A(IP).No.153 of 2023
in
I.P.No.16 of 2014

C.SARAVANAN, J.

This application has been filed by the applicant/petitioner for discharging the applicant from the insolvency proceedings.

2. The applicant/petitioner himself had originally filed a petition for declaring himself as an insolvent. The applicant/petitioner was adjudged as an insolvent on 13.02.2014. Thereafter, his sworn statement was recorded before the Office of the Official Assignee on 14.02.2014 wherein, the applicant/petitioner/insolvent has stated that he was the sole proprietor of a business that was being carried out under the Name and Style of M/s.Manilal & Company at Sowcarpet, Chennai - 600 079 and was dealing with tailoring materials, selling it both in wholesale and in the retail sale market.

3. After the applicant/petitioner was adjudged as an insolvent, the applicant/petitioner also filed a schedule of affairs. It appears that the applicant/petitioner had borrowed a sum of Rs.32,67,000/- from 67 unsecured creditors. So far, about 11 unsecured creditors have filed their

claim statements before the Office of the Official Assignee for a total sum of Rs.47,91,326/-.

4. The learned counsel for the unsecured creditors no.40,46 and 47 appears through video conferencing and opposes this application. He would submit that the applicant/petitioner/insolvent has paid only a sum of Rs.1,857/- and Rs.88,051/- to the unsecured creditor no.40 and a sum of Rs.26,11,334/- to the unsecured creditor no.46 and a sum of Rs.16,57,779/- to the unsecured creditor no.47.

5. It is submitted that the question of discharging the applicant/petitioner/insolvent under Section 39 of the Presidency Towns Insolvency Act, 1909 does not arise as the applicant/petitioner/insolvent has not paid minimum amount that is required under Section 39(1)(c) of the Presidency Towns Insolvency Act, 1909.

6. The learned counsel for the applicant/petitioner/insolvent has placed reliance on the following decisions:

(i) **T.P.Kunhiraman, Proprietor, International Typewriter**

Emporium Vs. **The Official Assignee, Madras**, 1982 SCC Online Mad 86.

(ii) **N.M.Rajesh** Vs. **The Official Assignee, High Court, Madras**, 2014 (6) CTC 423.

7. The second mentioned decision has placed reliance on the decision of the Hon'ble Division Bench of this Court rendered in first mentioned case and in **C.D.Desikachari** Vs. **Official Receiver, Chingleput**, AIR (30) 1943 Mad.26 (DB), wherein it was held as under:-

> ***"6. The principles laid down by our High Court in the judgments referred to above are that -***
>
> ***(i) The proceedings in insolvency shall be dealt with as expeditiously as possible and the Creditors shall be satisfied as expeditiously as possible from the property of the insolvent and that the insolvent shall then be free to start life again unburdened by his debts.***
>
> ***(ii) The law of bankruptcy does not expect that the debtor should always be the slave of the Creditors, but he has to be released at the appropriate time by taking into consideration several factors referred to in Section 39 of the Presidency Towns Insolvency Act.***
>
> ***(iii) It is the discretion of the Court to refuse discharge or suspend discharge for a specified time or grant conditional discharge, having regard to totality of all the factors enumetated in Section 39(2).***
>
> ***(iv) The absolute Order of Discharge does not put an end of the administration of the insolvent's property.***

> ***(v) It is for the Court to decide whether the property should, even after annulment of adjudication, continue to vest with the Official Receiver or not. Whether the administration of the particular insolvency is brought to an end by the Court's Order of granting the absolute Order of Discharge and is depending upon the nature of the Order made.***
>
> ***(vi) Once there is an unconditional absolute Order of Discharge, the Official Receiver has no longer power to bring any of the properties of the ex-insolvent to sale and any dealing of the property by the Official Receiver in a given situation is against law and is liable to be set aside.***
>
> ***The relief sought for herein, if viewed in the light of the principles drawn form the Authorities cited above, the same would compel this Court to grant the relief as sought for herein."***

8. The Official Assignee objects to the application. It is submitted that the applicant/petitioner/insolvent cannot be discharged under Section 38 of the Presidency Towns Insolvency Act, 1909. It is submitted that discretion under Section 38(2) of the Presidency Towns Insolvency Act, 1909 cannot be exercised in favour of the applicant in view of the misdemeanor of the applicant.

9. The Official Assignee has filed a report dated 25.08.2023. In the report, it has been stated as follows:-

"4. It is submitted that claim notices have been sent to all the creditors as shown by the insolvent in his schedule of affairs, on 13.03.2014 by RPAD. So far, 11 unsecured claims have been received by this office for a total sum of Rs.47,91,326/- and the said claims are pending for enquiry.

