Reserved on	*26.06.2024*
Pronounced on	**02.08.2024**

Application (IP) No. 176 of 2017
in
I.P.No.25 of 2014

Dr. G. JAYACHANDRAN, J.
&
C. V. KARTHIKEYAN, J.

This application has been filed by the Official Assignee, High Court, Madras, under Sections 7, 36, 68 and 90 of the Presidency Town and Insolvency Act 1909 seeking a Judgment and Decree against the second respondent, Supreme Industries Private Ltd., having office at Andheri Ghatkopar Link Road, Chakala, Anderi (East) Mumbai Maharashtra, for a sum of Rs. 3,12,00,000/- together with interest at 18% p.a., from 30.04.2013 till date of realisation and for costs of the recovery proceedings.

2. In the report of the Official Assignee, it had been stated that on the basis of a petition filed on 10.03.2014 by a petitioning creditor, Chitra Desai,

the first respondent Arjunlal Sunderdas had been adjudicated as insolvent by order dated 21.04.2014. Necessary procedures consequent to such order had been undertaken by the Official Assignee. It had been further stated that the insolvent should have filed his schedule of affairs but did not file the same and did not also produce the books of accounts maintained by him. It was also stated that there were 257 claim petitions arising from the estate of Arjunlal Sunderdas to a total sum of Rs.117/- crores.

3. It had been further stated in the report that a Chartered Accountant Ranga Ramanujam was the auditor for Arjunlal Sunderdas and had prepared and filed his income tax returns. It had been stated that the auditor furnished the list of debtors and creditors. Thereafter, the Official Assignee engaged M/s. Annamalai Associates, Chartered Accountants to examine and verify the said list of debtors and creditors with the computer generated statements of accounts.

4. It had been stated that on verification of the list, it was found that the second respondent, Supreme Industries Private Limited had received a sum of

Rs.3.12/- crores from Arjunlal Sunderdas and that was shown as outstanding and due as on 13.03.2013. It had been stated that there were no transactions to prove discharge by the second respondent of that amount. It had been stated that even in the statement of accounts produced by the auditor, Ranga Ramanujam, the said amount of Rs.3.12/- crores was shown as due and payable by the second respondent to the estate of the insolvent, Arjunlal Sunderdas as on 21.04.2014.

5. It had therefore been contended by the Official Assignee that the second respondent was retaining the amount and was enjoying the benefit for such retention. It had been stated that on 07.04.2014, Arjunlal Sunderdas had issued a letter relating to the statement of debtors and creditors and in that letter also, the second respondent was shown as a debtor, as due and payable a sum of Rs.3.12/- crores to the estate as on 30.04.2013. It is under those circumstances that this application has been filed seeking a Judgment and Decree against the second respondent for the said sum of Rs.3.12/- crores together with interest at 18% p.a., from 30.04.2013 till date of realisation and also for costs of the proceedings.

6. A counter had been filed on behalf of the second respondent, denying and disputing every contention of the Official Assignee. It had been stated that the second respondent had never borrowed any amount from the insolvent, Arjunlal Sunderdas and that no amount is due and payable by them to the estate of the insolvent. It had been stated that the transaction between the insolvent and the second respondent was one of goods sold and delivered and consideration received. That transaction took place in the year 2008. It had been stated that the consideration was received by a demand draft dated 07.09.2008. It was therefore contended that the application is misconceived and any claim is barred by the law of limitation.

7. It had been further stated that the second respondent is a public limited company incorporated under the Companies Act 1956 with registered office at Mumbai. They are manufacturers of high quality plastic furnitures, material handling products, packing products and industrial components etc., having manufacturing units at several places in India including at Tamil Nadu. It is a private limited company and listed with the Bombay Stock Exchange

and the National Stock Exchange. It is one of the top 500 companies of the country by market capitalization.

