



CRP(PD)(MD)No.1919 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED :15.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP(PD)(MD)No.1919 of 2022 and
CMP(MD) No.8691 of 2022

E.Anandan

... Petitioner

Vs

1.K.Karunanithi
2.R.Saravanan
3.N.Selladurai
4.M.Karunanithi
5.S.Kiruba
6.C.Venugopal
7.A.Ramachandran
8.K.Thangarasu
9.K.Karuppanna Gounder
10.T.Gunasekaran
11.P.K.Mani
12.K.Ganesan

... Respondents

Prayer: Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 16.11.2021 passed in C.M.A.No.7 of 2018 on the file of the District Court, Karur, reversing



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the Judgment and Decree dated 27.06.2018 passed in I.P.No.59 of 2015, on the file of the Principal Sub Court, Karur, by allowing this Civil Revision Petition.

For Petitioner : Mr.D.Nallathambi
For Respondents : Mr.K.Suresh

ORDER

This Civil Revision Petition is filed as against the fair and decreetal order passed by the learned District Judge, Karur in C.M.A.No.7 of 2018, dated 16.11.2021.

2.The petitioner has filed an Insolvency Petition in I.P.No. 59 of 2015 before the Principal Subordinate Court, Karur, to declare him as insolvent and to vest his B schedule property with the official Receiver. The trial Court, by its order dated 27.06.2018 allowed the application, as against which, the first respondent preferred an appeal before the District Court, Karur and the learned District Judge, Karur by his Judgment and decree dated 16.11.2021 allowed the Civil



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Miscellaneous Appeal. Aggrieved over the same, the present Civil Revision Petition is filed.

3.The learned counsel appearing for the petitioner submits that the petitioner was doing some vulcanizing work and for the purpose of putting up some construction in the suit schedule property, he borrowed money from the respondents and when he is unable to repay the debt to the respondents, the first respondent attached the property of this petitioner in E.P.No.234 of 2015. Hence, the petitioner filed the above petition under Section 10 of Provincial Insolvency Act,1920, to declare him as insolvent and to vest his property with the official Receiver. The trial Court has allowed the application. However, in the appeal filed by the respondent in CMA No.7 of 2018, the order of the trial Court was reversed by the learned District Judge, Karur by his order dated 16.11.2021, without any valid reasons. The petitioner has produced evidence before the trial Court that he has fulfilled the requirements under Section 10 of Provincial Insolvency Act,1920 and

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he has also established his inability to repay the debt. The grievance of the petitioner is that the trial Court has rightly allowed the petition filed by the petitioner in I.P.No.59 of 2015, however, it was simply reversed by the first Appellate Court without any independent findings and therefore, the order of the first Appellate Court has to be set aside. The learned counsel has relied on the following Judgments in order to substantiate his contentions:-

1. CRP No.273 of 1972 of Madras High Court in the case of R.Nandakumar Vs.M.V.Krishnan, dated 29.11.1973.
2. (1977) AIR (AP) 346 of the Division Bench of Andra Pradesh High Court, dated 19.04.1976.
3. 1966 (1) MLJ Page 210 K.R.K.K.Krishnappa Chettiar Vs.V.VR.Kasiviswanathan Chettiar and others.
4. 1982 (1) MLJ Page 274, P.Thangaraju Pillai Vs. Periaswamy Pillai and others
5. AIR 1977 Madras 250, Karnagam Vs V.Jayaseelam Chettiar and others



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4.The learned counsel appearing for the first respondent submits that the first respondent filed a suit in O.S.No.276 of 2013, for recovery of money as against this revision petitioner and obtained a decree. When the respondent initiated the execution proceedings in E.P.No.234 of 2015, the revision petitioner filed the Insolvency Petition in I.P.No.59 of 2015 only to stall the execution proceedings. The trial Court allowed the application filed by the petitioner, on the ground that the revision petitioner is having more than Rs.500/- as debt and declared him as insolvent. The first Appellate Court reversed the findings, based on the provisions under Section 24(1) (a) of the Provincial Insolvency Act,1920, that he has not complied with the conditions stipulated therein. According to the learned counsel appearing for the first respondent, the petitioner has created fictitious debts and filed the above Insolvency Petition that his property was brought for sale in the Execution Petition. Though the respondents 2 to 12 were shown as creditors, they have not contested the proceedings in the Insolvency



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Petition. The petitioner has also not stated anything about the date of borrowal and other particulars with regard to the liabilities of this petitioner with the respondents 2 to 12. Hence, there is no need to interfere with the order of the first Appellate Court. The learned counsel has relied upon the following judgments:-

1. 2000 (II) CTC 288, Venkatachalam Chetty Vs. K.Poova Gounder and others
2. 1995 SCC online Mad 462, Kumarathal Vs. Balasubramania Gounder and others.

5.This Court considered the rival submissions made by either side counsel and also perused the materials placed on record.

6.The revision petitioner has filed the Insolvency Petition in I.P.No.59 of 2015, to declare him as insolvent. According to the petitioner, he is having liabilities towards the respondents for more than Rs.500/- and he is unable to pay the debt and his property in B Schedule



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was also attached by the first respondent in the Execution Proceedings.

