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Application (IP) No.67 of 2023 in I.P. No.30 of 2018 and
Application (IP) No.68 of 2023 in I.P. No.8 of 2019

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ABDUL QUDDHOSE, J.

S.Shanmugam ... Applicant in both Applications

Versus

1.V.K.Sameer Ahmed ... 1st respondent in A.No.67 of 2023

1.Snehalatha Elangovan ... 1st respondent in A. No.68 of 2013

2.The Official Assignee,
High Court, Madras 600 104. ... 2nd respondent in both Applications

These applications have been filed seeking to annul the orders dated 21.01.2019 and 18.03.2020 passed in I.P. Nos.30 of 2018 and 8 of 2019 adjudicating the applicant as insolvent and directing the re-vesting of the assets in the name of the applicant.

2.The only issue that arises for consideration in these applications, which have been filed to annul the orders of adjudication of insolvency passed against the applicant by this Court on 21.01.2019 in I. P. No.30 of



Application (IP) No.67 of 2023 in I.P. No.30 of 2018 and
Application (IP) No.68 of 2023 in I.P. No.8 of 2019

2018 and on 18.03.2020 in I.P. No.8 of 2019 is whether the insolvent is permitted to settle the dues of the creditors directly and without payment of the Government Commission as per Order XVII Rule 10(1) of the Insolvency Rules, 1958, which is extracted hereunder:

'10(1).The Official Assignee shall charge a Commission at the rate of 7 percent on the principal amount or value of assets collected by him in each estate and on the amounts paid to creditors in pursuance of a composition or scheme of arrangement.'

3.In the instant cases, the applicant was declared as an insolvent pursuant to the Orders passed by this Court in two petitions in I. P. Nos.30 of 2018 and 8 of 2019, filed by two different creditors. The Orders were passed adjudicating the applicant as an insolvent on the dates mentioned supra.

4.The applicant/insolvent has filed these applications seeking for annulment of the insolvency. The same has been objected to by the Official Assignee on the ground that the Commission payable to the Official



Application (IP) No.67 of 2023 in I.P. No.30 of 2018 and
Application (IP) No.68 of 2023 in I.P. No.8 of 2019

Assignee as per the aforementioned Rule has not been paid. According to the Official Assignee, the amounts paid by the applicant/insolvent to the creditors directly without his knowledge will also attract Commission as per Order XVII Rule 10(1) of the Insolvency Rules, 1958.

5.Learned counsel for the applicant drew the attention of this Court to the following authorities in support of his contention that no Commission is payable in respect of the payments made by the applicant/insolvent directly to the creditors without the knowledge of the Official Assignee as the said payments cannot be treated as one collected by the Official Assignee. According to him, only in cases where the Official Assignee has collected the debts, payable by the insolvent, he is entitled for Commission:

a)A Division Bench judgement of this Court, dated **06.10.2017**, passed in **O.S.A. Nos.26 to 28 and 183 of 2017** in the case of **K.Dhanalakshmi Ammal and another vs T.Radha and The Official Assignee, High Court Madras;**



Application (IP) No.67 of 2023 in I.P. No.30 of 2018 and
Application (IP) No.68 of 2023 in I.P. No.8 of 2019

b)A Division Bench judgment of this Court in the case of
**Kanakasubbu and etc. vs. Suryanarayana Shastri and others reported
in AIR 2002 Madras 252;**

6.Relying upon the aforesaid judgments, learned counsel for the applicant would submit that the insolvent in the instant cases is not liable to pay Commission as settlement was made with the creditors directly by the insolvent and the Official Assignee was not involved in the settlement.

7.However, the learned Official Assignee would submit that the facts of the present case are different from the facts involved in the aforesaid Division Bench judgments. He would submit that in the instant cases, only due to the efforts taken by the Official Assignee, the insolvent was forced to settle the dues. He would also submit that the insolvent had appeared before him on various occasions and had promised to settle the dues of the creditors as well as pay the Government Commission. He would further submit that in the Minutes recorded by the Official Assignee, the applicant/insolvent had agreed to pay the Government Commission as per Order XVII Rule 10(1) of the Insolvency Rules, 1958.



Application (IP) No.67 of 2023 in I.P. No.30 of 2018 and
Application (IP) No.68 of 2023 in I.P. No.8 of 2019

WEB COPY

8.This Court is bound by the decisions rendered by the Division Bench of this Court. The Division Bench of this Court, in the aforesaid decisions, relied upon by the learned counsel for the applicant, has interpreted Order XVII Rule 10(1) of the Insolvency Rules, 1958 in the following manner:

“Only in cases where the Official Assignee has collected the debts payable by the insolvent through his efforts, the question of payment of Commission at the rate of 7% as per Order XVII Rule 10(1) of the Insolvency Rules, 1958 will arise.”