8. It had been stated that a notice dated 13.04.2017 had been received from the office of the Official Assignee calling upon the second respondent to pay the amount of Rs.3.12/- crores. It was contended that in the year 2008, the second respondent had taken a decision to close down its factory premises at Pondicherry and had negotiated with M/s. A.R.A.P. Enterprises Private Limited, having with registered office at Chennai through its representative Mr.A.Prabakaran for the sale of land and building along with the machineries which were embedded to the ground and every other component. The total sale consideration for the land and building was determined at Rs.4,80,00,000/-. The consideration for the machineries/accessories was determined at Rs.3,00,00,000/-. With respect to the consideration for the machineries / accessories alone, M/s. A.R.A.P. Enterprises Private Limited had forwarded a demand draft bearing No. 53379 dated 07.08.2008 for a sum of Rs.3.12/- crores purchased in the name of the second respondent from Indian Bank, Ethiraj Salai Branch, Chennai. It had been stated that this amount included the Central Sales Tax component of Rs.12/- lakhs.

9. A further demand draft was forwarded by M/s. A.R.A.P. Enterprises Private Limited for a sum of Rs.4,24,50,925/- in the name of the second respondent for purchase of the land and building, after adjusting the initial advance of Rs.5,00,000/-. It had been contended that on 23.09.2008 Mr.A.Prabakaran, the representative of M/s. A.R.A.P. Enterprises Private Limited sent an E-mail to the second respondent requesting them to raise an invoice for the sale of accessories in the name of Arjunlal Sunderdas and to keep the original documents ready. It had been further stated that since the total sale consideration for the land, building and the accessories had been received, sale deed dated 29.08.2008 was registered as Document No. 5454 of 2009 in the office of the Sub Registrar, Villianur. On the same day, a sale invoice for accessories was prepared in the name of Arjunlal Sunderdas and it is claimed that possession of the entire Pondicherry unit was handed over to M/s. A.R.A.P. Enterprises Private Limited. It had been thus been stated that the transaction between the company and Arjunlal Sunderdas cannot be termed as a loan transaction. It had been contended that towards the receipt of the said sum of Rs.3.12 crores, the second respondent had sold the machineries which were fixed to the ground in the factory premises at

Puducherry. It was therefore contended that the second respondent is not due and liable to pay any amount to the Official Assignee.

10. It had been further contended that the list of debtors had been prepared only on the basis of a computer generated bank statement produced by the Auditor of Arjunlal Sunderdas. The names alone had been given and it had not been verified whether the second respondent was actually a debtor or not. It had therefore been contended that the application should be dismissed.

11. On examining the nature of the pleadings, the parties were directed to tender evidence.

12. Accordingly, on the side of the petitioner/Official Assignee, R.Padma, Sub Assistant Registrar in the office of the Official Assignee was examined as PW-1. She marked Exs. A-1 to A-5. Ex.A-1 is a letter from the Chartered Accountant to the Official Assignee dated 05.08.2015 enclosing the ledgers accounts of the debtors and the creditors of Arjunlal Sunderdas. Ex.A-2 is a letter from the counsel for the insolvent to the Official Assignee dated

07.04.2017. Exs. A-3 and A-4 are copies of invoice and notices exchanged between the counsels. Ex.A-5 is the statement of accounts in account No. 422156084 of Indian Bank for the period from 01.08.2008 to 31.08.2008.

13. On the side of the respondent, P.C.Somani, Chief Financial Officer was examined as RW-1. He had filed Exs. R1 to R11. Ex.R-2 is the photocopy of a Demand Draft for a sum of Rs.3,12,00,000/-, Ex.R-4 is the extract of E-mails received from Prabakaran, Ex.R-5 is the copy of the sales invoice dated 29.09.2008 for sale of accessories to M/s. A.R.A.P. Enterprises Private Limited and also the invoice raised in the name of Arjunlal Suderdas by the second respondent. Ex.R-6 is the copy of the sale deed dated 22.09.2008. Exs. R7, R8, R9 and R10 are correspondences exchanged between the parties. Ex.R-11 is the original Balance Sheet of the second respondent relating to the year ending 31.03.2009.

14. During the trial, the auditor Ranga Ramanujam was examined as

CW-1. He was cross examined on behalf of the Official Assignee and also on behalf of the second respondent. He had not produced any document.

15. Heard arguments advanced by Mr. K.V.Ananthakrushnan, learned counsel for the applicant/Official Assignee and Ms.R.T.Shyamala, learned counsel for the second respondent.

