Application.I.P.No.29 of 2020
in
I.P.No.24 of 2016

Reserved on	22.12.2023
Pronounced on	04.06.2024

C.SARAVANAN, J.

This application has been filed by the applicant to declare the Sale cum Construction Agreement entered into with respondents 3 to 15 with the insolvent as null and void and thereby set aside the consequential sale deeds and other documents in favour of the Respondents 2 to 18.

2. The 1st respondent herein had filed I.P.No.24 of 2016 on 18.07.2016. At the time of filing of I.P.No.24 of 2016, the 1st respondent has stated that he had a debt for a sum of Rs.7,85,85,450/- to various creditors (both secured and unsecured creditors).

3. The 1st respondent was adjudicated as an insolvent by this Court by its order dated 28.07.2016.

4. Pursuant to the aforesaid order dated 28.07.2016 of this Court, the estate of the 1st respondent insolvent was taken over by the 2nd respondent/official assignee.

5. The facts of the case that emerged during the course of hearing indicate that the 1st respondent-insolvent was engaged in a Real Estate Business under the name and style of Cosy Promoters. The 1st respondent-insolvent had entered into the separate Construction Agreements with respondents 3 to 15 on various dates. Thereafter sale deeds were executed in favour of respondents 3 to 15 by the 1st respondent-insolvent between 23.04.2014 and 21.08.2015 respectively as detailed below:-

Table 1:-

Sl.No.	**Name of the Owner/Flat No.**	**Date of Construction Agreement**	**Month of handing over of possession as per construction agreement**	**Sale Deed/Date**
1.	Mr.S.Radhakrishnan, Flat No.F1	23.09.2013	February 2015	2832/2015 25.02.2015
2.	M/s.Balaji & Kalpana Flat No.F3	23.09.2013	April 2015	5401/2015 08.04.2015
3.	Mr.Sathya Naren Boddu Flat No.F4	23.09.2013	October 2014	16055/2014 15.10.2014
4.	Mr.A.Gowri Shankar Flat No.S1	23.09.2013	August 2015	9125/2014 11.06.2015
5.	Mr.A.Gowri Shankar	23.09.2013	August 2015	9157/2015

	Flat No.S2			11.06.2015
6.	Mr.Jude Matchado Flot No.S3	23.09.2013	May 2015	13316/2015 21.08.2015
7.	Mrs.Selva Lakshmi Flat No.S4	20.09.2013	September 2014	13474/2014 27.08.2014
8.	Mr.M.K.Balu Flat No.S1, S2 & F2	20.09.2013	August 2015	22.03.2015
9.	Mr.G.Vinodkumar Flat No.S1	23.09.2013	March 2015	18.03.2015
10.	Mr.S.Irudhaya Johnson Flat No.F2	20.09.2013	June 2014	8786/2014 05.06.2014
11.	Mr.Muthuramalingam Flat No.F6	01.06.2013	June 2014	9573/2014 18.06.2014
12.	Mr.Y.Balakrishnan Reddy Flat No.F5	04.09.2013	April 2014	7339/2014 12.05.2014
13.	Mr.R.Arumugam Flat No.S5	20.09.2013	July 2014	11120/2014 11.07.2014
14.	Mrs.Y.Gowthami Flat No.S6	17.09.2013	April 2014	6302/2014 23.04.2014

6. The 9th respondent has subsequently sold the properties to 16th, 17th and 18th respondent. Thus, 16th, 17th and 18th respondent have been arrayed as respondents in this Application.

7. The above Sale –cum-Construction Agreements which were signed by the 1st respondent- insolvent in favour of the 3-15 respondents were both unregistered and were under-stamped. These construction agreements were for allotting flats promoted by the 1st respondent

insolvent. *Prima-facie* these agreements were contrary to Section 17(1)(f) of the Registration Act, 1908 as amended with effect from 01.12.2012 read with Section 35 of the Indian Stamp Act, 1899 and Article 5 of Schedule I to the Indian Stamp Act, 1899 which will warrant proceedings under the provisions of the Indian Stamp Act, 1899 and Registration Act, 1908.

8. Section 17(1)(f) of the Registration Act, 1908 as amended with effect from 01.12.2012 reads as under:-

> "***17(1)(f) Instruments of agreement relating to construction of building as referred to in clause (i) under Article 5 of Schedule I to the Indian Stamp Act, 1899 (Central Act II of 1899)***"

9. Pursuant to the Sale-cum-Construction Agreements, the 1st respondent-insolvent has also executed Sale Deeds on various dates in favour of the 3rd respondent to 15th respondent on various dates which are also under challenge by the applicant.

