Application (IP) No. 183 of 2016
in
I.P.No.25 of 2014

Dr. G. JAYACHANDRAN, J.
&
C. V. KARTHIKEYAN, J.

Application No. 178 of 2016 has been filed by the Official Assignee seeking a Judgment and Decree against the second respondent for a sum of Rs.10/- lakhs together with interest at 18% p.a., from 21.04.2014 till date of realisation and for costs of the recovery proceedings.

2. The Official Assignee had stated in the report that the second respondent had received a sum of Rs.10/- lakhs from the first respondent / insolvent and that the said amount has been shown as outstanding in the statement of accounts and as due and payable by the second respondent to the first respondent/insolvent.

3. The first respondent/insolvent had been adjudicated as such on 21.04.2014 on an application filed by a creditor seeking such adjudication.

4. It had been stated that the Official Assignee had issued a notice dated 19.08.2015 calling upon the second respondent to pay the amount. It must also be incidentally pointed out that the husband of the second respondent herein had also made a claim against the estate of the first respondent/insolvent and that the claim had been admitted. It had been stated that the Official Assignee had placed reliance on the statements of accounts relating to the transactions of the first respondent given by the Auditor Rangaramanujam wherein the amount of Rs.10/- lakhs was shown as outstanding. It had also been stated that there no proof had been produced by the second respondent for discharge of the loan.

5. Notice had been directed to the second respondent and counter had also been filed.

6. In the counter affidavit, the second respondent stated that the application seeking recovery of the amount mentioned by the Official Assignee was based on surmises. It had been stated that the insolvent had actually borrowed a sum of Rs.30/- lakhs from her husband on 10.04.2013 and the said amount had been paid by cheque drawn on Indian Bank, T-Nagar Branch on 10.04.2013 and credited to the current account of the insolvent and Indian Bank, T-Nagar Branch. It had also been stated that the insolvent had executed a promissory note dated 10.04.2013.

7. The second respondent denied all transactions as alleged by the Official Assignee. She also stated that the claim is barred by the law of limitation since there had been no further transaction as is evident from the statements of accounts produced by the Official Assignee.

8. Thereafter, the matter was taken up for evidence and on the side of the Official Assignee, Mrs. R.Padma, Sub Assistant Registrar, Office of the Official Assignee was examined as PW-1. She filed her proof affidavit and also marked Exs. A-1 to A-7. Ex.A-1 was the true copy of the relevant pages from the report of the Auditor Rangaramanujam, Ex.A-2 was the true copy of the relevant page from the report of the Auditor Annamalai Associates, Exs. A-3 and A-4 are the notices issued and reply exchanged between the parties, Exs. A-5 and A-6 are the true copies of schedule of affairs and Ex.A-7 was yet another reply issued by the second respondent.

9. On the side of the second respondent, Mr.C.Elango, who had been authorised to give tender evidence was examined as RW-1. He marked Exs. R-1 to R-9. Ex.R-1 was the copy of the authorisation letter, Exs. R-2 to R-7 were copies of statements of accounts of the second respondent during the relevant period from HDFC Bank, Canara Bank, Oriental Bank of Commerce, City Union Bank Ltd., Indian Bank and TNSC Bank, Ex.R-8 series are copies of income tax returns for the assessment years 2013-2014 and 2014-2015 with respect to the second respondent, Ex.R-9, who is a photocopy of the Pancard of the second respondent.

10. We have carefully considered the material records.

11. During the cross examination of PW-1, she had stated as follows:-

"I am not able to find any entry in the account statements furnished by Revathi Rajan and Income Tax returns filed by her for the assessment year 2013-2014 and 2014-2015 that the second respondent Revathi Rajan has borrowed Rs.10 lakhs from the insolvent. Based only on the report of auditor Ranga Ramanujam the present application has been filed. It is also true that even in the auditor report there is no reference about mode of payment by the Insolvent to the second respondent. "

12. She further stated as follows:-

"It is correct to state that in the CBI investigation report it has not been revealed the mode of payment by the insolvent to the second

respondent."

13. The learned Official Assignee in the course of his arguments stated that the second respondent had not grazed the witness box but rather she had authorised RW-1 to depose evidence on her behalf. But however, the entire issue revolves around accounts and the statement of accounts had been produced by the Official Assignee. There is no indication of further transaction having taken place subsequent to the alleged borrowal by the second respondent.

14. In view of all these facts, we hold that the Official Assignee had not made out a claim for grant of decree and as a matter of fact even if it is to be held that the second respondent had borrowed the amount, though ofcourse there is no evidence for the same, the debt has become barred by the law of limitation. Hence, this Application stands dismissed.

vsg (Dr.G.J.J.,) (C.V.K.J.,)

22.12.2023

Dr. G. JAYACHANDRAN, J.
&
C. V. KARTHIKEYAN, J.

vsg

Pre-Delivery Order made in
Application (IP) No. 183 of 2016
in
I.P.No.25 of 2014

22.12.2023