16. It is the contention of Mr.K.V.Ananthakrushnan, learned counsel for the Official Assignee that on an application filed by a creditor, the first respondent Arjunlal Sunderdas had been adjudicated as insolvent by an order dated 21.04.2014. The learned counsel stated that the insolvent did not co-operate during the course of investigation and did not hand over any material document also. He further contended that therefore the Official Assignee had to rely on the statement of accounts as maintained by the Bank to determine the creditors and debtors to the estate of the insolvent. Additionally, a letter was given by the insolvent wherein he had given a list of creditors and debtors. It was further contended that statement revealed that the second respondent had received a sum of Rs.3.12/- crores from Arjunlal Sunderdas. The learned

counsel pointed out that no discharge had been pleaded by the second respondent.

17. The learned counsel asserted that the explanation given by the second respondent that it was not a loan but rather a sale transaction cannot be countenanced by this Court. The learned counsel insisted that the transaction was a loan arising out of insolvency and that therefore, the law of limitation would not strictly apply. With respect to the explanation given by the second respondent that they wanted to sell the land and building and also the machineries which had been embedded to the earth and that the land and building were sold to M/s. A.R.A.P. Enterprises Private Limited and the accessories were sold to Arjunlal Sunderdas, the learned counsel for Official Assignee pointed out that there had been no delivery of the goods to complete the sale transaction of the machineries. It was therefore contended that the explanation given by the second respondent towards receipt of a sum of Rs.3.12/- crores from the insolvent was not a true statement.

18. The learned counsel further pointed out that the second respondent

had not denied or disputed receipt of the said amount, but only contended that for the said receipt, they had sold machineries to the insolvent. The learned Official Assignee pointed out that GST was not paid towards the said transaction and therefore, contended that the said explanation should be rejected by this Court. He pointed out that there were no transfer of goods but there was only transfer of money by way of a demand draft and receipt of the same had not been denied by the second respondent. It was also contended that no material had been produced independently for payment of tax for the sale of the machineries. It had also been contended that even in the sale deed for land and building, the machineries were not reflected as having been sold. It had been therefore argued that there was no sale of the machineries and that, the amount of Rs.3.12/- crores was received by the second respondent only as a loan.

19. Ms.R.T.Shyamala, learned counsel for the second respondent contended that the second respondent is a company with registered office at Mumbai having branches / factories across the country. They had a factory premises at Puducherry. They wanted to sell the land, the building and the

machineries which were available at that particular premise. They had entered into an agreement of sale with M/s. A.R.A.P. Enterprises Private Limited represented by one Prabakaran for such sale. The learned counsel pointed out that as directed by the said Prabakaran, a separate invoice was raised for sale of the machineries in the name of the insolvent and demand draft for Rs.3.12/- crores was received. The learned counsel stated that independently the land and building were sold to M/s. A.R.A.P. Enterprises Private Limited. It was therefore contended that the amount of Rs.3.12/- crores was received by the second respondent only towards sale of the machineries and not for any further purpose. It was therefore contended that the claim of the Official Assignee should fail. The learned counsel further pointed out that the claim had been made much after the stipulated period of limitation and that the claim is barred by the law of limitation. The learned counsel urged that the application should be dismissed.

20. We have carefully considered the arguments advanced and considered the materials available on records.

21. The points to be determined are:-

(i) Whether the sum of Rs.3.12/- crores received by way of demand draft by the second respondent and transferred from the bank account of the insolvent was received as a loan as contended by the Official Assignee or whether it was received as sale consideration for sale of the machineries in the factory premises of the second respondent at Puducherry?

(ii) Whether, if it is held that the amount was received as loan, the claim of the Official Assignee is barred by the law of limitation?

Point No.1:

22. This application has been filed by the Official Assignee calling upon the second respondent, Supreme Industries Ltd., with registered office at Mumbai, to pay to the estate of the insolvent Arjunlal Sunderdas a sum of Rs.3.12/- crores together with interest at 18% p.a., from 30.03.2013 till date of realisation.

23. It is seen from the records that originally, a creditor Chitra Desai

had filed I.P.No. 25 of 2014 seeking to declare the first respondent Arjunlal Sunderdas as an insolvent. Orders were passed on 21.04.2014 in the said petition adjudicating the first respondent as insolvent. As and from that particular date, the estate of the insolvent stood vested with the office of the Official Assignee. The estate included creditors and debtors, namely, amounts payable from and out of the estate and also receivable by the estate.