9.In fact, in the judgment, relied upon by the learned counsel for the applicant in the case of **Kanakasubbu and etc. vs. Suryanarayana Shastri and others reported in AIR 2002 Madras 252**, it has been made clear that it is always open to the judgment debtors (insolvents) to sell the property and discharge the decretal debts and seek for annulment of order adjudicating them as insolvents. Even though the issue regarding payment of Commission as applicable under Order XVII Rule 10(1) of the Insolvency Rules, 1958 was not involved in the aforesaid Division Bench judgment



Application (IP) No.67 of 2023 in I.P. No.30 of 2018 and
Application (IP) No.68 of 2023 in I.P. No.8 of 2019

reported in AIR 2002 Madras 252, it has been made clear by the Division Bench that the insolvent, for the purpose of seeking annulment of insolvency, is always at liberty to seek settlement of the dues payable to his creditors even after being adjudged as an insolvent.

10.The aforesaid decisions makes it clear that there is no prohibition for the insolvent/applicant herein to negotiate with the creditors and arrive at a settlement and pay the dues in terms of the said settlement. Admittedly, even according to the Official Assignee, dues of the insolvents to the creditors have been settled.

11.The Official Assignee contended that whether the settlement is made by the insolvent or by the Official Assignee, the Commission payable under Order XVII Rule 10(1) of the Insolvency Rules, 1958 is attracted. However, in view of the decisions rendered by the Division Bench of this Court dated 06.10.2017 in O.S.A. Nos.26 to 28 and 183 of 2017, relied upon by the learned counsel for the applicant, it is clear that only in cases where the Official Assignee has collected the debts through his efforts, the



Application (IP) No.67 of 2023 in I.P. No.30 of 2018 and
Application (IP) No.68 of 2023 in I.P. No.8 of 2019

question of payment of Commission under Order XVII Rule 10(1) of the Insolvency Rules, 1958 will arise. The Division Bench in the aforesaid decision has interpreted the phrase “collected by him in each estate and on the amounts paid to creditors” found in Order XVII Rule 10(1) of the Insolvency Rules, 1958 by holding that 7% Commission payable to the Official Assignee is applicable only to cases where the Official Assignee through his efforts has collected the debts payable by the insolvent and not to the cases where the insolvent has directly settled the dues with the creditors by entering into private negotiations.

12. Though the Official Assignee contends that the insolvent/applicant had agreed to pay the Commission, which was recorded in the Minutes of the Official Assignee, no documentary evidence has been produced before this Court by the Official Assignee to that effect. Therefore, the oral submissions made by the Official Assignee have no evidentiary value. However, the conduct of the applicant/insolvent in not informing the Official Assignee about the settlement talks with the petitioning creditors has to be deprecated. A person, who has been adjudicated as an insolvent, will always



Application (IP) No.67 of 2023 in I.P. No.30 of 2018 and
Application (IP) No.68 of 2023 in I.P. No.8 of 2019

have to keep the Official Assignee informed about his negotiations for settlement with the petitioning creditors and the creditors.

13.In the instant cases, admittedly, the applicant has not informed the Official Assignee about the negotiations he has been having with the petitioning creditors for the purpose of settlement of their dues. Even though the applicant is not liable to pay Commission at the rate of 7% as per Order XVII Rule 10(1) of the Insolvency Rules, 1958, he is certainly liable to pay costs to the Official Assignee's Office for not informing the Official Assignee the details of the negotiations he has been having with the petitioning creditors for the purpose of settling their dues.

14.In view of the applicant's despicable conduct, costs will have to be imposed on him and the same will have to be paid to the Official Assignee's Office.

15.This Court is of the considered view that a sum of Rs.25,000/- will be a reasonable sum payable by the applicant/insolvent, as costs, to the Official Assignee's Office.



Application (IP) No.67 of 2023 in I.P. No.30 of 2018 and
Application (IP) No.68 of 2023 in I.P. No.8 of 2019

WEB COPY

16.For the foregoing reasons, these applications seeking for annulment of insolvency has to be allowed as prayed for. However, the applicant will have to pay costs of Rs.25,000/- (Rupees Twenty Five thousand only) to the Official Assignee for his despicable conduct in not informing the Official Assignee about the settlement talks with the petitioning creditors and the subsequent settlement of dues.

17.Accordingly, the applicant is directed to pay costs of Rs.25,000/- (Rupees Twenty Five thousand only) to the Official Assignee and subject to the said payment, these Applications are allowed as prayed for and the administration of the estate by the Official Assignee with regard to the estate of the applicant/insolvent is directed to be closed.

24.07.2023

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Application (IP) No.67 of 2023 in I.P. No.30 of 2018 and
Application (IP) No.68 of 2023 in I.P. No.8 of 2019

ABDUL QUDDHOSE, J.

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Application (IP) No.67 of 2023 in I.P. No.30 of 2018 and
Application (IP) No.68 of 2023 in I.P. No.8 of 2019

24.07.2023