THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2025

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Appln. No.393 of 2024
in
I.P. No.46 of 2023
and
I.P. No.46 of 2023

A. No.393 of 2024

S. Ramesh Krishnan ... Applicant

Versus

The Official Assignee,
High Court, Madras ... Respondent

For Applicant : Mr.K. Balamurali
For Respondent : Mr. Raghavachari
Senior Counsel
for Mrs.V. Srimathi
- (for insolvent)

Mrs.C.B. Meena
Official Assignee

ORDER

This application has been filed seeking to set aside the order passed by the Official Assignee, dated 12.11.2024 in Claim No.38 of 2024.

2. Under the impugned order, the Official Assignee has admitted the claim of the applicant at Rs.26,37,883/-. Unsatisfied with the said determination, the applicant has filed this application.

3. The applicant is the petitioning Creditor and the respondent is the Official Assignee, in this application viz., Appln No.393 of 2024. In the Insolvency Proceedings, viz., I.P. No.46 of 2023 the applicant is the petitioning Creditor and the respondent / Debtor is the insolvent. Henceforth, the parties are referred to as applicant, Official Assignee and the respondent/Insolvent.

4. The applicant claims that the determination made by the Official Assignee is not in accordance with the judgment and decree passed in favour of the applicant against the insolvent. According to the applicant as per the decretal debt, 24% p.a. interest is payable by the insolvent, but however under the impugned order, the Official Assignee has calculated interest only at 6% p.a. by applying Entry 23 to Schedule 2 of the Presidency-towns Insolvency Act, 1909. According to the applicant, once the insolvent has agreed to pay interest at 24% p.a. and a judgment and decree has also been passed by a Civil Court awarding interest at the

rate of 24%, Entry 23 to Schedule 2 of the Presidency-towns Insolvency Act, 1909 shall not apply. According to the applicant, if the determination was made by the Official Assignee in accordance with the judgment and decree passed in favour of the applicant, the Official Assignee ought to have determined the amount payable by the insolvent to the applicant at Rs.36,88,147/- in respect of Claim No.38 of 2024, instead of erroneously determining the same at a lesser sum of Rs.26,37,883/-.

5. A counter has been filed by the respondent / insolvent before this Court denying the contentions of the applicant. The respondent / insolvent has submitted that only in accordance with the Presidency-towns Insolvency Act and its Rules, the Official Assignee has determined the amount payable by the respondent / insolvent to the applicant. He has also stated that instead of filing an Execution Petition, the applicant has filed this insolvency petition to harass the respondent. The Official Assignee has also submitted a report to this application and she has reiterated that only in accordance with the Presidency-towns Insolvency Act, 1909, the determination was made by the Official Assignee under the impugned order.

6. The learned counsel for the applicant in support of his contention that determination of the amount due and payable by the respondent / insolvent to the applicant has been erroneously done, has relied upon a decision rendered by a learned Single Judge of this Court, dated 10.01.2022 passed in Appln. No.97 of 2021 in I.P. No.13 of 2007 in the case of ***Shri Kamakshi Kaingarya Trust and others vs. S. Gayathri*** and would submit that since the respondent / insolvent has agreed to pay interest at 24% p.a. and the Civil Court has also passed a decree directing the insolvent to pay interest at 24% p.a., the question of applying Entry 23 to Schedule 2 of the Presidency-towns Insolvency Act, 1909 does not arise. He would submit that in cases where the insolvent has agreed to pay interest at 24% p.a., Rule 23(1) of the 2nd Schedule shall stand attracted and the respondent / insolvent is liable to pay interest at the agreed rate i.e., 24%.

7. On the other hand Mr.V. Raghvachari, learned Senior Counsel appearing for the respondent / insolvent would at the outset submit that being the only creditor, the applicant ought to have filed an Execution Petition instead of filing an Insolvency Petition. He would also rely upon Entry 23 to Schedule 2 of the Presidency-towns Insolvency Act, 1909 and would submit that the Official Assignee has rightly applied the

said rule and has rightly determined the amount due and payable by the respondent / insolvent to the applicant.