24. It is the contention of the Official Assignee that the second respondent was a debtor to the estate with liability to pay a sum of Rs.3.12/- crores together with accrued interest. It had been contended that this amount of Rs.3.12/- crores had flowed out of the bank account of the insolvent and therefore, the second respondent had received the amount only as loan. It has been contended that immediately on taking over of the estate of the insolvent, the Official Assignee had issued a demand notice to the second respondent and since there was refusal to pay, this application has been filed seeking a Judgment and Decree against the second respondent for the sum of Rs.3.12/- crores together with interest at 18% p.a., and for costs.

25. The explanation given by the second respondent is that they had a factory at Puducherry and they wanted to sell the land and building and the machineries available in the said factory premises. In this connection, they were able to identify a purchaser, M/s. A.R.A.P. Enterprises Private Limited. That entity was represented by one Prabakaran. It had been contended that the sale consideration for the land and building was determined at Rs.4.80/- crores. With respect to the machineries / accessories, the consideration was determined at Rs.3/- crores.

26. It is the contention of the second respondent that M/s. A.R.A.P. Enterprises Private Limited produced two separate demand drafts, one for a sum of Rs.3.12/- crores towards purchase of the machineries and the other for a sum of Rs.4,24,50,925/- towards purchase of the land and building. It is therefore contended by the second respondent that a lawful transaction had been entered into with M/s. A.R.A.P. Enterprises Private Limited for the sale of the land, the building and the machineries. It had been stated that subsequently, on 23.09.2008, Prabakaran sent an E-mail calling upon the second respondent to raise an invoice in the name of the insolvent for the sale

of machineries/accessories. Accordingly, the second respondent had raised an invoice dated 29.09.2008 for a sum of Rs.3/- crores and for a sum of Rs.12/- lakhs towards the Central Sales Tax at 4%, thus for a total sum of Rs.3.12/- crores. This invoice had been marked as Ex.R-4.

27. In the Cambridge Dictionary, *invoice* had been defined as *"a list of things provided or work done together with their costs, for payment at a later date."*

28. In the Oxford English Dictionary, the word *invoice* has been defined as *"an official paper that lists goods or services that you have received and says how much you have to pay for them".*

29. In Black's Law Dictionary, the word *'invoice'* had been defined as "*an itemized list of goods or services furnished by a seller to a buyer usually specifying the price and terms of sale; a bill of costs."*

30. An invoice has to be contrasted with a cash receipt which directly provides a chain or link between the goods sold and the consideration received.

31. The invoice in the instant case lists out the machineries which are to be sold and their price. This is dated 29.09.2008. The demand draft, on the other hand received from M/s. A.R.A.P. Enterprises Private Limited for the purchase of these very machineries was dated 07.08.2008 nearly more than 50 days prior to this invoice. This would imply that when the invoice was drawn by the second respondent, they should have referred to the receipt of the consideration in that particular document. There is no document produced by the second respondent to show that the demand draft received and for which admittedly, money flowed from the account of the insolvent was towards the sales of the machineries. If the demand draft had been received earlier and the goods had been sold at a later date, in the document reflecting such sale of goods, the receipt of the consideration should have been reflected. If the consideration had already been received, an invoice would not have been raised. An invoice indicates the nature of the goods and their sale price which

had to be paid only on a later date. Viewed from this angle, we hold that there is no direct link or connection between the demand draft dated 07.08.2008 and the invoice dated 29.09.2008.

32. Even otherwise, the goods though sold were never transported to the purchaser. They remained at the very same place where they were at the time by their sale. This would effectively mean that there was a cash flow from the account of the insolvent to the second respondent but there was no corresponding transfer of goods in their physical form to the insolvent or to M/s. A.R.A.P. Enterprises Private Limited.

33. The amount involved is quite substantial namely, Rs.3/- crores in the year 2008. It can never be imagined that such a huge amount would be advanced without any transfer of goods worth that amount to the purchaser. There has been flow of money only from one end, namely, from the account of the insolvent to the second respondent but there has been no reverse flow of the goods from the second respondent to the insolvent. The invoice is not a cash transaction. It only provides a list of materials to be sold for payment to

be made on a later date.