10. The Applicant, who is the Creditor No.250 has challenged the above mentioned sale Deeds executed between 23.04.2014 and 11.06.2015 in favour of the 3rd respondent to 15th respondent. They are being challenged on the grounds that the Sale Agreements are contrary to Sections 55 and 57 of the Presidency Towns Insolvency Act, 1909 apart from the Sale-cum-Construction Agreement being under stamped and unregistered.

11. Respondents 3,4,6,7,13,14,15 who have filed their counter stated that they are bonafide purchasers of the property from the 1st respondent-insolvent and therefore, the sale in their favour by the 1st respondent was protected in terms of Section 57 of the Presidency Towns Insolvency Act, 1909.

12. A similar application to the present application was also filed by one K. Sridharan, Creditor No.262 in A.No.226 of 2018. In A.No.226 of 2018, the applicant therein, Creditor No.262, Mr.K.Sridharan had prayed for vesting the property mentioned in the annexure of the 3rd respondent to 15th respondents with the Official Assignee namely the 2nd

respondent. The Counter filed in A.No.226 of 2018 has been adopted as counter in the present application by the 6th respondent.

13. Crucial dates for a fair disposal of the above application are as under:-

TABLE -II

S.No	DATE	Particulars
1.	18/7/2016	I.P. No. 24 of 2016 filed by 1st Respondent -insolvent Irudhayam Sugadoss
2.	28/7/2016	Adjudicated 1st respondent as insolvent in I.P. No. 24 of 2016
3	-	Sale (in Construction Agreement *
		Sale Deed *

* as in Table - I

14. Sections 55 and 57 of the Presidency Towns Insolvency Act, 1909 are reproduced below for the sake of clarity:-

Table III :-

Section 55 of the Presidency Towns Insolvency Act, 1909	***Section 57 of the Presidency Towns Insolvency Act, 1909***
55. Avoidance of voluntary transfer.- *Any transfer of property, not being a transfer made before any and in consideration of marriage, or made*	***57. Protection of bona fide transactions.–*** *Subject to the foregoing provisions with respect to the effect of insolvency on an execution and with respect to the*

in favour of a purchaser or incumbrancer in good faith and for valuable consideration, shall, if the transferor is adjudged insolvent within two years after the date of the transfer, be void against the official assignee.	*avoidance of certain transfers and preferences, nothing in this Act shall invalidate in the case of an insolvency—* *(a) any payment by the insolvent to any of his creditors;* *(b) any payment or delivery to the insolvent;* *(c) any transfer by the insolvent for valuable consideration; or* *(d) any contract or dealing by or with the insolvent for valuable consideration:* ***Provided that any such transaction takes place before the date of the order of adjudication and that the person with whom such transaction takes place has not at the time notice of the presentation of any insolvency petition by or against the debtor.***

15. As per Section 55 of the Presidency Towns Insolvency Act, 1909 if within two years after the date of transfer, the transferor is adjudged as an insolvent, the transfer made by the transferee (insolvent) is void against the Official Assignee. In other words, transfers made between 28.07.2014 and 28.07.2016 are deemed to be void against the Official Assignee, the 2nd respondent herein, Official Assignee unless the transfers were made in consideration of marriage or in favour of a purchaser or incumbrancer in good faith and for valuable consideration.

16. There are no indications that the sales were not made in good faith in favour of 3rd to 15th respondents/ transferee's on various dates as in Table-1 & 2. As per Section 57 of the Presidency Towns Insolvency Act, 1909, it is open for the 3rd to 15th respondents also to plead the sales made in their favour by the 1st respondent-insolvent were *bonafide* under any one of the following circumstances:-

> *(a) any payment by the insolvent to any of his creditors;*
>
> *(b) any payment or delivery to the insolvent;*
>
> *(c) any transfer by the insolvent for valuable consideration; or*
>
> *(d) any contract or dealing by or with the insolvent for valuable consideration:*
>
> *Provided that any such transaction takes place before the date of the order of adjudication and that the person with whom such transaction takes place has not at the time notice of the presentation of any insolvency petition by or against the debtor.*

17. Section 57(c) of the Presidency Towns Insolvency Act, 1909, expressly makes it clear that insolvency proceedings shall not invalidate any transfer by the insolvent to a transferee for a valuable consideration such transactions are protected. Similarly Section 57(d) of the Presidency Towns Insolvency Act, 1909, any contract or dealing by or

with the insolvent for a valuable consideration is also protected.

