



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.11.2021

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P (PD) (MD) No.1669 of 2010

and

M.P (MD) No.01 of 2010

WEB COPY

Anjalai	... Petitioner/Petitioner in I.P / 3 rd Party in I.P
	Vs.
1.Murugan	... 1 st Respondent/1 st Respondent in I.P/Petitioner in I.P
2.Nagarajan	... 2 nd Respondent/2 nd Respondent in I.P/1 st Respondent in I.P
3.Thangaraj	... 3 rd Respondent/3 rd Respondent in I.P/2 nd Respondent in I.P

PRAYER:- Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order dated 15.07.2010 and made in S.R.No.190 of 2010 in I.P.No.17 of 2004 on the file of the Court of the Principal District Court, Pudukkottai.

For Petitioner	: Mr.K.Balasundaram
For Respondents	: No appearance

ORDER

The petitioner/third party, who had filed an application under Section 35 of the Provisional Insolvency Act, is the petitioner before this Court. She has filed the revision petition challenging the dismissal of her above referred application by the learned Principal District Judge, Pudukottai, without numbering the said application by stating that the papers have already been sent to the official receiver and therefore, the application could not be considered.

2.The petitioner had filed the said application stating that the entire insolvency petition had been stage managed by her husband /second respondent herein. In order to avoid giving maintenance to her and her child, which had been ordered by the trial Court which was confirmed by this Court in C.R.P(MD) No.22 of 2004. She would therefore submit that the order declaring the second respondent as a insolvent, had to be recalled. The learned Principal District Judge, Pudukkottai, without even numbering the said application had dismissed the petition filed by the revision petitioner herein. Challenging the same, the revision petitioner is before this Court.

3.The respondents, though served, had not entered appearance



either through counsel or in persons. Heard the learned counsel for the petitioner and perused the records.

4.A mere perusal of the impugned order would show that the learned Judge has stated that an *ex parte* order had been passed on 27.07.2007 in I.P.No.17 of 2004 and on 19.06.2009, the petitioner in the insolvency proceedings, had filed an application under Section 56 of the said Act. Even in this petition, the second respondent herein had remained *ex parte* and the insolvency petition was ordered on 27.07.2007 and thereafter, the records were sent to the official receiver at Trichy. The learned Judge ought to have numbered the said application and heard both parties before passing any order. The only ground on which the petition has been dismissed is that the records had been forwarded to the official receiver. Such a reasoning, especially, at the initial stage of numbering, is totally erroneous.

5.In the result, this Civil Revision Petition is allowed and the order passed in I.P.SR No.190 of 2010, dated 05.04.2010 is set aside and the learned Principal District Judge, Pudukkottai, is directed to number the application and pass orders on merits after hearing both sides. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

cp

Note In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:-

The Principal District Judge, Pudukkottai.

C.R.P(PD) (MD)No.1669 of 2010and
M.P(MD) No.01 of 2010
30.11.2021

BUC(CO)
KB(23.12.2021) 2P 2C