8. The learned Senior Counsel appearing for the respondent / insolvent also drew the attention of this Court to a decision rendered by the Hon'ble Supreme Court in the case of ***State of Punjab vs. Rattan Singh, reported in AIR 1964 SC 1223*** and would submit that in the said decision, it has been made clear that an Insolvency Court can go behind a decree and probe into the genuineness of the debt on which it is founded and it is not necessary to consider the contention as to whether the insolvency Court is a civil court or not for the purpose of Section 11 of the Presidency-towns Insolvency Act, 1909**.** Therefore he would submit that since the Official Assignee has determined the amount due and payable by the respondent / insolvent to the applicant only as per the provisions of the Presidency-towns Insolvency Act, 1909 and its rules and has found that only 6% interest is payable, the question of interfering with the order of the Official Assignee does not arise.

9. The learned Senior Counsel appearing for the respondent / insolvent also relied upon a decision of the learned single Judge of this Court in the case of ***T.T.V. Dhinakaran vs. Dy. Director, Enforcement Directorate, Shastri Bhawan, Chennai – 34 reported in 2003 – 3***

LW.99. Relying upon the said decision, the learned Senior Counsel appearing for the respondent / insolvent would submit that insolvency proceedings have to be construed with great strictness in favour of the Debtor. According to him as seen from the said decision, the petition filed under Section 9(2) of the Presidency-towns Insolvency Act, 1909 by the applicant therein was held to be an abuse of the process of law.

Discussion :

10. Admittedly, the respondent / insolvent who was declared as an insolvent pursuant to the orders passed by this Court had only one claim against him viz., the claim of the applicant before this Court. The applicant is an unsecured creditor, who has obtained a judgement and decree against the respondent / insolvent. He has chosen to initiate insolvency proceedings instead of filing an Execution Petition to execute the judgment and decree passed in his favour against the respondent / insolvent. Admittedly, out of the determined amount adjudicated by the Official Assignee under the impugned order, the respondent / insolvent has paid Rs.26,00,000/- and the same has also been received by the applicant. As per the determined amount, there remains a balance of Rs.37,883/-, due and payable by the respondent / insolvent to the applicant. The said fact is also not disputed by the learned counsel for

the applicant. However, the only dispute raised by the applicant in this application is that the determination made by the Official Assignee is not in accordance with the judgment and decree passed in favour of the applicant against the respondent / insolvent. The Official Assignee has applied Entry 23 to Schedule 2 of the Presidency-towns Insolvency Act, 1909 for determining the interest payable by the respondent / insolvent to the applicant. However, the said determination is disputed by the applicant through this application. According to the applicant only in cases, where the respondent / insolvent has not agreed to pay interest at 24% or no specific rate of interest has been agreed upon, Entry 23 to Schedule 2 of the Presidency-towns Insolvency Act, 1909 shall come into play. The Hon'ble Supreme Court in the case of ***State of Punjab v. Rattan Singh,*** referred to supra, has made it clear in paragraph No.36 of the said judgment that an Insolvency Court can go behind a decree and probe into the genuineness of the debt on which it is founded and it is not necessary to consider the contention as to whether the insolvency Court is a civil Court or not for the purpose of Section 11 of the Presidency-towns Insolvency Act, 1909. Only by exercising the powers vested with the Official Assignee, the Official Assignee has determined, the amount payable by the respondent (insolvent) to the applicant under the

Presidency-towns Insolvency Act, 1909 by applying Entry 23 to Schedule 2 of the Presidency-towns Insolvency Act, 1909 and has awarded interest at 6% p.a. though the applicant has claimed 24% p.a.

11. Admittedly, the Official Assignee only based on the documents placed on record as well as by applying the provisions of the Presidency-towns Insolvency Act, 1909 has determined the amount due and payable by the respondent / insolvent to the applicant. Admittedly, no oral and documentary evidence was placed on record before the Official Assignee, while determining the amount due and payable by the respondent / insolvent to the applicant.

12. The applicant is only an unsecured creditor. The suit filed by the applicant against the insolvent which culminated in the passing of the judgment and decree in favour of the applicant against the insolvent is a summary suit. The insolvent had filed an application seeking leave to defend the said suit. But however, the said application was dismissed and thereafter the judgment and decree came to be passed by the Civil Court in favour of the applicant against the insolvent. The applicant has chosen to file the insolvency proceedings instead of filing an Execution Petition.

