



I.P.No. 18 of 2024

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM

DATED : 14.10.2024

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

I.P.No.18 of 2024

P.Shanmugam,
S/o.Mr.Periyanayagam,
Residing at No.A-41, Garden City Apartments,
No.318, Valluvar Kottam High Road,
Nungambakkam, Chennai 600 034. ... Petitioning Creditor

Vs

S.Mythili,
W/o.Saravanan,
Flat No.F-25, Nageswara Road,
Nungambakkam,
Chennai 600 034. ... Debtor

PRAYER: Insolvency Petition filed under Section 9, 10, 11, 12 and 13 of the
Presidency Towns Insolvency Act, 1909 and Order III of the Insolvency Rules,
1958, to

- (a) to treat this petition as urgent;
- (b) to adjudicate the debtor as insolvent
- (c) to direct that the estate of the Debtor be vested in the Official Assignee
of Madras, for the benefit of the general body of creditors of the Debtor;



I.P.No. 18 of 2024

provide costs to the petitioner from and out of estate;

(d) to order that the costs of this petition be paid by the Official Assignee of Madras, from and out of the estate of the Debtor to the Petitioning Creditor;

(e) to pass such other or further order.

For Petitioning Creditor : Mr.J.Balagopal

For Debtor : No Appearance

ORDER

This instant Insolvency Petition had been filed seeking to declare the respondent as insolvent.

2. After a notice being issued, the respondent has also entered through his counsel. But, however in a subsequent proceedings, time had been taken by the learned counsel for respondent for filing counter. However, today, when the matter had been taken up for hearing, there was no representation on the side of the respondent.

3. The learned counsel for the petitioner would contend that a suit on O.S.No.794 of 2022 had been decreed in favour of the petitioner on 18.07.2023.



I.P.No. 18 of 2024

The petitioner had preferred an application in I.A.No.4 of 2024. A notice of which was returned with an endorsement 'refused'. Thereafter, on taking out a service by way of substituted service, this Court by an order dated 18.04.2024 ordered the same. In spite of the same, the respondent/ debtor had not paid the amount and hence, he had filed the present application.

4. Even though, there was no appearance on the side of the respondent, a counter statement had been filed along with the list of documents indicating that the respondent had preferred an application in I.A.No.1 of 2023 and had stated that the respondent is not the debtor and that she is a tenant to the petitioner and due to the COVID pandemic, rental arrears have accumulated. Therefore, counsel for the respondent had prayed that the I.P. may be dismissed.

5. She would also contend that she had filed a C.M.A. against the fair and decreetal order made in an interlocutory application in the subsequent suit and the same is pending consideration by this Court.

6. Heard the learned counsel for petitioning creditor and perused the



I.P.No. 18 of 2024

materials available on records.

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7. From the counter affidavit filed by the respondent it could not be seen that there is no statement that the respondent having filed an appeal against the judgement and decree made in O.S.No.794 of 2022. Therefore, it is clear that the respondent wants to wriggle out of the liability under the judgment and decree and hence, is evading payment to the petitioner.

8. Accordingly, this Court is inclined to pass the following orders:

- i) This Insolvency Petition is allowed.
- ii) The respondent/debtor is hereby adjudicated as insolvent.
- iii) This Court directs that the estate of the respondent/debtor be vested in the learned Official Assignee of Madras.
- iv) The petitioning creditor is directed to deposit a sum of Rs.5,000/- with the learned Official Assignee and the said amount shall be paid by the learned Official Assignee, from and out of the estate of the respondent/debtor to the petitioning creditor.



I.P.No. 18 of 2024

14.10.2024

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Index :Yes/No

Speaking Order/ Non-Speaking Order

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I.P.No. 18 of 2024

K.KUMARESH BABU, J.
Gba

I.P.No. 18 of 2024

14.10.2024

6 / 6