Application (IP) No. 231 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.1,00,000/- 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. 1,00,000/- 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 14.02.2018, 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.

4. The second respondent died during the pendency of this application and his legal representatives have been brought on record.

5. Accordingly, Mrs.P.Mangaiyarkkarasi, Assistant Section Officer, attached to the office of the Official Assignee, High Court, Madras, filed proof affidavit and was examined as PW-1. She filed Exs. A-1 to A-11. Ex.A-1 is the true copy of the relevant pages of the Auditor's Report, which are reflected in page No.1 (2011-2012), page No.8 (212-2013) and page No. 4 (2013-2014). Ex.A-2 is the true copy of the relevant page in Auditor Annamalai Associates dated 07.10.2015. Ex.A-3 is the true copy of the reply dated 07.11.2017 sent by the second respondent's son to the Official Assignee. Ex.A-4 is the true copy of the relevant entries in the schedule of affairs (Sl.No. 89). Ex.A-5 is the true copy of the statement of account of Arjunlal Sunderdas. Ex.A-6 is the true copy of the relevant pages from CBI report filed as annexure D before the Additional Chief Metropolitan Court, Egmore. Ex.A-7 is the true copy of the relevant page in Auditor Ranga Ramanujam's Report. Ex.A-8 is the true copy of the reply dated 11.07.2018 from the respondents to the Official Assignee. Ex.A-9 is the true copy of the notice dated 09.01.2019 sent by the Official Assignee to the second respondent. Ex.A-10 is the true copy of the reply dated 23.01.2019 by the son of the second respondent to the Official Assignee. Ex.A-11 is the true copy of the notice dated 09.10.2017 sent by the Official Assignee along with the true copy of the acknowledgment card.

6. A perusal of the documents reveal that the entries relating to Vasudev Sundardhas were stated to be mere journal entries. In the proof affidavit the following extract was also given:

Sl.No	***Date***	***Rs.***
1.	17.08.2010	50,000/-
2.	17.08.2010	50,000/-
	Total	1,00,000/-

7. It is thus seen that the transactions were of the years 2010. There were no further transactions between the 2nd respondent and the insolvent.

8. 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 barred by limitation.

9. 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.

10. In the instant case, the last transaction was in the year 2010. The debt was certainly barred.

11. 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.,)

.08.2023

vsg

<u>Dr. G. JAYACHANDRAN, J.</u>
<u>&</u>
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<u>PRE-DELIVERY JUDGEMENT IN</u>

Application (IP) No. 231 of 2016
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