34. In the instant case, the payment had been made 50 days in advance and therefore there was no necessity at all to raise an invoice but rather a cash receipt could have been raised by indicating receipt of consideration for the machineries for the goods sold and transfer of the machineries.

35. Section 4 of the Sale of Goods Act, 1930 is as follows:-

"4. Sale and agreement to sell.—

(1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.

(2) A contract of sale may be absolute or conditional.

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

(4) An agreement to, sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred. "

36. In the instant case, there was no delivery of the machineries.

37. The contention of the learned counsel for the second respondent that this particular receipt of Rs.3.12/- crores was towards sale of machinery does not withstand the scrutiny of this Court.

38. The learned counsel for the Official Assignee was emphatic in his

submission that there was no transfer of goods at all. Even the second respondent has admitted that the goods still remain at Pondicherry. They were never transferred either to the premises of the insolvent or to any nominee of the insolvent. There is only one document reflecting sale and that is Ex.R-4, the invoice dated 29.09.2008. That document also does not reflect the receipt of the demand draft for the sum of Rs.3.12/- crores towards the sale of the machineries. The invoice had been raised for the very same amount. The total value of the accessories / goods had been brought to Rs.3/- crores and the Central Sales Tax at Rs.4% had been stated to be Rs.12/- lakhs. There is no document produced to show payment of such tax to the statutory authorities. There is no receipt produced from the said authorities for having received the said sum of Rs.12/- lakhs. It is only a statement in the invoice and there is no supporting document for the same. Therefore, there is no evidence produced either for transfer of the goods or for payment of tax but a demand draft is available for receipt of a sum of Rs.3.12/- crores by the second respondent.

39. The contention of the second respondent is that the sale of land and

building and the sale of accessories were two separate transactions and that the invoice was raised in the name of the insolvent as directed by Prabakaran. This contention cannot be accepted as being a statement made bona fide. Even though in the invoice, the name of the insolvent is given, there is no corresponding reference to the demand draft already received or to the actual transfer of goods to the insolvent. It is clear that this invoice was created to cover up the actual sale consideration. The document is a sham document. The document is rejected. It is therefore evident that this amount of Rs.3.12/- crores has no connection whatsoever with the goods purportedly sold by the second respondent. The only conclusion is that this amount of Rs.3.12/- crore was a loan transaction paid by the insolvent to the second respondent.

__Point No.2:__

40. This point relates to whether the claim of the Official Assignee which has been determined as a loan advanced to the second respondent is barred by the law of limitation.

41. In the report of the Official Assignee, it had been stated that the

second respondent Supreme Industries Private Limited was the recipient of a sum of Rs.3.12/- crores from the insolvent. This fact stood further confirmed by Ex.A-5 which is the extract of the account in the name of the insolvent.

42. A perusal of the same shows that on 07.08.2008, a sum of Rs.3,12,11,250/- had been debited from the account of the insolvent. Further, in the ledger maintained by the Auditor Ranga Ramanujam in Ex.A-1, the amount of Rs.3,12,00,000/- was reflected as a sundry debt receivable from the second respondent Supreme Industries Private Limited.

43. It is the contention of the learned Official Assignee that this amount had been given as a loan by the insolvent to the second respondent and therefore since there were no transactions reflecting discharge, the second respondent is due and liable to pay the said amount.

44. The contention of the second respondent that the amount had been received as sale consideration for machineries sold to the insolvent has been rejected by this Court.

45. The point to be now examined is whether the claim by the Official Assignee for this amount together with interest is barred by the law of limitation.

46. The borrowal, as is evident from Ex.A-5, Bank Statement was on 07.08.2008. Thereafter, it is the contention of the learned counsel for the Official Assignee that the insolvent had been carrying forward this amount in his ledger as due and payable to him by the second respondent. The Official Assignee, in view of the non co-operation of the insolvent had to rely on the report of an auditor Ranga Ramanujam, who was examined as CW1. He had produced a ledger wherein, as on 01.04.2011, the second respondent was shown as a sundry debtor to the insolvent for a sum of Rs.3.12/- crores. This would indicate that the borowal which was on 07.08.2008 was kept alive till 01.04.2011 within the period of three years.

