Application (IP) No. 205 of 2016
in
I.P.No.25 of 2014

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

This application had been filed by the Official Assignee seeking a Judgment and Decree against the second respondent, directing the second respondent to pay a sum of Rs.2,58,50,000/- with interest at 18% p.a from 21.04.2014 till date of realization with cost of the recovery proceedings.

2. The Official Assignee had stated that the second respondent had received a sum of Rs. 2,58,50,000/- from the first respondent/insolvent Arjunlal Sunderdas, which was shown as due and outstanding as on 21.04.2014. It was also stated that this amount was reflected in the accounts. It was asserted that there were no subsequent transactions to prove discharge.

3. When the matter was taken up for consideration on 18.01.2018, there was no representation, so the 2nd respondent was set *ex parte*. Thereafter, *ex parte* evidence was recorded by the Master on 25.02.2018. Before pronouncement of order in the application, the second respondent who was set *ex parte* earlier, died on 23.09.2021. The death certificate was filed along with the memo. The applicant / Official Assignee has filed a memo stating that in view of Order XXII, Rule 4(4) of C.P.C., the Court may exempt the plaintiff from taking steps to substitute the deceased second respondent with his legal representatives.

4. By order dated 06.09.2022, this Court had noted that the 2nd defendant had not contested the matter, despite notice and consequently, granted exemption as sought for by the Official Assignee.

5. The Official Assignee was permitted to adduce further evidence.

6. The Official Assignee examined as PW-1 and PW-2, Sub Assistant Registrar and Assistant Section Officer respectively in the office of the Official Assignee, Madras High Court were examined and filed proof affidavits. They marked Exs.A1 to A9. Ex.A1 was the true copy of the relevant pages of the Auditor's Report concerning the second respondent.

Ex.A2 was the certified true copy of the relevant pages of the Auditor's report concerning the second respondent. Ex.A3 was the certified true copy of the notice dated 07.09.2016 sent by the office of the Official Assignee to the second respondent along with certified true copy of the postal return cover. Ex.A4 was the certified true copy of the schedule of the debtor's affairs dated 30.10.2015 filed by the Insolvent. Ex.A5 was the true copy of the relevant pages in Auditor Rangaramanujam's Report dated 11.03.2020 which are reflected in page No.1 (2011-2012), page No.8 (2012-2013) and page No.4 (2013-2014). Ex.A6 was the true copy of the relevant pages in Auditor's Rangaramanujam's Report dated 19.03.2015; Ex.A7 was the true copy of the statement of account of Arjunlal Sunderdas. Ex.A8 was the true copy of the relevant entries in the schedule of affairs dated 24.05.2014. Ex.A9 was the true copy of the relevant entries in the schedule of affairs dated 30.10.2015.

7. A perusal of the documents show that the relevant bank entries were as follows:

Date	Cheque No.	Debit (Rs)	Credit (Rs)
17-11-2007	188455	6,00,000/-	
17-11-2007	188453	6,00,000/-	
17-11-2007	188454	6,00,000/-	

Date	Cheque No.	Debit (Rs)	Credit (Rs)
28-12-2007	197741	5,00,000/-	
29-12-2007	197745	2,00,000/-	
24-10-2007	188430	9,00,000/-	2,20,000/-
24-10-2007	188429	9,00,000/-	6,80,000/-
01-08-2007	165657	5,00,000/-	3,70,000/-
04-01-2008	125009	5,00,000/-	
28-02-2008	141607	5,00,000/-	

Date	*Cheque No.*	*Debit (Rs)*
Opening Balance		5,30,50,000/-
22-04-2008	398294	5,00,000/-
	007449	50,00,000/-
24-04-2008	153159	5,00,000/-
28-04-2008	153160	6,00,000/-
28-05-2008	164988	6,00,000/-
27-06-2008	172082	6,00,000/-
26-07-2008	185232	6,00,000/-
27-08-2008	365555	6,00,000/-
27-09-2008	198001	6,00,000/-
25-10-2008	849524	5,00,000/-
28-10-2008	849523	5,00,000/-
28-10-2008	849525	6,00,000/-
27-11-2008	867334	5,00,000/-
27-11-2008	867335	5,00,000/-
28-11-2008	857336	6,00,000/-
	Total	6,58,50,000/-

8. The entries relating to Rajkumar Menon were stated to be mere journal entry and in the proof affidavit the following extract was also given

Sl.No	*Date*	*Particulars*	*Rs.*
1.	10.09.2012	Rajkumar Menon	8,00,00,000/-
2.	30.04.2012	Rajkumar Menon Int Account	2,58,50,000/-

9. It is thus seen that the transactions were of the years 2007 and 2008. There were no further transactions between the 2nd respondent and the insolvent.

10. The Official Assignee had raised claims for those debts, which were reflected in the books of accounts as on 21.04.2014. By that particular date, all the aforementioned debts were bared by limitation.

11. In ***AIR 1959 Mad 394, Velayudham Chettiar, In Re***, the issue before the High Court was whether a debt, which was not barred at the time of presentation of the petition, could be proved in the insolvency of the debtor,

even though it was barred at the time of adjudication of the insolvent. The provision under Section 28(7) of the Provincial Insolvency Act, 1920 was examined, which provided for "*relation back*" to take effect from the date of presentation of the petition. In that case, the debt was not barred at the time of presentation of the petition, but became barred by the time of adjudication. It was held that, the crucial date is the date of presentation of the petition and if on that date, the debt is barred then it cannot be proved.

12. In the instant case, the last transaction was in the year 2008 and as on 2014, the debt was certainly barred.

13. In view of this reasoning, we hold that the application necessarily has to suffer an order of dismissal on the issue of limitation and accordingly, the same is dismissed. No costs.

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

09.08.2023

smv

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