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Application Nos. 44,45,46,47 & 48 of 2024
in I.P. No. 34 of 2023

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K.KUMARESH BABU, J.

These applications have been filed for the following reliefs:-

- (a) Application No. 44 of 2024 has been filed seeking to declare the transfer of the insolvent's property described in the schedule to the judges summons in favour of the second respondent herein as null and void and not binding upon the Official Assignee.
- (b) Application No. 45 of 2024 has been filed seeking to issue warrant permitting the Official Assignee to seize the property described in the schedule to the judges summons from the custody or possession of the second respondent or any other person, men, agent or servants acting under him with the assistance of Police.
- (c) Application No. 46 of 2024 has been filed seeking to direct the second respondent, his men, agent or servants or any other person acting on his behalf to deliver vacant possession of the said property described in the schedule to the judges summons with all documents of title in his possession to the Official



Assignee.

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(d) Application No. 47 of 2024 has been filed seeking to permit the Official Assignee to sell the property described in the schedule to the judges summons in public auction and sale proceeds rateably divided amongst the General Body of Creditors or for such other reliefs in the circumstances of the case.

(e) Application No. 48 of 2024 has been filed seeking to grant an order of interim injunction restraining the second respondent, her men, agents, representatives or any other person acting under her or authorized by her, from encumbering, alienating or otherwise dealing with the property morefully described under the schedule to the judges summons.

2. By order dated 02.08.2024, this Court has relegated the matter for recording of evidence before the learned Master by also recording that there has been no representation on behalf of the respondents, which shows that they have no interest in contesting the matter. The evidence was also recorded by the learned Master on 29.08.2024 and PW1 was examined on the side of the Official Assignee and has marked Exs.A1 and A2. Even during the time of recording, there has been no representation on the side of the respondents and therefore,



the evidence has been closed.

3. I have perused the materials available on record and also the evidence of PW1. The evidence would speak that the first respondent was adjudicated as insolvent on his own petition by order dated 13.07.2023. Pursuant to the order of adjudication, the statement of the first respondent was recorded on 17.08.2023. In the said statement, the insolvent had admitted to have transferred the property in favour of the second respondent, but had not mentioned such transfer in his petition. Even though it is the case of the insolvent that the property was sold by him prior to the presentation of the petition, the witness had categorically spoken that the petition was presented on 18.06.2023 and the first respondent adjudicated as insolvent on 13.07.2023 and the sale had taken place on 04.10.2021. The witness had further spoken that the said transaction is vitiated by fraud and he had also deposed that the purchaser of the property is one of the creditors of the insolvent. The liability of the assets of the insolvent as disclosed in his petition itself comes to nearly one crore. He had also deposed that the sale consideration that has paid by the second respondent was Rs.8,54,652/- while the value of the property based on the guideline as on the date of the sale was Rs.21,26,000/-.

4. Based upon the evidences recorded above, the learned Official Assignee



would contend that only to defeat the rights of the creditors, the sale transaction had been made in a fraudulent manner. Relying upon the valuation report and also the sale deed under which the insolvent had transferred the property to the second respondent she would contend that the property had been sold at a throw away price only to defeat the rights of the creditors and therefore, she would seek this Court to allow these applications as prayed.

5. I have considered the submissions made by the learned Official Assignee and also perused the evidence on record. From the sale deed that had been executed by the first respondent insolvent in favour of the second respondent, it could be seen that the same had been sold on 04.10.2021 for a sum of Rs.8,54,652/-. Admittedly, the petition under the Act had been made on 18.06.2023 and the first respondent had been adjudicated as insolvent on 13.07.2023.

6. Section 55 of the Insolvency Act protects only any transfer by the insolvent for a valuable consideration that too, prior to the date of adjudication. In the present case, from the sale document executed by the first respondent insolvent in favour of the second respondent was for a value of Rs.8,54,652/-. The market value of the property was assessed at Rs.21,26,000/- which has also



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been marked as Ex.A2.

7. In view of the same, I find that the sale had not taken place for a valuable sale consideration. It is also to be noted that the witness has deposed that the second respondent, who had purchased the property, was also a creditor to the insolvent. These facts only draw me to the conclusion that this sale is not a bonafide sale and seems to have been made with an intent to defraud the admitted creditors of the insolvent.

8. For the aforesaid reasons, I am inclined to allow the applications.

09.09.2024

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