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A.No.184 of 2024

Appln.No.184 of 2024

in

I.P.No.46 of 2023

**RESERVED ON
19.08.2024**

**PRONOUNCED ON
03.10.2024**

K.KUMARESH BABU.,J

ORDER

This Application had been filed to seek this Court to annul the adjudication order passed on 02.02.2024 in I.P.No.46 of 2023, on the file of this Court.

2. Heard Mr.V.Raghavachari, learned Senior counsel appearing for M/s.Abiramee, learned counsel appearing for the applicant, Mr.K.Balamurali, learned counsel appearing for Mr.Shiva Kumar and Mr.Suresh, learned counsels for the first respondent and Mrs.C.B.Meena, Official Assignee appearing for the second respondent.

3. The learned Senior counsel appearing for the applicant would submit that the present insolvency petition itself would have to be struck off for the simple reason that the insolvency notice had been issued upon which the insolvency proceedings stirred from, was taken on file, when a



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Civil Revision Petition filed by the applicant was pending adjudication.

He would submit that originally the respondent/petitioning creditor had filed a Suit in O.S.No.4109 of 2016 under Order XXXVII of CPC and a petition for leave to defend was also filed by the applicant. The said application came to be dismissed on 15.07.2019 and on the very same day, a judgment and decree was passed against the applicant. Since the leave to defend petition was dismissed, the applicant had also preferred Civil Revision Petition in CRP.No.1084 of 2020. In the interregnum, an insolvency notice was filed by the respondent/petitioning creditor and the same was numbered in the month of July 2021 as I.N.No.2 of 2021. When the Insolvency notice was listed before the learned Master, it was adjourned in view that this Hon'ble Court had granted stay in Civil Revision Petition filed by the applicant. The Civil Revision Petition came to be dismissed on 28.06.2023 and the insolvency notice was ordered by the learned Master on 21.09.2023. On 17.10.2023, the applicant had received the notice in I.N.No.2 of 2021. A Civil Miscellaneous Petition filed by the applicant to restore the Civil Revision Petition was dismissed on 20.11.2023 and the present Insolvency Petition was filed in November 2023 and was ordered by this Court on



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24.11.2023. This facts came to the knowledge of the applicant only on 01.01.2024, when the applicant had received the notice in the Insolvency Petition. Thereafter, the applicant was declared as 'insolvent', as he had not appeared for hearing before the Insolvency Court. A further CMP.No.27645 of 2023, to restore the Civil Revision Petition was filed and the same was dismissed by holding that the applicant had been declared as 'insolvent' and the proceedings cannot be proceeded at the instance of the applicant without the Official Assignee being a party to the proceedings. Hence, the present application had been filed.

4. He would further submit that the numbering of the insolvency notice itself was a fallacy, since the judgment and decree which the applicant suffered, had not attained finality in view of the Civil Revision Petition filed by the applicant, in which also a stay had been granted. He would submit that for the medical reasons of his father-in-law, he was to be away from Chennai, and therefore, he was not able to either appear or engage a counsel, when he had been in receipt of the notice in the Insolvency Petition on 01.01.2024. The applicant is always willing to settle the amount, if found right and not otherwise. It is his case that the



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entire amount had been paid to the respondent and when his liability is adjudicated, he is willing to pay the amount. He would submit that the entire insolvency proceedings had been initiated on bad faith. He would also contend that the respondent/petitioning creditor cannot usurp the powers of this Court under the Insolvency Act to coerce the applicant through an application without approaching the Civil Court for executing the decree. For all these reasons, he would request this Court to annul the order of adjudication.

5. Countering his arguments, the learned counsel appearing for the first respondent would submit that the applicant had been abusing the process of this Court by taking out unnecessary application to thwart the insolvency proceedings. Firstly, he would submit that there is no reason that had been attributed by the applicant as to why he had allowed the revision filed by him to be dismissed for non-prosecution. He would further submit that the Civil Miscellaneous Petition filed by the applicant to restore the Civil Revision Petition was dismissed as early as on 28.06.2023 that too for non-prosecution. The applicant was aware of the insolvency proceedings, as he himself admits the receipt of the notice in



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the insolvency petition as early as on 01.01.2024. When the matter was listed on 12.01.2024, there was no appearance on the side of the applicant, since his name was not printed in the cause list, this Court had given direction to print the name of the applicant in the cause list and his name was reflected in the cause list. Thereafter, Insolvency Petition was listed on 02.02.2024 and by a detailed order, the applicant was declared as 'Insolvent'. Subsequently, the application again to restore the Civil Revision Petition along with condone delay application was filed. In the said application according to him, the applicant cannot be heard to say that he was not aware of the proceedings as a diligent litigant. The applicant ought to have verified the further proceedings of the Insolvency Petition that too when the Insolvency Petition was listed as per the notice before the date of filing the CMP. He would submit that having had the knowledge of the insolvency petition, a CMP had been filed to condone the delay to restore the Civil Revision Petition without impleading the Official Assignee and therefore, the same had also been dismissed. Without taking any steps to implead the Official Assignee in the said proceedings, the applicant cannot now come and press before this Court for annulment of adjudication. He would further submit that there is no



