Application (IP) Nos.155 to 161 of 2023 in I.P. No.91 of 1998

ABDUL QUDDHOSE, J.

The Official Assignee,
High Court, Madras. .. Applicant

vs.

B.V.Saraswathy (deceased insolvent)
1.Seenan
2.Dilli
3.Raja
4.K.S.Vijayalakshmi
5.Kesavan
6.Padma ... Respondents/Insolvents
7.E.Balu .. 7th respondent/petitioning creditor

Appln.No.155 of 2023 has been filed seeking to permit the Official Assignee to declare and disburse the first and final dividend at the rate of 100 paise in a rupee to the tune of Rs.1,38,162/- along with interest at the rate of 24% per annum, amounting to Rs.1,99,764/- upto the date of adjudication and further interest at 6% per annum till the date of disbursement, totalling a sum of Rs.3,37,926/- to the two proved unsecured creditors.

Appln.No.156 of 2023 has been filed seeking to permit the Official Assignee to pay the legal fees of Rs.1,25,000/- (Rupees one lakh and twenty five thousand only) to Mr.J.Balachander, Advocate as per his Bill for the services rendered.

Appln.No.157 of 2023 has been filed seeking to permit the Official Assignee to transfer a sum of Rs.2,21,293/- being 2% charge on interest received to Contingency Fund.

Appln.No.158 of 2023 has been filed seeking to permit the Official Assignee to pay Auditors remuneration to M/s.Annamalai Associates in the sum of Rs.8,427/- as per his Bill dated 29.01.2014.

Appln.No.159 of 2023 has been filed seeking to permit the Official Assignee to pay the co-owners of the property, the sum of Rs.69,60,071/- as per Note II Appended to the report being their legitimate share payable from the total sale consideration and interest thereon.

2.In this regard, a report dated 07.06.2023 has also been filed by the Official Assignee seeking for the above directions.

3.Appln.No.155 of 2023 pertains to aforementioned debts payable to the petitioning creditor by the insolvents, who were directed by the Civil Court to pay interest to the petitioning creditor at the rate of 30% per annum from the date of judgement till the date of realisation. As seen from the report, the Official Assignee has ajudicated the rate of interest at 24% per annum upto the date of adjudication and thereafter, further interest payable to the petitioning creditor was calculated at 6% per annum from the date of adjudication till the date of disbursement. Admittedly, surplus funds are available in the estate of the insolvents.

4.Learned counsel for the petitioning creditor would submit that in terms of Section 76 read with Rule 23(2) of Appendix I of the Presidency-Towns Insolvency Act, 1909, the petitioning creditor is entitled for the payment of interest exceeding 6% per annum as it is a decretal debt. Section 76 and Rule 23(2) of Schedule II of the Presidency-Towns Insolvency Act, 1909 reads as follows:

*"**Section 76**.Right of insolvent to surplus.- The insolvent shall be entitled to any surplus remaining after payment in full of his creditors, with interest, as provided by this Act and of the expenses of the proceedings taken thereunder.*

***Rule 23(2)**.Where a debt which has been proved in insolvency includes interest or any pecuniary consideration in lieu of interest, the interest or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding six per centum per annum, without prejudice to the right of a creditor to receive out of the debtor's estate any higher rate of interest to which he may be entitled after all the debts proved have been paid in full."*

5.As seen from the aforesaid Section 76 and Rule 23(2), the petitioning creditor is entitled for payment of interest from the proceeds available out of the estate of the insolvents even though Rule 23(2) of Schedule II of the Presidency-Towns Insolvency Act, 1909 restricts the Official Assignee to not award interest exceeding 6% per annum, but the same is without prejudice to the right of a creditor to receive out of the debtor's estate any higher rate of interest to which, he may be entitled after all the debts proved have been paid in full.

6.In the case on hand, surplus funds are available in the hands of the Official Assignee from and out of the estate of the insolvents. The claim of the petitioning creditor also arises out of a decretal debt.

7.Admittedly, the Civil Court had directed the insolvents to pay interest only at the rate of 30% per annum. When there are surplus funds available and the funds are sufficient to discharge the debts of the creditor, which were earlier payable by the insolvents, this Court is of the considered view that restriction of 6% interest on the part of the Official Assignee will not be applicable to the instant case as the claim of the petitioning creditor arises out of a decretal debt, which has awarded 30% interest to the petitioning creditor. It will also not restrict the award of interest to 6% per annum when surplus funds are available in the hands of the Official Assignee and without those funds, it is not possible for the Official Assignee to discharge the creditor, who has already made his claims before the Official Assignee. The Official Assignee has awarded interest of 24% per annum on Rs.1,38,162/- upto the date of adjudication and has awarded 6% per annum from the date of adjudication till the date of disbursement, totalling a sum of Rs.3,37,926/- to the proved unsecured creditors.