47. The Insolvency Petition was filed by Chitra Desai, a petitioning

creditor on 10.03.2014.

48. Arjunlal Sunderdas was adjudicated as insolvent by order dated 21.04.2014.

49. In the letter forwarded by his counsel in Ex.A-2 dated 07.04.2017, the second respondent was shown as a debtor for a sum of Rs.3.12/- crores but the debt was categorised as a bad debt.

50. There were notices exchanged between the second respondent and M/s. A.R.A.P. Enterprises Private Limited, and in Ex.R-10, A.Prabakaran of M/s. A.R.A.P. Enterprises Private Limited, had very categorically stated that they had purchased only land and building and not the machineries. The machineries are however still available only at the factory premises at Puducherry. They had never been transferred to the insolvent.

51. During the course of hearing, by order dated 04.04.2018 in Application No. 27 of 2016, this Court had directed the CBI (EOW), Chennai, to take up further investigation of FIR in Crime No. 6 of 2017 registered by EOW-II, Chennai and continue investigation. The CBI had registered FIR in R.C.No. 03/E/2018/CBE/EOW, Chennai on 24.05.2018. Investigation

relating to the second respondent revealed that the second respondent had sold land to an extent of 238 ares at Villianur Commune Panchayat in Pondicherry together with industrial sheds to M/s. A.R.A.P. Enterprises Private Limited, for Rs.4.80/- crores. It had also been stated that the second respondent had raised an invoice in the name of the insolvent, but after investigation, it had been very categorically concluded that there was no delivery challan as proof that the goods were delivered to the insolvent. There was also no record to prove payment of Central Sales Tax of Rs.12/- lakhs. It was also found that the goods which were said to have been sold, were available in the factory premises. It was concluded by the CBI that a sum of Rs.3,12,11,250/- was debited in the account of the insolvent on 07.08.2008 and a demand draft was issued by Arujunlal Sunderdas and paid to Supreme Industries Limited. All these facts are narrated to show that the debt was continuously kept alive at both ends.

52. The second respondent admitted to receiving the sum of R.3.12/- crores but denied it was received as a loan but rather only as consideration for goods sold and delivered.

53. It had also been stated that there were cash transactions between the insolvent, Arjunlal Sunderdas and A.Prabakaran and his family members in the name of M/s. A.R.A.P. Enterprises Private Limited. As a matter of fact, the CBI had concluded that the mail sent by the second respondent from A.Prabakar was a sham document since he had not entered into any agreement to purchase the machineries with the second respondent.

54. It would only be appropriate that reference is made to two separate Judgments of Madras High Court.

(1) The Full Bench Judgment of the Madras High Court reported in ***AIR 1936 Madras 778 [G.V.Muthuswami Chetty Vs. The Official Assignee].*** In that case, the insolvent was so adjudicated in February 1925. He had mortgaged his property earlier in April 1923. The Official Assignee made an application in March 1931 under Section 55 of the Presidency Town Insolvency Act to set aside the mortgage and the mortgage deed was set aside by an order in February 1932. In December 1934, the Official Assignee filed an application under Sections 7 and 36 of the said Act calling upon the

mortgagee to account for the rents and profits which he had received from the mortgaged property.

55. The Full Bench held that the mortgagee was liable to pay the mesne profits only for a period of three years immediately preceding the application of the Official Assignee. In other words, it has been held that the Official Assignee can lay a claim only for such debts which had arisen within the period of three years prior to the filing of the application.

56. The facts in this case are different. In the case cited, the insolvent was adjudicated as insolvent in February 1925. As a comparison in the instant case, the insolvent was adjudicated as insolvent in April 2014. The Official Assignee in that case had made an application in December 1934 calling upon the mortgagee to account for rents and profits. That application itself was well beyond the period of three years from the date of adjudication as insolvent.

57. The Full Bench had held that the Official Assignee had made his

application as representing the estate of the insolvent and he had no higher right to raise or resist the bar of limitation.

58. In the instant case, the application by the Official Assignee was presented on 17.04.2017 within the period of three years from the date of adjudication. As on the date of adjudication, the debt was shown to be existent.

