Application (IP) No. 182 of 2024
in
I.P. No. 64 of 2005

K.KUMARESH BABU, J.

The present appication had been filed challenging the order of adjudication made by the Official Assignee on the Claim Petition filed by the applicant.

2. When the matter was taken up for hearing, a report had been filed by the Official Assignee indicating that an amount of Rs.68,77,871/- is available with the Official Assignee. The said report also indicates from the aforesaid amount, a sum of Rs.6,59,351/- had to be set aside for another secured creditors, viz., Canara Bank.

3. The learned counsel appearing on behalf of the applicant would submit that Canara Bank cannot be termed as secured creditor as the property was secured to the applicant, which has been sold by the Official Assignee for a sum of Rs.87,50,000/-. He would submit that the entire amount received by way of sale consideration from sale of secured asset to the applicant should be credited to the applicant since he has a judgment of the Debt Recovery Tribunal for a recovery of Rs.1,53,09,157/-. He would submit that the Canara Bank had a secured asset of a Flat at Keelkattalai, which had been sold only for

Rs.5,00,000/- and after adjusting the expenses incurred by the Official Assignee, Rs. 4,20,000/- had been paid to the said Canara Bank and therefore, they cannot further called to be a secured creditors.

4. The arguments of the learned counsel appearing for the claimant, in my view, cannot be countenanced for the simple reason, that when the properties of the insolvent had been subjected to the insolvent proceedings, whatever the amount that has been recovered by sale of assets of the insolvent, even through secured asset, would all have to be pooled in for distribution to the secured creditors first and thereafter, if any residuary is left, to the unsecured creditors.

5. Further, the report also envisages that Canara Bank had claimed a sum of Rs.7,83,438/- and a sum of Rs. 7,29,224.38 had been admitted to be the claim amount by order of the Official Assignee. From and out of the same proceedings of the said secured assets, Rs.4,20,000/- had been paid to the Canara Bank and thereafter, for the remaining sum of Rs. 3,09,224 Canara Bank was treated as an unsecured creditors.

6. Since the present amount admittedly available with the Official Assignee is only a sum of Rs.68,78,871/-, being a secured creditors the applicant would be entitled for the receipt of the said amount. Even though it had been originally adjudicated to be entitled only to a sum of Rs.23,74,876/- with 6% per annum from the date of adjudication till the date of relealization.

7. In view of the aforesaid findings and reasonings, I am of the view that the claimant would be entitled to receive the said amount in the hands of the Official Assignee as being a secured creditors. Accordingly, the application stands allowed to the extent as indicated above and the applicant would be entitled to the said amount, after deducting the amounts for expenses and setting apart the amounts of capital gain tax and the application is disposed of on the aforesaid terms.

19.08.2024

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