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In order to discharge his liability to the other creditors, he filed the above petition to hand over his B schedule property with the official Receiver for distributing the proceeds of B schedule property to the respondents/creditors. The trial Court considering the materials placed before it, found that the petitioner is having debts for more than Rs.500/- and declared him as insolvent. It is to be noted that the first respondent has already filed the suit in O.S.No.279 of 2013, as against this revision petitioner for recovery of money, obtained a decree and filed the application to execute the decree in E.P.No.234 of 2015. After the execution proceedings, the petitioner filed I.P.No.59 of 2015 under Section 10 of the Provincial Insolvency Act, 1920 that the petitioner is having liability towards other respondents also. The trial Court allowed the petition. However, the first Appellate Court found that the petitioner has not complied with the requirements of the provisions under Section 24 (1) (2) of the Provincial Insolvency Act, 1920 that he is unable to pay the amount to the debtors and reversed the findings of the trial Court



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and dismissed the claim of the petitioner that the respondents 2 to 12 might not be the real creditors. The first Appellate Court has also held that there is no documentary evidence to substantiate that the other respondents are real creditors.

7. Admittedly, the petitioner has not made any application with regard to the other respondents/creditors that he borrowed the amount from them and whether the same is time barred debts or not. The respondents 2 to 12 though entered appearance have not contested the proceedings in Insolvency Petition and they have not initiated any proceedings as against the petitioner for his default of amount. Therefore, the first Appellate Court held that the respondents 2 to 12 are bogus persons and they are colluding parties and in order to make out a case they have been impleaded as parties in IP proceedings.

8. The conditions, on which, a debtor may file a petition under the Provincial Insolvency Act is described as under:-

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- 1) A debtor shall not be entitled to present an insolvency petition, unless he is unable to pay his debts and
 - a) his debts amount to five hundred rupees; or
 - b) he is under arrest or imprisonment in execution of the decree of any Court for the payment of money; or
 - c) an order of attachment in execution of such a decree has been made, and is subsisting, against his property.

The petitioner/debtor is entitled to maintain the petition only by establishing that he is unable to pay his debts. The petitioner claims that he is having a property and the same is under attachment by the Court in E.P.No.234 of 2015. The petitioner claims that apart from this debt towards the first respondent, the petitioner is also having liability towards the other respondents 2 to 12. However, the petitioner has not established that those debts towards the respondents 2 to 12, through promissory notes are in existence or not at the time of filing the



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Insolvency Petition. The procedures to be adopted in the petition filed under section 10 of Provincial Insolvency Act, 1920, are defined under Section 24 of the Act, which reads as under:-

24.Procedure at hearing -

1) On the day fixed for the hearing of the petition, or on any subsequent day to which the hearing may be adjourned, the Court shall require proof of the following matters, namely:-

a) that the creditor or the debtor, as the case may be, is entitled to present the petition:

Provided that, where the debtor is the petitioner, he shall, for the purpose of proving his inability to pay his debts, be required to furnish only such proof as to satisfy the Court that there are prima facie grounds for believing the same and the Court, if and when so satisfied, shall not be bound to hear any further evidence thereon;

b) that the debtor, if he does not appear on a petition presented by a creditor, has been served with notice of the order admitting the petition; and

c) that the debtor has committed the act of insolvency alleged against him.

2) The Court shall also examine the debtor, if he is present, as to



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his conduct, dealings and property in the presence of such creditors as appear at the hearing, and the creditors shall have the right to question the debtor thereon.

9.The petitioner has to satisfy the Court *prima facie* that he is unable to pay his debt. In order to declare a person as insolvent, it is not enough that the debt is exceeding Rs.500/- and the petitioner ought to have established before the Court that he is unable to pay his debts. Every insolvency petition presented by a debtor shall contain the amount of particulars of all pecuniary claim against him with a statement that he is unable to pay his debts, as per Section 13 of the Provincial Insolvency Act,1920. Though the petitioner has stated that he is having liability towards the respondents 2 to 12 through promissory notes, the details of the promissory notes and the dates, on which, the liabilities incurred are not stated by him. It is not known whether the liabilities are time barred and whether the liabilities are subsisting on the date of filing of the petition or not. It is also to be noted that though



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respondents 2 to 12 have entered appearance in the Insolvency Petition, they did not furnish any details with regard to the dues from the petitioner. Therefore, this Court is of the view that this petitioner has not proved his eligibility to present the insolvency petition and there is lack of evidence to arrive at a *prima facie* conclusion that he is entitled to be adjudicated as insolvent. In view of the above, this Court feels that there is no reason to interfere with the order of the first Appellate Court.

10. Accordingly, this Civil Revision Petition is dismissed.

No costs. Consequently, connected Miscellaneous Petition is closed.

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Internet : Yes / No.

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To

1. The District Court, Karur.

2. The Principal Sub Court, Karur

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B.PUGALENDHI, J.

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