IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2022

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THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.No.4213 of 2018
and
CMP No.23146 of 2018

A.M.Veeraraju .... Petitioner

Vs

N.Ramasamy .... Respondent

Prayer :- Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and final order passed in C.M.A.No.15 of 2017 on the file of the Additional District (Fast Track Court), Mettur dated 31.10.2018 confirming the fair and final order passed in I.A.No.22 of 2014 in I.P.No.9 of 2014 on the file of the Sub Court, Sankari dated 10.08.2017 and allow the Civil Revision Petition.

For Petitioner : Mr.Sundara Vadhanan
For Respondent : Mr.R.Venkatajalapathy
for Mr.S.Kadarkarai

ORDER

This Civil Revision Petition has been filed to set aside the fair and final order dated 31.10.2018 passed in C.M.A.No.15 of 2017 on the file of the Additional District (Fast Track Court), Mettur, thereby confirming the fair and final order dated 10.08.2017 passed in I.A.No.22 of 2014 in I.P.No.9 of 2014 on the file of the Sub Court, Sankari, thereby allowing the petition to appoint an interim receiver to administer the credit and liabilities of the petitioner herein to meet the ends of justice.

2. The petitioner herein filed an Insolvency Petition in I.P.No.2 of 2008 on the file of the Subordinate Judge, Mettur, as against 159 creditors. The petitioner also had shown immovable properties in the Insolvency Petition. Pending Insolvency Petition, the petitioner, without seeking any permission from the Court below, sold out the properties which were shown in the Insolvency Petition to third parties by registered sale deeds dated 05.03.2014, 06.03.2014 and 07.03.2014. The possession of those properties were also handed over to the purchasers. From the sale proceeds he had settled all the creditors except two creditors shown in the Insolvency Petition i.e., the respondent herein and the creditor No.116. After settling the amount to the creditors, the petitioner filed a memo on

05.03.2014 seeking withdrawal of the Insolvency Petition.

3. Pending the said Memo, one of the creditor i.e, the respondent herein filed an application under Section 20 of the Provincial Insolvency Act, 1920 to take immediate possession or custody of the properties mentioned in the Insolvency Petition and to bring the properties for realization, management, production, preservation and improvement of those properties, collection of rents and profits and the execution of the documents, if any. The same was allowed and appointed interim receiver to administer the credits and liabilities of the petitioner to meet the ends of justice. Aggrieved by the same, the petitioner preferred an appeal and the same was also dismissed and the order of the Trial Court was confirmed.

4. A perusal of the counter filed by the petitioner in I.A.No.22 of 2014, which is under challeng here, reveals that all the properties which were shown in Insolvency Petition as Item No. 1 to 14 were sold in favour of third parties by registered sale deeds dated 05.03.2014, 06.03.2014 and 07.03.2014. On receipt of the sale proceeds, the petitioner also settled all the creditors except the respondent herein and the creditor No.116 in the Insolvency Petition. Therefore, he filed a Memo dated 05.03.2014 seeking

to not press the Insolvency Petition. It is not dispute by the respondent herein that the petitioner had already settled all the creditors except the respondent herein and the creditor No.116. While granting interim stay, this Court imposed a condition that the petitioner shall deposit a sum of Rs.15,00,000/- to the credit of Insolvency Petition. Accordingly, the petitioner had deposited the said amount.

5. The learned counsel for the respondent contended that the petitioner, without obtaining any prior permission from the Court below, sold out the entire properties. Though, the petitioner settled all the creditors, he failed to settle the respondent herein and another creditor No.116. All the sale of the properties mentioned in the Insolvency Petition are illegal and all the properties have to be restored by the interim receiver as contemplated under Section 20 of the Provincial Insolvency Act, 1920. Therefore, the Court below rightly appointed the interim receiver to deal with the properties.

6. Admittedly, the entire properties were sold out by the

petitioner, while the Insolvency Petition is pending and settled all the creditors except the respondent and another. Now the petitioner also deposited a sum of Rs.15,00,000/-, which is due to the respondent herein. Therefore, no purpose would be served by appointing the interim receiver to restore the properties, since, all the properties were sold in favour of third parties and thus third parties' interest is also created over the suit properties. At the same time, the Insolvency Petition cannot be "not pressed" by way of filing memo. The Insolvency Petition cannot be withdrawn without the leave of the Court as contemplated under Section 14 of the Provincial Insolvency Act, 1920. The Section 14 of Provincial Insolvency Act, 1920, reads as follows :

> *14. **Withdrawal of petitions** – No petition, whether presented by a debtor or by a creditor, shall be withdrawn without the leave of the Court."*

7. Thus, it is clear that the memo filed by the petitioner to withdraw the Insolvency Petition cannot be entertained without leave of the petitioner, which means the petitioner have to file a proper application to withdraw stating proper reason. Admittedly, the petitioner also settled the entire creditors except the respondent and another. In fact, the petitioner

also deposited a sum of Rs.15,00,000/- to the credit of the Insolvency Petition. Therefore, the appointment of interim receiver would not serve any purpose.

8. In view of the above, the fair and final order passed in C.M.A.No.15 of 2017 on the file of the Additional District (Fast Track Court), Mettur dated 31.10.2018 and the fair and final order passed in I.A.No.22 of 2014 in I.P.No.9 of 2014 on the file of the Sub Court, Sankari dated 10.08.2017 are hereby set aside on condition that the petitioner shall deposit a sum of Rs.6,00,000/- to the credit of the Insolvency Petition in addition to the earlier deposit of Rs.15,00,000/-. The Memo filed by the petitioner dated 05.03.2014 to not press the Insolvency Petition is hereby rejected and the petitioner is at liberty to file an appropriate application to withdraw the Insolvency Petition as contemplated under Section 14 of the Provincial Insolvency Act, 1920 with all necessary documents in order to prove that all the creditors have already been settled by him. On receipt of such application, the Court below is directed to pass orders on merits and in accordance with law, within a period of twelve weeks from the date of filing of that application. The respondent is permitted to withdraw the amount

which was already deposited by the petitioner with accrued interest, if any, by way of filing appropriate application before the Court below. It is also made clear that the Court below is directed to permit the respondent to withdraw the said amount, without ordering any objections from the petitioner herein. Further, the respondent is also at liberty to pursue any other claim against the petitioner in the manner known to law. The creditor No.116 is also at liberty to pursue his claim against the petitioner. The creditor No.116 is also permitted to withdraw the amount which was deposited by the petitioner by way of proper application.

9. In the result, this Civil Revision Petition stands allowed. Consequently, connected miscellaneous petition is closed. No costs.

16.12.2022

Index:Yes/No
Internet:Yes/No
Speaking Order: Yes/No
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To
1. The Additional District (Fast Track Court),
Mettur

2. The Subordinate Judge,
Sankari.

G.K.ILANTHIRAIYAN, J.

Lpp

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