5. It is submitted that the insolvent has stated in his statement recorded before this office on 14.02.2014 that in the year 1992, he had started his own business as a sole proprietor in the name and style of M/s.Raj Interlinings at C.S.L.Complex, No.37, Reddy Raman Street, Sowcarpet, Chennai - 600 079. Since the aforesaid shop was not sufficient to carry on business, he had taken another shop opposite to the old shop on rent, viz., at No.6, measuring 100 sq.ft. in the same complex in the year 1999. He has stated that in the year 2009, the landlord of the Shop No.6 demanded him to vacate the premises as he was to sell the shop. While so, to carry on business, the insolvent purchased the said shop bearing Shop No.6, measuring 100 sq.ft. at C.S.L.Complex, No.37, Reddy Raman Street, Sowcarpet, Chennai - 600 079, for a sale consideration of Rs.1,80,000/-. In the year 2012, he had sold the said shop to one Mohanlal for Rs.1,80,000/- but has not furnished copy of sale deed for the said property before this office.

6. It is submitted that Public Examination of the insolvent was held and completed on 04.01.2023, facilitating the creditors to examine the insolvent as to his conduct, dealing and property. None of the creditors questioned the insolvent concerning his affairs and the causes of his failure. <u>Only the Official Assignee took part in the Public Examination</u>.

7. It is submitted that the present application is filed by the insolvent to grant him unconditional discharge from the insolvency proceedings.

8. It is submitted that a sum of <u>Rs.10,950/-</u> was realized towards the value of household articles of the insolvent. A sum of Rs.15,000/- was realized on sale of movables kept in the business premises of the insolvent. A sum of <u>Rs.59,741/-</u> was realized towards surrender value of LIC policy. A sum of <u>Rs.1,594/-</u> was received from IDBI Bank, Parrys, Chennai - 600 001 towards monies in Bank. After making payment of 7%

Government Commission and reserving for administrative expenses, as of now, a sum of Rs.79,000/- is available in this estate.

9. It is submitted that the aforementioned shop was sold by the insolvent to one Mohanlal, vide Document No.711 of 2012 dated 21.06.2012, on the file of Sub Registrar Office, Sowcarpet, Chennai - 600 001. Since the said transaction took place within 2 years from the date of adjudication passed by this Hon'ble Court on 13.02.2014 in I.P.No.16 of 2014, a letter dated 24.11.2022 was addressed to the Sub Registrar, Sowcarpet, Chennai, and obtained Encumberance Certificate and certified copies of documents which confers title for the subject property. After ascertaining the title of the property, Valuer Er P.Anbarasan was engaged to value the subject property. As per the valuation Report submitted by Valuer Er P.Anbarasan, the shop was valued at Rs.6,00,000/- as on 07.11.2014.

10. It is submitted that the vesting rights of the Official Assignee has been duly incorporated in the Encumberance Certificate vide Document No.11 of 2018 dated 12.11.2018 and the property is to be brought for auction sale.

11. It is submitted that in the event of admission of 11 claims for a sum of Rs.47,91,326/- with the available amount of Rs.79,000/-, a dividend at the rate of 0.01 paise in a rupee alone can be paid. The insolvency estate is not in a position to declare dividend of at least 25 paise in a rupee as provided under section 39(2)(a) of Presidency Towns Insolvency Act, 1909, which is a pre-requisite for granting discharge. Hence, the application for discharge is liable to be dismissed."

10. I have considered the arguments of the learned counsel for the applicant, the Official Assignee and the unsecured creditor nos.40,46 and 47.

11. It is clear from a reading of Section 39(1) of the Presidency Towns Insolvency Act, 1909, the Court shall refuse the discharge in all

cases where the insolvent has committed any offence under this Act, or under section 421 to 424 of the Indian Penal Code (45 of 1860), and shall, on proof of any of the facts hereinafter mentioned, either---

(a) refuse the discharge; or

(b) suspend the discharge for a specified time; or

(c) suspend the discharge until a dividend of not less than four annas in the rupee has been paid to the creditors; or

(d) require the insolvent as a condition of his discharge to consent to a decree being passed against him in favour of the official assignee for any balance or part of any balance of the debts provable under the insolvency which is not satisfied at the date of his discharge; such balance or part of any balance of the debts to be paid out of the future earnings or after-acquired property of the insolvent in such manner and subject to such conditions as the Court may direct; but in that case the decree shall not be executed without leave of the Court, which leave may be given on proof that the insolvent has since his discharge acquired property or income available for payment of his debts.

12. Sub-Section 1 to Section 39 thus makes it clear that the Court has wide discretion.

13. In this case, the dividend that is payable is only 0.01 paise in rupees and therefore there is no scope for exercising discretion in favour of the applicant/petitioner/insolvent.

14. Therefore, the request of the applicant/petitioner/insolvent for being discharged from the insolvency proceedings is liable to be rejected and is accordingly rejected.

15. This Application stands dismissed.

05.01.2024

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C.SARAVANAN, J.

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