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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2021

CORAM

THE HON'BLE MR.JUSTICE PARESH UPADHYAY
AND
THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

O.S.A.NOS.312 TO 315 OF 2021
AND
C.M.P.NOS.18186, 18191,18225 AND 18243 OF 2021

S.Kumutha

... Appellant in all
the O.S.As

.Vs.

1. The Official Assignee,
High Court, Madras - 104,
Rep. Estate of Shanmugam.

2. S.Shanmugam

3. Dr.Snehalatha Elangovan

4. The Motor Finance Corporation,
Akshaya Plaza, 55, Harris Road,
Opposite to Egmore Court,
Chennai - 2.

... Respondents in all
the O.S.As

PRAYER:-

Appeals preferred under Order XXXVI Rule 1 of O.S. Rules r/w Section 8 of the Presidency Towns Insolvency Act, III of 1909 r/w Clause 15 of Letters Patent against the order dated 25.08.2021 made in A.Nos.27, 28, 29 and 30 of 2021 in I.P.No.8 of 2019.

PRAYER IN A.NO.27 OF 2021:-

Application praying that this Honourable Court be pleased to pass an order to set aside the settlement deed dated 08/09/2016, executed by the insolvent in favour of his Wife S.Kumutha and registered as Document No.9536 of 2016 before Joint-I, Sub-Registrar, Saidapet, South Chennai and the subsequent



mortgage by deposit of title deed dated 28/04/2017 and registered as Doc.No.4172 of 2017 before SRO Saidapet, in respect of the property at Plot No.543, Flat No.1, Temple Tree Apartment, 21st East Street, Kamarajar Nagar, Thiruvanmiyur, Chennai - 600 041, morefully described in the schedule as null and void and will not bind the Official Assignee.

PRAYER IN A.NO.28 OF 2021:-

Application praying that this Honourable Court be pleased to pass an order of ad interim injunction restraining the 3rd and 4th Respondents, their men, agents, assignee executors or anyone else claiming through or on their behalf from alienating the property at Plot No.543, Flat No.1, Temple Tree Apartment, 21st East Street, Kamarajar Nagar, Thiruvanmiyur, Chennai - 600 041, morefully described in the schedule pending disposal of the application to set aside the settlement deed.

PRAYER IN A.NO.29 OF 2021:-

Application praying that this Honourable Court be pleased to pass an order to direct the 3rd and 4th Respndents to hand over all the original documents/title deeds relating to the property at Plot No.543, Flat No.1, Temple Tree Apartment, 21st East Street, Kamarajar Nagar, Thiruvanmiyur, Chennai - 600 041, morefully described in the schedule.

PRAYER IN A.NO.30 OF 2021:-

Application praying that this Honourable Court be pleased to pass an order to permit the Official Assignee to bring the property at Plot No.543, Flat No.1, Temple Tree Apartment, 21st East Street, Kamarajar Nagar, Thiruvanmiyur, Chennai - 600 041, morefully described in the schedule for sale and disburse the sale proceeds to the creditors.

PRAYER IN I.P.NO.8 OF 2019:-

Petition filed under Sections 9, 10, 11, 12 & 13 of the Presidency Towns Insolvency Act III of 1909 and Order III-A of the Insolvency Rules 1958 praying that this Honourable Court may be pleased to

- a) To treat this Petition as Urgent;
- b) To adjudicate the Debtor as Insolvent;



c) To direct that the estate of the Debtor be vested in the Official Assignee of Madras for the benefit of the General body of the Petitioning Creditor;

d) To order that the costs of this Petition be paid by the Official Assignee of Madras, from and out of the estate of the Debtor to the Petitioning Creditor;

e) To pass such other or further orders as Honourable may deem fit and proper under the circumstances of the case.

For Appellant ... Mr.R.Thiagarajan
In all the O.S.As

COMMON JUDGMENT

(Delivered by PARESH UPADHYAY, J.)

Challenge in these appeals is made to the common order dated 25 August 2021 passed by learned Single Judge on A.Nos.27, 28, 29 and 30 of 2021 in I.P.No.8 of 2019.

2. By the impugned order, learned Single Judge has ordered as under:

"That the settlement deed dated 08.09.2016 executed by the insolvent in favour of his wife S.Kumutha and registered as Document No.9536 of 2016 before Joint I Sub Registrar, Saidapet, South Chennai and the subsequent mortgage by deposit of title deed dated 28.04.2017 and registered as Doc.No.4172 of 2017 before SRO, Saidapet, in respect to the property at Plot No.543, Flat No.1, Temple Tree Apartment, 21st East Street, Kamarajar Nagar, Thiruvannamiyur, Chennai - 600 041 morefully described in the schedule hereunder be and is hereby set aside and declared as null and void and shall not bind the Official Assignee.