18. The 3rd to 15th respondents-Transferees will also have to satisfy provision to Section 57 of the Presidency Towns Insolvency Act, 1909. As per proviso to Section 57 of the Presidency Towns Insolvency Act, 1909, there are two prerequisites before proceeding to clause (a) to (d), which are:-

i) The transaction has taken place before the date of the order of adjudication i.e.28.07.2016 and
ii) That they had no notice of the presentation of any insolvency petition either by or against the 1st respondent insolvent viz., at the time of such transfer/transaction.

19. In this case, the respondent SaleCum-Construction Agreement with the 3rd to 5th espondents by the 1st respondent-insolvent are of the year 2013. They have culminated into the Sale Deeds in favour of 3rd to 15th respondents in the year 2014 & 2015 as mentioned above in **Table 1**. The 3rd -18th respondents are also in possession of various flats as mentioned above. The Annexure filed by the applicant -Creditor No.250 in support of the present application itself gives the above details. Non/ under stamping and non registration of Sale-cum-Construction

Agreement would not compromise the rights of 3rd to 15th respondents.

20. It is useful to refer to Section 17(1)(f) of the Registration Act, 1908 and Section 49 of the Registration Act, 1908.

Section 17(1)(f) of the Registration Act, 1908	**Section 49 of the Registration Act, 1908.**
(f)instruments of agreement relating to construction of building as referred to in clause (i) under Article 5 of Schedule I to the Indian Stamp Act, 1899 (Central Act II of 1899);	49. Effect of non-registration of documents required to be registered.— No document required by section 17 [or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall— (a) affect any immovable property comprised therein, or (b) confer any power to adopt, or (c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered: 1 [Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877) or as evidence of any collateral transaction not required to be effected by registered instrument.

21. As per Section 17(1)(f) of the Registration Act, 1908, instrument of agreement relating to construction of building as referred

to in clause (i) under Article 5 of Schedule I to the Indian Stamp Act, 1899 is compulsorily registrable. If it is not registered, they cannot be received as evidence of contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 or as evidence of any collateral transaction required to be effected by registered instrument.

22. Under proviso to Section 49 of the Registration Act, 1908, no document which is required to be registered under it or Transfer of Property Act, 1882 may be received as evidence of contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 or as evidence of any collateral transaction required to be effected by registered instrument.

23. A cumulative reading of Section 17(1)(f) of the Registration Act, 1908, Section 49 of the Registration Act, 1908 and Sections 55 & 57 of the Presidency Towns Insolvency Act, 1909, makes it clear that mere non-registration of Construction Agreement signed between 1st respondent-insolvent and respondents 3-15, *ipso facto* would not render the Sale Deed executed by the 1st respondent-insolvent void. At best, stamp duty and penalty can be demanded.

24. In case, the 1st respondent had refused to execute Sale Deeds pursuant to various unregistered Sale-cum-Construction Agreement signed by the 1st respondent-insolvent with the 3rd to 15th respondents on various dates, the rights of the 3rd to 15th respondents would have been subject to restriction under Section 49 of the Registration Act, 1908.

25. The facts on record clearly reveal that the 1st respondent-insolvent had entered into the Sale-cum-Construction Agreement beyond two years prior to the date of adjudication on 28.07.2016. Therefore, the registration of Sale Deeds based on the Sale-cum-Construction agreement will not annul various Sale Deeds executed by 1st respondent-insolvent in favour of 3rd to 15th respondents subsequently on various dates as mentioned above in Table-1 are within two years prior to the date of 1st respondent-insolvent being adjudicated as insolvent on 28.07.2016.

26. The transactions are *prima facie bonafide* transactions as they are prior to the presentation of the above insolvency petition by the 1st respondent on 18.07.2016. Therefore, the objection of the petitioner that

the sales are liable to be declared as void cannot be countenanced.

27. That apart, the counter of the official assignee in response to the above application is vague and deals with certain other transactions of the 1st respondent with Dr.Radhika and Ms.Monique to whom the 1st respondent had pledged his jewellery.

28. It further states that the 1st respondent was unable to pay interest on the borrowed amounts and the jewels that were pledged with Dr.Radhika were sold except the Thali.

29. That being the position, this petition has to fail. Accordingly, the above petition is liable to be dismissed. Accordingly, it is dismissed. No costs.

04.06.2024

Index : Yes/No
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Neutral Citation : Yes/No
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C.SARAVANAN,J.

rgm/kkd

Pre-delivery Order in
A(I.P).No.29 of 2022

04.06.2024