



C.M.A(MD)No.101 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.03.2023**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.101 of 2015

and

M.P(MD)No.1 of 2015

1.R.Dhamodaran

2.Thirumoorthy Sungudi Printing Works,
Represented by its Proprietor,
R.Dhamodaran.

3.Maruthi Tex,
Represented by its Proprietor,
R.Dhamodaran.

4.Sri Ram Textiles,
Represented by its Proprietor,
R.Dhamodaran.

... Appellants/Petitioners

Vs.

1.Rao Enterprises,
Through its Proprietor,
No.423, Nazar Camp 3rd Cross,
Wadgaum Main Road,
Wadgaum, Belgaum,
Karnataka State.

2.Thirumalai Dye Chem,
Through its Proprietor,
T.N.Sathiyamoorthy.



C.M.A(MD)No.101 of 2015

WEB COPY

3. Corporation Handloom,
Through its Manager,
Cotton Dyed Yarn Merchant,
Na.Pudur, Karaikudi.

4. A.B. Polyester,
Through its Proprietor,
No.18, Michael Mooppanar Street,
Madurai.

5. Sri Palani Andavar Kadhi Stores,
Through its Proprietor,
Palanichamy.

6. Sri Sivan Tex,
Through its Proprietor,
P. Krishnasamy.

7. Sweena Fabrics,
Through its Proprietor,
R. Selvaraj.

8. Sri Kamala Textiles,
Through its Partner
G. Dharmaraj.

9. K.R. Lakshmanan and Sons,
Through its Proprietor,
K.R. Lakshmanan.

10. Balaji Dye Chem,
Through its Proprietor,
No.23, Panthadi 6th Street,
Madurai.

11. R. Subramanian

12. Attai R. Ganesan

13. S. Murugan



C.M.A(MD)/No.101 of 2015

14.R.Krishnamoorthy

... Respondents/Respondents

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PRAYER: Civil Miscellaneous Appeal is filed under Section 75 (4) of the Provincial Insolvency Act, to set aside the fair and decreetal order dated 05.11.2014 passed in I.P.No.27 of 2005 on the file of the Additional District and Sessions Judge, Dindigul and thereby allow the present civil miscellaneous appeal.

For Appellant : Mr.M.R.Sreenivasan

For Respondents : No Appearance

JUDGEMENT

The present appeal has been filed by the petitioners in insolvency proceedings challenging an order of dismissal of the insolvency proceedings.

2. The appellant herein as proprietor of three concerns has filed I.P.No.4 of 2000 on the file of sub Court, Pazhani and it was later transferred to additional District and Sessions Court, Dindigul and renumbered as I.P.No.27 of 2005.

3. According to the appellant/insolvent petitioner, he is running 3 proprietary concerns, namely the petitioners 2 to 4 who are dealing with



C.M.A(MD)No.101 of 2015

chemicals, yarn and cloth business in the above said names. He had further contended that the 1st petitioner had borrowed chemicals, cotton dyed yarn and polyester sarees from respondents on cash credit basis and in turn manufactured sarees and doing wholesale and retail business. The petitioner has to do business and settle their accounts after selling the products. The petitioner has further contended that the respondents 7,8 and 9 have supplied materials on a cash credit basis and he had borrowed a sum of Rs.50,000/- from the 11th respondent and Rs.50,000/- from 12th respondent and another sum of Rs.25,000/- from the 13th respondent and a sum of Rs.30,000/- from the 14th respondent. According to the petitioner, since the debts have exceeded the assets, he had filed insolvency petition under Section 10 of the Provincial Insolvency Act, 1920.

4. The 1st respondent had filed a counter contending that the petitioner is having immovable properties both at Dindigul and at Chinnalapatti. He had further contended that the petitioner owns a two wheeler. According to the objector, these properties have been suppressed in the insolvency petition. The respondents 4 and 5 have also filed a counter contending that unnecessary persons have been impleaded in the insolvency proceedings only to evade payment to them.



C.M.A(MD)No.101 of 2015

5. The trial Court after considering the documentary evidence on the side of the petitioner has arrived at a finding that no records have been placed before the Court with regard to the borrowals made by the petitioner from the respondents 11 to 14. The trial Court has also arrived at a finding that the account produced by the petitioner does not reflect any such borrowal. The tribunal further found that the account does not reflect whether the said borrowals were made by the 1st petitioner in his individual capacity or as a proprietor of the petitioners 2 to 4. The trial Court further found that no records have been placed before the Court to show that the petitioner had any business dealings with the respondents 1 to 10 and he had purchased goods from respondents 1 to 10 on a cash credit basis. Based upon the above said findings, the trial Court has dismissed the insolvency petition. Challenging the same, the present appeal has been filed.

6. The learned counsel appearing for the appellants had contended that the 1st respondent in his objection petition has categorically pointed out that the petitioner has suffered a decree. He has also pointed out there are no immovable properties belonging to the petitioner. When the entire record is placed before the Court, the trial Court ought to have considered the said fact and declared the petitioner as an insolvent.



C.M.A(MD)No.101 of 2015

Hence, he prayed for allowing the appeal.

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7. Though the respondents have been served, there is no appearance either in person or through counsel.

8. It could be seen from the records that the debtor has filed this application under Section 10 of the Provincial Insolvency Act, 1920 to declare himself as an insolvent. It is mandatory on the part of the debtor to place all his assets and liabilities before the Court to declare himself as an insolvent and to prove that the liability exceed his assets in order to declare him as an insolvent. He has simply stated in the petition that his liabilities exceed the assets.

9. Whenever an application is filed under Section 10 of the Provincial Insolvency Act, the contents of the petition should be as per Section 13 of the said Act. As per Section 13 (e), the petitioner has to mention about the amounts and particulars of all his property together with the specification of the value of all such property. However, in the present case, the petitioner has, in fact suppressed his assets which were disclosed in the counter filed by the 1st respondent in the insolvency petition. That apart, the petitioner has only produced the ledger accounts



C.M.A(MD)No.101 of 2015

of the 3rd petitioner proprietorship concern and not with regard to the other concerns. A perusal of the order further indicates that the petitioner has not even entered into the box to prove his case that the liability exceeds the assets. Only Exhibits A.1 to A.4 which are ledger accounts maintained by the 3rd petitioner have been placed on record even without the petitioner entering into the box. Without the petitioner entering into the box, this Court is not able to understand how the documents came to be marked. Therefore, this Court does not find any illegality or infirmity in the order of the trial Court rejecting the insolvency petition. Hence, this appeal lacks merits.

10. Therefore, this Civil Miscellaneous Appeal stands dismissed.
No costs. Consequently, connected Miscellaneous Petition is closed.

21.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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C.M.A(MD)No.101 of 2015

To

- 1.The Additional District and Sessions Judge,
Dindigul.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A(MD)No.101 of 2015

R.VIJAYAKUMAR ,J.

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Order made in
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21.03.2023