Appln.(IP)No.189 of 2016
in
IP.No.25 of 2014

DR.G.JAYACHANDRAN.,J.
and
C.V.KARTHIKEYAN.,J.

This application is filed by the Official Assignee seeking judgment and decree apart the second respondent Divyesh Electricals & Chemicals for a sum of Rs.15 lakhs with 18% interest from 21.04.2014 till the date of realisation.

2. According to the applicant, the insolvent Arjunlal Sunderdas advanced a loan of Rs.15 lakhs to the second respondent on 21.07.2010 and the same is reflected in the statement of accounts furnished by the auditor of the insolvent. After Arjunlal Sunderdas was adjudicated as insolvent on 21.06.2014, based on the statement of accounts, notice was caused to the second respondent and thereafter the present application is filed.

3. In the course of trial, the auditor report submitted by Ranga Ramanujam dated 16.02.2016 and a report of auditor Mr.Annamalai Associates were marked as Ex.A1 and Ex.A2. The demand notice dated 15.03.2016 calling upon the second respondent to pay Rs.15 lakhs is marked

as Ex.A3, for which, the second respondent has replied vide notice dated 28.06.2016 and same is marked as Ex.A4, wherein, the respondent has admitted the transaction with Arjunlal Sunderdas, but had come out with the defence that Arjunlal Sunderdas was a Builder and for his need, he borrowed Rs.15 lakhs from the respondent on various dates and also executed two promissory notes for a sum of Rs.5 lakhs and Rs.10 lakhs respectively. To discharge the said debt, Arjunlal Sunderdas deposited Rs.15 lakhs through RTGS on 21.07.2010. Being a short term hand loan, this loan transaction has not been reflected in the statement of accounts filed by the insolvent along with insolvency petition.

4. Though the respondent has pleaded the money reflected in the account books of the insolvent is the discharge of his loan, the respondent herein has not come forward to cross examine the applicant/witness or lead evidence to show the money paid to him was in connection with the earlier loan availed by Arjunlal Sunderdas as stated in the reply notice marked as Ex.A4. Particularly in the reply notice, the respondent has stated that on 12.10.2010 and 17.10.2010, Arjunlal Sunderdas borrowed Rs.5 lakhs and Rs.10 lakhs respectively and executed two promissory notes. If it is so, there

is no need to transfer Rs.15 lakhs in the account of the respondent on 21.07.2010. Further, no documents produced by the respondent for appreciation.

5. The learned counsel appearing for the applicant would submit that the limitation should run from the end of the accounting year. Since the accounting year is 2010-2011, applying the principle of dating back the date of insolvency petition i.e, 10.03.2014, has to be considered as date of filing this application and therefore, the limitation prescribed for recovery of money is 3 years and the period prescribed for recovery of money is satisfied in this application.

6. This court is unable to countenance his submission since there is no indication in Ex.A1, A2 or Ex.A7 statement to infer transaction between the applicant/insolvent and the second respondent was a running account. Further the principle of dating back also not applicable to the case on hand. Even if the principle of dating back is applied, the period of limitation has crossed so far as this application is concerned. Since it is not a running account, the date to reconcile the commencement of limitation is 21.07.2010 and the limitation

for recovery of money got expired on 20.07.2013 whereas the insolvency petition is dated 10.03.2014, this application was filed on 08.08.2016.

7. Accordingly, this application is dismissed for the reason it is barred by limitation.

(Dr.G.J.,J.) **(C.V.K.,J.)**

20.09.2022

Index: Yes/No
Internet: Yes/No
gv

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