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provision to annul the order of adjudication of the applicant on the grounds raised by the applicant. He would submit that only if the Court comes to a conclusion that he ought not to have been adjudged insolvent or if he proves to the satisfaction of the Court that the debts of the insolvent have been paid in full, only then there can be an order of annulment. In the present case, he would submit that as of today, there is a decree, which indicates that the applicant is in debt to the respondent and even in his affidavit, he had categorically admitted that he would be paying the liability after proper adjudication. Such a stand cannot be indicated by the applicant, as firstly when the insolvency notice was issued, the proceedings in the same was adjourned awaiting the orders of the Civil Revision Petition, only after the CRP was dismissed, the insolvency notice was ordered by the learned Master and the attempt was made by the respondent to restore the Civil Revision Petition was also dismissed and only thereafter, the Insolvency Petition was entertained by this Court. He would submit that the Civil Revision Petition and also the CMP to restore the revision were dismissed for default, which would itself indicate that the applicant is trying to prevent the respondent from proceedings in the insolvency notice and the petition of which he had



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received the notice. Therefore for the conduct of the applicant, the learned counsel for the first respondent prays this Court to reject the Application.

6. Heard the rival submissions made by learned counsels appearing on either side and perused the materials placed on record.

7. It is an admitted case that in a suit filed under Order XXXVII of CPC, a judgment and decree had been made against the applicant in favour of the respondent. The Civil Revision Petition which had been filed as against the grant of leave had also been dismissed by this Court for non-prosecution. The CMP filed to restore the CRP, again came to be dismissed for non-prosecution. There has been no reason that had been put forth by the applicant for the negligence in prosecuting both the Civil Revision Petition and the Civil Miscellaneous Petition. Even though he has attempted to substantiate his absence before this Court in the instant Insolvency Petition by contending that his father-in-law had been medically invalidated and for his medical treatment, the applicant had



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been away from Chennai, for which he was neither able to enter appearance nor engage a counsel, when this Court had passed orders adjudicating the applicant as 'insolvent', he had not produced any documents whatsoever of the predicament, which made him not to appear before this Court. From the case records, it could be seen that the service of notice on the applicant had been recorded by this Court on 12.01.2024 and thereafter, the Insolvency Petition to be listed on 19.01.2024, when this court directed to print the name of the applicant in the cause list. Again when the matter was listed on 02.02.2024, the applicant was not represented and therefore, this Court had passed an order of adjudication. When an order of adjudication had been passed, this Court can invoke the power for annulment, only if it is found that the insolvency proceedings ought not to have been initiated or ought not to have been adjudged insolvent or when it is proved to the satisfaction of the Court that the debts of the insolvent had been paid in full.

8. In the present case, the applicant had been adjudged insolvent in view of the decree that had been passed against him and the demand made by the respondent for payment of the decreetal amount. Therefore,



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the first limb of Section 35 of the Provincial Insolvency Act, 1920, which indicates that the order of adjudication of insolvent ought not to have been passed, cannot be applicable to the present facts of the case.

9.Secondly, the applicant himself has admitted in his affidavit filed in support of the application that he is willing to pay only on proper adjudication. Even though the applicant had filed a revision as against the order refusing leave to defend, no independent appeal had been filed against the judgment and decree. The reason given by the learned Senior counsel appearing for the applicant that if the revision is entertained in favour of the applicant, the judgment and decree would also fall. On perusal of the present facts of the case, it is evident that the applicant has not diligently prosecuted the Civil Revision Petition and therefore, I am not satisfied with the reasons given by the learned Senior counsel for not filing an appeal against the judgment and decree that was passed as early as in the year 2019. Therefore, the second limb also cannot be made applicable. It is further to be noted that an adjudication of person as 'insolvent' is an order in rem and therefore, when such an adjudication has been made, an annulment at the instance of the insolvent



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can only be made, if the reason for adjudicating a person as 'insolvent' was not available. In the present case, I have already given a finding that the reason for granting an order adjudicating the applicant as insolvent was available, on the date when the adjudication was made. If that is so, only when all the debts of the insolvent has been paid in full, this Court can invoke the power under Section 35 to pass an order to annul. In the present case, I do not find any statement made by the applicant indicating that he had discharged all his debts in full.



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10. For the aforesaid reasons, I do not find any merits in the application and the Application is dismissed.

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Pre-Delivery Order in
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