

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2022

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No.864 of 2017

P.Balasubramani
S/o Palanisamy Gounder

... Petitioner

Versus

- 1 Vinayaka Tex
Rep. by its Proprietor Ravikumar
- 2 Balaji Tex
Rep. by its Proprietor Ramesh
- 3 K.Mohanasundaram
- 4 Subramnai
- 5 K.C.Eswaran
- 6 Bannari Amman Finance
Rep. by M.Ganesan
- 7 Kalaimagal Finance,
Rep. by N.Sadhasivam

8 Vasudevan

9 Shanmugam

10 Thangavel

11 M.Kavitha
W/o. Mani

12 Palanisamy @ Kutti

13 Velusamy

14 Arukkani
W/o Alagesan

15 HDFC Bank
Rep. by its Branch Manager

... Respondents

PRAYER : Civil Revision Petition filed under Art. 227 of Constitution of India, praying to set aside the fair and final order dated 16.02.2017 made in C.F.R.No.2200 of 2017 (unnumbered I.P. No. nil of 2017) on the file of the Court of II Addl. Subordinate Judge, Erode.

For Petitioner : Mr.R.Prabakaran

For Respondents : R1 to R15 – No appearance

ORDER

Challenging the impugned order passed by the trial court in C.F.R. No.2200 of 2017, on the file of the learned II Addl. Sub-Judge, Erode the Revision Petitioner preferred this Civil Revision Petition.

2. The contention of petitioner is that he preferred an Insolvency Application vide CFR No. 2200 of 2017 under Secs. 7, 10 and 13 of the Provincial Insolvency Act praying to adjudicate him as insolvent. Before taking on file, on perusal of records, the trial judge held that the total debts comes to Rs.48,50,000/- payable to the creditors, but the petitioner not disclosed any complaint against him to prove that he was threatened by the respondent creditors and also concludes that the averment of petitioner is not satisfied to take the insolvency application on file to adjudicate the petitioner as insolvent and consequently, that application was rejected.

3. The learned counsel for Revision Petitioner argued that he indebted to the respondents and unable to repay the loan amount. Accordingly, he

filed an Insolvency Application to declare him as insolvent, but the trial court without taking the application on file, erroneously rejected the application only on perusal of records, as such, is unfair. Hence, he prayed to set aside the findings rendered by the trial judge.

4. On bare perusal of records, it reveals that the petitioner approached the court to adjudicate him as insolvent, but he has not produced any particulars about the loan transaction and the alleged debts made by the creditors. So, the trial judge rightly concludes that the petitioner not having sufficient materials to take his insolvency application on file and to adjudicate him as insolvent. At the time of argument, the learned counsel for petitioner submitted that against the petitioner, the respondents and others initiated proceedings under Sec.138 of Negotiable Instruments Act and he was under threat, since then he was unable to repay the loan amount. Hence, he prayed to adjudicate him as insolvent. However, on perusal of records, he has not furnished any particulars with regard to the alleged proceedings initiated under Sec.138 of Negotiable Instruments Act. Therefore, this court directed the petitioner to submit particulars of the pendency of 138 cheque

bounced cases, but, the learned counsel submitted that the petitioner has not able to submit any materials about the same. So, the findings of the learned trial judge as such is maintainable, which needs no interference. Before taking his application on file, prima facie he has to submit sufficient materials, which was not submitted by the petitioner. Therefore, this Civil Revision Petition is also liable to be dismissed. Accordingly, this Civil Revision Petition is dismissed. No costs.

15.11.2022

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To

II Addl. Sub-Judge,
Erode.

C.R.P. No.864 of 2017

T.V.THAMILSELVI, J.

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