



CRP(MD)No.1408 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRP(MD)No.1408 of 2022

Anantharaj

: Petitioner

Vs.

1.Manimegalai

2.Navaneetha Krishnan

3.Vijayaraj

4.Murugesan

5.Paulraj

: Respondents

PRAYER: Civil Revision Petition filed Article 227 of the Civil Procedure Code to direct the learned Principal Subordinate Judge, Dindigul, to number the unnumbered I.P.Sr.No.1403 of 2022, dated 25.02.2022.

For Petitioner : Mr.S.C.Herold Singh

ORDER

This civil revision petition is filed by the petitioner seeking a direction to the learned Principal Subordinate Judge, Dindigul, to number the unnumbered Insolvency Petition SR.No.1403 of 2022 and to dispose of the same.



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2. According to the petitioner, the first respondent borrowed a sum of Rs.10,00,000/- from him, but has failed to repay the same. The petitioner has, therefore, filed a suit in O.S.No 155 of 2021 before the Additional Munsif Court, Palani. He has also filed an interlocutory application in I.A.No.178 of 2021 seeking attachment of properties before judgment. Pending the suit and the interlocutory application, the first respondent has made further encumbrance over the properties, which are the subject matter of I.A.No.178 of 2021, in favour of the other respondents, in order to escape from the liability and to evade the payment. Therefore, the petitioner has filed the impugned application on 25.02.2022 to declare the first respondent as insolvent and also for declaring the sale deeds executed by the first respondent during the pendency of the suit as null and void. The learned Principal Subordinate Judge, Dindigul, returned the said application as to how the petition is maintainable as per Section 9(c) of the insolvency act. The petitioner has re-presented the application, however, the same was returned again as to how it is maintainable. Aggrieved over the same, the petitioner has filed the above civil revision petition.

3. Heard the learned Counsel appearing for the petitioner and perused the available materials.



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4.It is the grievance of the petitioner that certain sale deeds have been executed by the first respondent and the other respondents in respect of the properties which are the subject matter of I.A.No.178 of 2021, to defeat the petitioner's claim. Therefore, he has filed the insolvency petition to declare the first respondent as insolvent and to declare the sale deeds executed during the pendency of the suit as null and void.

5.Section 9 of the Insolvency Act stipulates the conditions on which a creditor may file a petition. As per Section 9(1)(c) of the Act, the creditor shall not be entitled to present an insolvency petition against a debtor unless the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition.

6.In this case, the sale deeds were executed on 27.10.2021, 16.11.2021 and 22.11.2021, as such, the three months period got expired on 22.02.2022. But the petitioner presented the insolvency petition only on 25.02.2022. Therefore, the trial Court has raised a query as to how the petition is maintainable in view of Section 9(1)(c) of the Act.

7.The Hon'ble Supreme Court *In Re: Cognizance for Extension of Limitation* [2022 LiveLaw (SC) 31], has held that the period from 15.03.2020



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till 28.02.2022 shall stand excluded for the purposes of limitation and that the actual period of limitation shall commence from 28.02.2022. In this case, though the period of limitation for the petitioner to present the insolvency petition expired on 22.02.2022, in view of the aforesaid decision, the period of limitation commence only from 28.02.2022. However, the petitioner has preferred the insolvency petition much prior to the same, ie., on 25.02.2022 itself and as such, the petition filed by him is maintainable as per Section 9(1) (c) of the Act.

8.In view of the foregoing discussions, this civil revision petition stands allowed and the learned Principal Subordinate Judge, Dindigul, is directed to number the unnumbered I.P.SR.No.1403 of 2022 and to dispose of the same, on merits and in accordance with law. There shall be no order as to costs.

Index : Yes / No
Internet : Yes
gk

02.09.2022

To

The Principal Subordinate Judge,
Dindigul.

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