakhs by the appellant. Both the parties have to file affidavits today in this regard.

7. The appellant shall pay the said amount to the Official Assignee within the aforesaid date and on such payment, the Official Assignee shall make the payment of Rs.10,38,400/- and Rs.7,61,600/- to the respective petitioning creditors.

In the event of appellant's failure to comply with the payment within the stipulated

time, the entire amount of Rs.28 lakhs with further interest would be recovered by way of sale of property of the appellant.

8. Though the Official Assignee made a claim for 7% commission, taking into consideration, that the matter has been settled through Court, it may not be appropriate for the Official Assignee to charge 7% commission. Moreover, a Division Bench of this Court in ***O.S.A. Nos. 26 to 28 and 183 of 2017 dated 06.10.2017 [K. Dhanalakshmi Ammal and Another V. T. Radha and Another]*** has negated the claim of the Official Assignee for commission on the ground that the matter has been settled through Court. Following the said judgment, the claim of the Official Assignee for 7% commission is rejected. However, it is made clear that in the event the appellant fails to make the payment of Rs.18 lakhs and the property is brought for sale, then the Official Assignee would be entitled to 7% commission.

9. Further, it is submitted that a sum of Rs. 1lakh deposited by the appellant is available with the Official Assignee. The Official Assignee shall deduct the expenses incurred for bringing the property for sale so far and also for engaging counsel from the said amount of Rs.1 lakh and pay the balance amount to the appellant. Likewise, the amount of Rs.30,000/- deposited by the petitioning

creditors with the Official Assignee shall be refunded to them fully.

10. The Original Side Appeals are disposed of accordingly. No costs.
Connected C.M.Ps are closed.

nv

To

The Sub Assistant Registrar,
Original Side Section,
High Court of Madras,
Chennai.

(N.K.K.J.) (P.D.A.J.)
01.04.2021



WEB COPY

O.S.A.Nos.295 & 301 of 2019

AND

P.D. AUDIKESAVALU,J.

nv



O.S.A. Nos. 295 & 301 of 2019

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01.04.2021

O.S.A.Nos.295 & 301 of 2019

N.KIRUBAKARAN, J.

and

P.D.AUDIKESAVALU, J.

[Order of the Court was made by N.KIRUBAKARAN, J.,]

This matter has been brought before this Court under the caption “For being mentioned” at the instance of Mr.A.Babu, learned counsel for the Petitioning Creditors.

2.Heard Mr.A.Babu, learned counsel for the Petitioning Creditors and the Official Assignee.

3.This Court by order dated 01.04.2021, dispose of the present Appeals. However, in paragraph No.9 of the order, the amount to be refunded to the Petitioning Creditors was inadvertently mentioned as Rs.30,000/- instead of Rs.30,000/- each. Therefore, the Registry is directed to replace paragraph No.9 of the order dated 01.04.2021 passed in O.S.A.Nos.295 & 301 of 2019 as hereunder:

“9.Further, it is submitted that a sum of Rs.1 lakh deposited by the appellant is available with the Official Assignee. The Official Assignee shall deduct the expenses incurred for bringing the property for sale so far and also for engaging counsel from the said amount of Rs.1 lakh and pay the balance amount to the appellant. Likewise, the amount of Rs.30,000/- each deposited by Mr.M.B.Loganathan and Mr.A.N.Srinivasan with the Official Assignee shall be refunded to them fully.”

(NKKJ)

(PDAJ)

16.08.2021

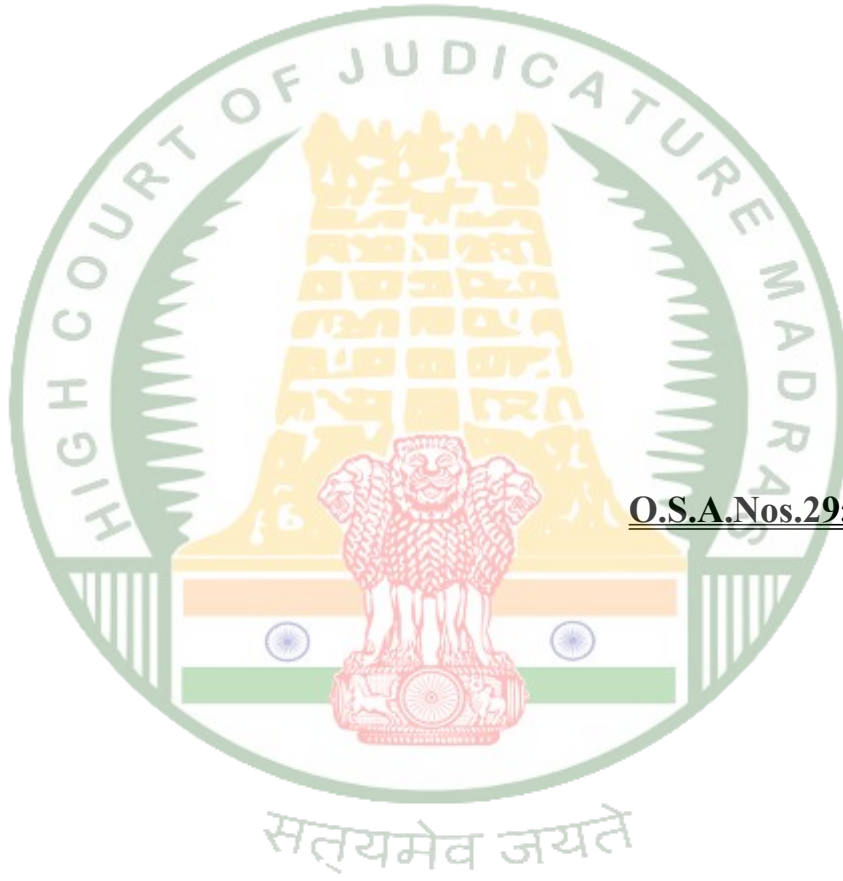
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Note: Registry is directed to carry out necessary corrections in the order and issue fresh order copy.

O.S.A.Nos.295 & 301 of 2019

N.KIRUBAKARAN, J.
and
P.D.AUDIKESAVALU, J.

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O.S.A.Nos.295 & 301 of 2019

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Dated: 16.08.2021