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C.M.A.No.3161 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2024

CORAM:

THE HONOURABLE Mrs. JUSTICE R.KALAIMATHI

C.M.A.No.3161 of 2009

S.Jamile Begum

... Appellant

vs.

1. R.Subramanian
2. A.Najimudeen
3. Syed Mohamed Barak
4. M.Y.Mohamed Maidin
5. R.M.A.Mohamed Yusuf
6. Mohamed Kasim
7. Indian Bank,
Thittacherry,
Karaikal

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 75 (2) of the Provincial Insolvency Act, 1920, against the order and decretal order dated 05.03.2008 made in I.P.No.1 of 2004 on the file of the Court of the Additional District Judge of Puducherry at Karaikal.

For Appellant : Mr.K.P.Jatheeswaran

For Respondents : Mr.R.Vasudevan for R1

: Notice Served for R2 to R7



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JUDGMENT

Being aggrieved by the order passed in I.P.No.1 of 2004 dated 05.03.2008 on the file of the Additional District Court, Karaikal, the petitioner has preferred this Civil Miscellaneous appeal.

2. The insolvency petition was filed under Section 7 of the Provincial Insolvency Act, 1920 to declare her to be an insolvent and to confer the benefits provided under the Provincial Insolvency Act, 1920.

3. The learned Additional District Judge upon consideration concluded that during the cross examination, P.W.1 has admitted that she had been paying debts in installments and the petitioner has failed to prove that she has obtained more loans than the worth of her property.

4. The contention made in the petition in brief: -

4.1. The petitioner is a Muslim house wife. Her husband was a small merchant. The petitioner is presently owning a residential house worth about Rs.5,00,000/- situate in Senior kulam Street, Karaikal and it is attached for a decree in O.S.No.82 of 2000. She has no other tangible or intangible properties. She along with her husband are indebted to several persons. She has borrowed loans from the below said persons as



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mentioned hereunder: -

SL.No.	Name of Creditor	Borrowed Amount
1	R.Subramanian	Rs.5,00,000/- based on a decree
2.	A.Najimudeen	Rs.2,00,000/- under a Promissory Note dated 10.02.2001
3.	Syed Mohamed Barack	Rs.4,00,000/- for construction
4.	M.Y.Mohamed Maidin	Rs.1,00,000/- as Trust Hand Loan
5.	R.M.A.Mohamed Yusuf	Rs.1,00,000/- under a Pronote dated 05.01.2002
6.	M.Mohamed Kasim	Rs.1,00,000/- under a Post dated cheque
7.	Indian Bank, Thittacherry	Rs.75,000/- through over draft facility

4.2. The total amount of debt is Rs.14,75,000/- which exceeds the value of the house property. Some of the creditors have initiated recovery proceedings. She has no means to pay the debts. Even if the property under attachment is ordered to be sold, it is insufficient to discharge her debts. Hence this petition.

5. On behalf of the 1st respondent, it was objected by filing counter



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as follows:-

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On 12.12.2000 an order of attachment was passed in the I.A.No.271 of 2000 in O.S.No.82 of 2000. She has made a part payment to the tune of Rs.1,90,000/- in E.P.No.50 of 2002 in O.S.No.82 of 2000. Thereafter, she was seeking time for payment. During that period, she created fictitious loans in the name of respondents 2 to 6 in order to cheat the 1st respondent. The other debts mentioned in this petition are only subsequent to the suit debt. The property attached in the suit has to be sold and after deducting balance of debt, the remaining amount is payable to the petitioner and pleaded to dismiss the petition.

6. The details of counter of the 3rd respondent in brief:-

The 3rd respondent is a building contractor. He was engaged by the petitioner to do repair works in her house and after completion of works, the petitioner is yet to pay the repair charges of Rs.4,00,000/-. He has filed suit for recovery of that amount. This petition is an afterthought, hence it is liable to be dismissed.

7. The objections raised by the 4th respondent is that this petition is filed with collusion of the 1st respondent. She has got sufficient means to discharge her liability. As there is no truth in this petition, her petition is



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liable to be dismissed.

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8. Whereas, 5th respondent in his counter has stated that the petitioner is owning several immovable properties exceeding the limit of the debts. There is no scope to treat her as an insolvent.

9. On behalf of the 6th respondent, this petition was objected by filing counter that the petitioner has got income yielding properties. The post dated cheques issued by the petitioner is dishonored. This petition is an abusing of process of law and liable to be dismissed.

10. Mr.K.P.Jatheeswaran, the learned counsel appearing for the appellant vehemently contended that the ingredients of Section 7 and Section 10 of the Act were duly satisfied. Ex.A4 Valuation certificate is filed. Though Ex.A4 Valuation Certificate is filed, the trial Court has held otherwise, which is incorrect. It is his further argument that just because she has paid some debts, it does not mean that she is a solvent person.

11. To buttress his arguments, the following judgments were referred:-

1. Yenumula Mallu Dora Vs. Peruri Seetharatnam and others
[AIR 1996 SC 918]



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2. Mohanakrishnan Vs. Gopalaswami Naidu and ors.

[(1969) 82 LW 215 (Mad)]

3. Karnagam Vs. Jayaseelam Chettiar [(1976) 89 LW 547 (Mad)]

4. Ganesa Mudaliar Vs. Annamalai [(1988) 1 LW 513]

12. At enquiry, petitioner A.Syed Maburak S/o Abdulla Mariear was examined as P.W.1 and six documents were marked. On the respondents side, one witness (1st respondent) was examined.

13. Ex.A4 is Valuation Certificate dated 21.07.2004.

14. Ex.A1 legal notice dated 19.07.2004 issued by the 3rd respondent to the petitioner and the legal notice issued by the 2nd and 5th respondents are Ex.A2 and Ex.A3.

15. It has come on record through the evidence of P.W.1 that the petitioner has paid an amount of Rs.1,90,000/- to the 1st respondent in E.P.No.50 of 2002. When she paid some amount that too in installments as mentioned supra without disclosing about the properties owned by her and also the properties owned by her children and husband. She is not supposed to raise a plea of insolvency.



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16. It is relevant to observe that her husband went abroad for earning and he was running a sports goods shop in Karaikal. Among her two sons, it has been stated that one son gone abroad. Only one item of property which is under attachment in O.S.No.82 of 2000 on the file of the Additional District Court, Karaikal alone is shown to be owned by her.

17. The Insolvency Court after detailed enquiry found that the insolvent has got sufficient means to discharge the debt and chose to dismiss her application. During the enquiry before the Insolvency Court, the respondents 2 and 7 remained absent. As per the petitioner averments, the insolvent incurred debts exceeding Rs.500/-. As regards Ex.A4 Valuation Certificate, no revenue official was examined. To show her bonafides, the insolvent has not filed debt records into the Court. Based on the aforesaid discussion, this Civil Miscellaneous Appeal stands dismissed. In the result, the order passed by the Insolvent Court in I.P.No.1 of 2004 dated 05.03.2008 stands confirmed.

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Index : Yes/No
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Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To

1. The Additional District Judge of Puducherry at Karaikal.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.



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R.KALAIMATHI, J.

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