That the respondents 1.S.Kumutha, W/o.Shanmugam, now at Plot No.543, Flat No.1, Temple Tree Apartment, 21st East Street, Kamarajar Nagar, Thiruvannamiyur, Chennai - 600 041, 2.Motor Finance Corporation, Akshaya Plaza, 55, Harris Road, Opposite to Egmore Court, Chennai - 600 002, respondents 3 and 4 herein, be and hereby are restrained by an order of interim injunction restraining the respondents 3 and 4, their men,



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agents, assignee executors or anyone else from claiming through or on their behalf from alienating the property at Plot No.543, Flat No.1, Temple Tree Apartment, 21st East Street, Kamarajar Nagar, Thiruvannamiyur, Chennai - 600 041 morefully described in the schedule hereunder pending disposal of the application.

That the respondents 3 and 4 be and hereby are directed to hand over all the original documents/title deeds relating to the property at Plot No.543, Flat No.1, Temple Tree Apartment, 21st East Street, Kamarajar Nagar, Thiruvannamiyur, Chennai - 600 041 morefully described in the schedule hereunder.

That the alienee and the fourth respondent be and are hereby directed to handover all the documents relating to the property to the Official Assignee within a period of 30 days from today i.e. 25/08/2021 and the Official Assignee is at liberty to take steps for sale of the property treating it as a part of the estate of the insolvent.

That the Official Assignee be and is hereby permitted to bring the property at Plot No.543, Flat No.1, Temple Tree Apartment, 21st East Street, Kamarajar Nagar, Thiruvannamiyur, Chennai - 600 041 morefully described in the schedule hereunder for sale and disburse sale proceeds to the creditors."

3. Mr.R.Thiagarajan, learned advocate for the appellant has submitted that the very institution of the insolvency proceedings is misconceived in view of the provisions under the Presidency Towns Insolvency Act inasmuch as the date of settlement of the property in question being 08.09.2016, by no stretch of imagination, it could have been brought within the adjudication process of the insolvency petition in question when the institution thereof was on 10.12.2018. Reference is also made to various provisions of the Act including Section 9(2)(b) coupled with the provisions of law invoked by the applicant so also the appellant before learned single Judge. It is submitted that the applications - on which the impugned order is passed were not maintainable. Without prejudice to this, it is submitted that even if they were to be adjudicated on merits, those applications ought to have been rejected. It is additionally submitted that, the impugned order could not have been passed without first setting aside the order passed in



earlier round of insolvency petition. It is further submitted that reliance on the orders of the Division Bench of this Court as referred in the order of learned single Judge was misconceived since it pertained to different provisions of law. According to learned advocate for the appellant, important questions of law have arisen in this case and therefore these appeals be entertained by putting the appellant to any terms.

4. Having heard the learned advocate for the appellant and having considered the material on record this Court finds as under:

4.1. The present appellant is holding title over an immovable property (the details of which are noted in the quoted portion of the impugned order), pursuant to the settlement deed dated 08.09.2016. Earlier, the property was owned by her husband. Her husband has faced the declaration being insolvent even earlier in I.P.No. 30 of 2018.

4.2. Important questions of law, as per the contention of learned advocate for the appellant which arise for consideration of this Court in this case, need not be examined at the hands of this appellant because what was staring before learned single Judge was the transaction dated 08.09.2016 (between the husband and wife) which is held to be fraudulent to defeat the interest of the creditors. This is a finding of fact, and if the totality of the circumstances are kept in view, on independent assessment thereof, we also arrive at the same conclusion. While doing so, the following facts, as emerging from the record are kept in view.

4.3. One V.K.Sameer Ahmed, who claimed that the husband of the present appellant had borrowed a sum of Rs.2,00,000/- filed I.P.No. 30 of 2018, which the husband of the appellant did not contest. He thereby not only suffered the declaration of being insolvent, he also earned that declaration. At that time, the property in question, which was stated to have been transferred in the name of the wife - the present appellant on 08.09.2016 (not sale deed), was not put to the notice of any one, not even to the notice of this Court. Therefore, the said property does not find place in the order passed by this Court in I.P.No.30 of 2018. The learned single Judge has taken note of the above mischief.

4.4. Having taken note of, as above, learned Single Judge gave directions to the concerned parties, which are quoted above. We do not find any error in the said order. The questions of law which are stated to have arisen in this case are refused to be entertained at the hands of the present appellant, because it would only give premium to the illegalities/fraud committed



not only with the creditors but even with this Court in the earlier round of insolvency petition.

5. In view of above, these appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Official Assignee,
High Court, Madras - 104.
2. The Sub Assistant Registrar,
Original Side, High Court,
Madras.

+2ccs to Mr.R.Thiagarajan, Advocate, S.R.No.58593

+1cc to M/s.S.Sashidhar Sivakumar, Advocate, S.R.No.58696

O.S.A.NOS.312 TO 315 OF 2021

GJ(CO)
PBS/03/12/2021