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CRP. No.4534 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2022

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRP. No.4534 of 2017

K.R.Selvaraj

...Petitioner/creditor/Petitioner

Vs.

1.R.Mani @ K.R.Mani

..1st respondent/Debtor/1st respondent

2.K.Senthil Kumar

...2nd respondent/Purchaser/2nd respondent

3.S.Ranjani

4.Karur Vysya Bank Limited

...Respondents/Proposed

Respondents/Respondents 3 and 4

PRAYER: This Civil Revision Petition is filed under Article 227 of constitution of India, praying to set aside the fair and decreetal order dated 02.11.2017 made in I.A No.38 of 2017 in I.P No.7 of 2011 on the file of Subordinate Judge's Court, Thiruchengode.

For Petitioner : Mr.T.L.Thirumalaisamy

For R1 and R3 : Mr.W.Manokaran

For R2 :Mr.A.Sundaravadhanan

For R4 : No Appearance



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ORDER

This Civil Revision petition has been filed to set aside the fair and decreetal order dated 02.11.2017 made in I.A No.38 of 2017 in I.P No.7 of 2011 on the file of Subordinate Court, Thiruchengode.

2. The revision petitioner herein is the petitioner in I.P No. 7 of 2001 on the file of the Sub Court, Thiruchengode, against the original respondent 1 and 2 to declare first respondent as insolvent for the reason that the first respondent borrowed a sum of Rs.2,00,00,000/- from him on 26.12.2010 at 18% rate of Interest. Thereafter, neither repay interest nor principal amount. Then, the first respondent transferred his property as mentioned in the schedule S. No. 208/ID at Tiruchengode to second respondent for meagre amount. The said I.P was filed in the year 2011 against the respondents 1 and 2, who contested the suit, during pendency of said I.P proceedings. In the year 2017, the petitioner filed an application under Order 1 Rule 10 and section 151 of IPC to implead proposed parties namely Ranjani and Karur Vysya Bank as respondents 3 and 4 in I.P proceedings by stating that during the pendency of the proceedings the second respondent executed a settlement deed in favour of the 3rd



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respondent. Subsequently, she mortgaged it at Karur Vysya Bank for a sum of rupees five crores. Hence they are prayed to add as necessary parties to the proceedings.

3. An objection raised by respondents before the Trial Court that if at all any liability fixed on the first respondent he has to work out his remedies by his other properties which were produced by him before the Court instead the petitioner only mentioned the properties in S. No. 208/ID at Tiruchengode.

4. On considering the submissions on both sides, the trial Court dismissed the application stating that the alleged transaction between 3 and 4 respondents was after filing of the I.P proceedings, they are not necessary parties to the proceedings.

5. Challenging the said findings the petitioner filed this revision petition by stating that the Trial court failed to take note of the fact that the alleged transaction between the respondents was taken place during the pendency with regard to property against the said Insolvency proceedings hence he prays to set aside the Order passed by the Trial Court .



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6. The learned counsel for the respondent submitted that Creditor/revision petitioner initiated proceedings against the properties as mentioned in the schedule but the first respondent produced other properties before the Trial Court, if any liability fixed the petitioner may consider other properties.

7. On considering the rival submissions, and also on perusal of the records, in the year 2011 revision petitioner/creditor initiated Insolvency proceedings in respect of properties in S.No. 208/1D Thiruchengode, which was said to be sold by the first respondent to second respondent during Insolvency proceedings, in turn, he settled the above said properties in favour of Ranjani. After that settlement in the year of 2014 the same property was mortgaged in Karur Vysya Bank, and obtained loan of Rs. 5 crores all these incident happened during the pending of I.P proceedings in respect of the property. Hence, this Court is of the view that Ranjani and Karur Vysya Bank is necessary to party to decide the issue, the reason assigned by the petitioner is acceptable one Accordingly order passed by the Trial Court in I.A No. 38 of 2017 in I.P No.7 of 2011 is hereby set aside. Accordingly, I.A is allowed petitioner is permitted to implead Ranjani and Karur Vysya bank as necessary parties to I.P proceedings.



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8.The Trial Court is directed to dispose the Insolvency Proceedings

within three months from the date of receipt of a copy of this order.

9. In the result, the Civil Revision Petition is allowed. No costs.

29.09.2022

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T.V.THAMILSELVI,J.

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To

1. The Principal Sub Court, Pondicherry.

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