8.Learned counsel for the 7th respondent/petitioning creditor submitted before this Court as observed earlier that the future interest awarded by the Official Assignee from the date of adjudication till the date of disbursement at 6% per annum is too low considering the fact that the debt payable to the petitioning creditor by the insolvents is of the year 1990.

9.After giving due consideration to Section 76 read with Rule 23(2) of Schedule II of the Presidency- Towns Insolvency Act, 1909, this Court is of the considered view that being a decretal debt and in a case where surplus funds are available in the hands of the Official Assignee, there is no restriction for this Court to award interest in favour of the petitioning creditor exceeding 6% per annum.

10.Admittedly, in the instant case, the petitioning creditor was awarded interest by the Civil Court at 30% per annum, but the Official Assignee in his adjudication, has restricted interest to 24% per annum till the date of adjudication and in respect of future interest has awarded 6% per annum.

11.Learned counsel for the petitioning creditor, on instructions, would submit that the petitioning creditor is agreeable to receive interest at the rate of 18% per annum uniformly instead of 24% as adjudicated by the Official Assignee upto the date of adjudication and 6% with regard to future interest from the date of adjudication.

12.This Court is of the considered view that 24% interest awarded by the Official Assignee in his adjudication order till the date of adjudication is on the higher side and it has to be reduced to 18% per annum and similarly, the future interest payable should also be increased to 18% per annum instead of 6% per annum awarded by the Official Assignee.

13.For the foregoing reasons, Appln.No.155 of 2023 is ordered as prayed for and the Official Assignee is directed to disburse to the unsecured creditors a sum of Rs.1,38,162/- together with interest at the rate of 18% per annum from the date of judgment passed by the Civil Court till the date of disbursement, within a period of three weeks from the date of receipt of a copy of this Order.

14.With regard to Appln.No.156 of 2023 filed seeking to permit the Official Assignee to pay the legal fees of Rs.1,25,000/- (Rupees one lakh and twenty five thousand only) to Mr.J.Balachander, Advocate as per his Bill with respect to the services rendered by him, this Court is of the considered view that after giving due consideration to the report filed by the Official Assignee, the sum of Rs.1,25,000/- shall be paid to Mr.J.Balachander, Advocate by the Official Assignee from and out of the funds available in the estate of the insolvents.

15.Appln.No.157 of 2023 has been filed seeking to permit the Official Assignee to transfer a sum of Rs.2,21,293/- being 2% charge on interest received to the Contingency Fund. The said application is also ordered as prayed for as the Official Assignee has also produced a precedent for the same in the form of an order dated 17.02.2014 passed in Appln. No.57 of 2014 in I.P.No.104 of 1993 and he would further submit that it is a settled practice.

16.Appln.No.158 of 2023 filed seeking to permit the Official Assignee to pay Auditors remuneration to M/s.Annamalai Associates in the sum of Rs.8,427/- as per his Bill dated 29.01.2014 towards their fees is also ordered as prayed for since the Bill is available and the Official Assignee has also vouched for the said payment. This Court directs the Official Assignee to pay a remuneration of Rs. 8,427/- to M/s.Annamalai Associates as per his Bill dated 29.01.2014.

17.With regard to Appln.No.159 of 2023 filed seeking to permit the Official Assignee to pay the co-owners of the property, the sum of Rs.69,60,071/- as per Note II appended to the report being their legitimate share payable from the total sale consideration and interest thereon, Mr.Balachander, learned counsel appearing for the Official Assignee drew the attention of this Court to the calculation sheet by which the shares payable to the respective co-owners are disclosed. This Court is satisfied with the calculation sheet and accordingly, directs the Official Assignee to pay the sum of Rs.69,60,071/- to the co-owners of the property in the ratio as ascertained in the calculation sheet submitted by Mr.J.Balachander, the learned counsel appearing for the Official Assignee, within a period of four weeks from the date of receipt of a copy of this order.

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18.With regard to Appln.No.160 of 2023 filed seeking to annul the order of adjudication dated 15.02.1999 adjudicating the debtors Seenan, Dilli, Raja, K.N.Vijayalakshmi, Kesavan and Padma as insolvents in I.P.No.91 of 1998 under Section 41 of the Presidency Towns Insolvency Act 1909 and Appln.No.161 of 2023 filed seeking to permit the Official Assignee to pay a sum of Rs.97,00,889/- being the surplus available after meeting out all payments and charges of administration to the insolvents/ legal representatives, this Court is of the considered view that the prayers sought for by the Official Assignee in the above applications, namely, Appln. Nos.160 and 161 of 2023 can be considered after a Supplementary Report is filed by the Official Assignee before this Court.

Post these matters on 11.09.2023.

31.07.2023

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