13. It is also an admitted fact that the applicant is the only claimant against the insolvent and the same is also confirmed through the report filed by the Official Assignee before this Court. Under Entry 23 to Schedule 2 of the Presidency-towns Insolvency Act, 1909, the interest payable is 6% p.a. The applicant contends that the determination of the amount by the Official Assignee is an incorrect determination. This Court is now hearing an appeal through this application questioning the determination of the amount due and payable by the insolvent to the applicant. The Official Assignee adjudicates the amount only based on the documents placed on record by applying the provisions of the Presidency-towns Insolvency Act, 1909. The Official Assignee has applied Entry 23 to Schedule 2 of the Presidency-towns Insolvency Act, 1909 for coming to the conclusion that the interest payable by the insolvent to the applicant is 6%. The same is disputed by the applicant who would contend that the Official Assignee has erroneously applied Entry 23 to Schedule 2 of the Presidency-towns Insolvency Act, 1909.

14. The learned counsel for the applicant also relied upon a judgment of the Division Bench of this Court in the case of ***T.R.Bhuvaneshwari vs. Punjab National Bank Assets Recovery Management Branch and another reported in 2016 8 MLJ 129*** and has

submitted that in accordance with the said judgment, the applicant is entitled for the contractual rate of interest and since the applicant is having a decree for the said sum, the Official Assignee ought to have determined the amount only in accordance with the judgment and decree passed in favour of the applicant against the insolvent. However, as seen from the aforesaid decision, the Division Bench was dealing with a case involving a secured creditor, whereas in the case on hand, admittedly the applicant is an unsecured creditor. Therefore, this Court is of the considered view that the Division Bench judgment relied upon by the learned counsel for the applicant has no bearing for the facts of the instant case. Unless and until there has been a grave error committed by the Official Assignee in determining the amount due and payable by the insolvent to the applicant, the question of interfering with the order of the Official Assignee by this Court, does not arise that too when, the applicant has got other remedies to redress his grievance by filing an Execution Petition with regard to the disputed amount viz., Rs.12,88,000/-.

15. Since the contentions of both the parties are debatable, this Court while deciding an appeal filed against an order passed by the

Official Assignee determining the amount due and payable by the insolvent to the applicant cannot adjudicate this application in favour of the applicant as it requires further evidence, which may include, oral evidence which can be let in only if at all before the Executing Court and not before the Official Assignee.

16. The decision of the learned Single Judge relied upon by the learned counsel for the applicant viz., ***Shri Kamakshi Kaingarya Trust and others vs. S. Gayathri*** has also got no bearing to the facts of the instant case since the said application viz., Appln. No.97 of 2021 was not an application challenging the determination of the amounts by the Official Assignee. But the said application was filed seeking to condone the delay of 4783 days in filing an application seeking to set aside the ex-parte order of adjudication of the applicant in the said application as an insolvent, dated 21.07.2008. In the said decision, the learned Single Judge of this Court was not examining an order passed by the Official Assignee adjudicating the claim of a Creditor. Therefore, the said decision has got no bearing for the facts of the instant case. When there is no glaring error committed by the Official Assignee which shocks the conscience of this Court, the question of interfering with the order of the Official Assignee adjudicating the claim of a Creditor does not arise.

Therefore, this Court does not find any merit in this application. Accordingly, this application stands dismissed.

17. However, since the respondent / insolvent has to still pay a sum of Rs.37,883/- as per the determined amount adjudicated by the Official Assignee through the impugned order, the said amount will have to be paid to the applicant within a time frame to be fixed by this Court. Accordingly, this Court directs the respondent / insolvent to pay the aforesaid sum to the applicant, within a period of one week from the date of receipt of a copy of this order.

18. Since the applicant claims further sums of money as per the decretal debt obtained by the applicant against the respondent, the applicant is granted liberty to file an Execution Petition for recovery of the said sum from the insolvent and liberty is also granted to the insolvent to raise all objections, whenever such an Execution Petition is filed.

19. Since the petitioner is only an unsecured creditor and the respondent/insolvent having paid the amount determined by the Official Assignee under the impugned order and further the petitioner being the only claimant in the insolvency proceedings, the question of interfering with the order of the Official Assignee, which is a speaking order, does

not arise. Once the balance amount of Rs.37,883/- is paid by the respondent/insolvent to the Petitioning Creditor, Insolvency Petition viz., I.P. No.46 of 2023 shall stand closed.

28.07.2025

Index: Yes/ No
Speaking order / Non speaking order
Neutral citation : Yes / No
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ABDUL QUDDHOSE, J.

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