59. The learned counsels for the insolvent in their communication dated 07.04.2017 had categorised the debt as a bad debt. But the insolvent himself had through his bank account had paid the amount which is evident from the debit in his bank statement.

60. The principle which had been laid down in the Full Bench is that the Official Assignee can claim an amount which is due and payable to the estate only if it became due within three years prior to the date of the application.

(2) In a Division Bench Judgment of the Madras High Court reported in ***AIR 1949 Madras 289, [Abdul Shukoor Sait Vs. The Official Assignee of Madras and Others]***, the Full Bench Judgment was brought to the notice of the Division Bench. But the Division Bench still held that, in their opinion, even if a claim was out of time, it does not necessarily prevent an Officer of the Court under directions from the Court from doing what would be just and proper. It had been held that the bar of limitation is only a bar for enforcement of claims. The lapse of time does not necessarily extinguish either the debt or the claim. It was further held that the Official Assignee, as an Officer of Court is justified in applying to the Court for directions and the learned Judge was justified in making, what he considered was a proper order.

61. The facts in that case are that a learned Single Judge had given directions to the Official Assignee to execute a sale deed in favour of one Dr.Dr.M.A.Hussain for a property to an extent of 10 grounds called 'Rutland Gate'. The property originally belonged to P.Veeraperumal Pillai, who had been adjudicated as insolvent in the year 1926. The property was the subject of a mortgage and with the consent of the mortgagee, there was an order by

the insolvent Court to dispose of the property in favour of the appellant for a sum of Rs.1,60,000/-. The appellant paid an advance of Rs.10,000/- but defaulted in the payment of the balance consideration. The Official Assignee therefore sought an order to cancel the contract of sale. There were various other transactions and the property could be sold only in parts. The Official Assignee executed conveyance to several purchasers.

62. A guarantor had entered into an agreement with Dr. Hussain to convey an extent of about 10 ground at Rs.730 per ground. He gave a cheque for Rs.7,000/- received from Dr.Hussain as part payment to the Official Assignee. This was on 24.10.1939. On 03.04.1941, the Official Assignee wrote a letter that conveyance could be executed on payment of the balance purchase price. Dr.Hussain wanted the sale deed to be executed in favour of his nominee which the Official Assignee was not willing to do so without a specific order of Court.

63. When an application was made by way of a representation dated

19.07.1946, well beyond the period of three years, a learned Single Judge of this Court had held that the Official Assignee was not seeking adjudication of rights of the parties but sought directions alone. It was contended that the application was barred by the law of limitation.

64. In this connection, the attention of the Division Bench was drawn to the Judgment of the Full Bench reported in ***AIR 1936 Madras 778*** referred supra. But the Division Bench held that if Dr.Hussain had filed a suit for specific performance that would have been barred by law of limitation but the objection that therefore the application by the Official Assignee must be barred by time was rejected by pointing out that this would not necessarily prevent an Officer of Court under directions from the Court from doing what was just and proper.

65. In the instant case, this Court will have to examine as to what would be just and proper for the company of creditors of the estate of the insolvent. The debt amount of Rs.3.12/- crores had flowed from the bank account of the insolvent to the second respondent. There is no denial on that

point. The case of the second respondent that they had sold goods in the form of machineries to the insolvent has been rejected by this Court. The amount of Rs.3.12/-crores remained as a loan given by the insolvent to the second respondent. At one point of time, it could have been categorised as bad debt and it could also be argued that if the insolvent were to recover, it might be barred by law of limitation.

66. It had been held in ***AIR 1949 Mad 289*** (referred Supra) by the Division Bench as follows:

> *"**The next objection was, even assuming that the application was maintainable, it was barred by limitation.** A decision of the Full Bench of this Court in* **Muthuswami Chetty v. Official Assignee, Madras (1936) 71. M.L.J. 289 : I.L.R. 59 Mad. 1020 (F.B.)** *was relied on for the proposition that an application under Section 7 of the Presidency Towns Insolvency Act must be deemed to be a suit to which the provisions of the Indian Limitation Act would apply.* ***If Dr.***

Hussain had filed a suit for a specific performance, so the argument ran, it would have been barred by time, and therefore this application by the Official Assignee must equally be held to be barred by time. *In our opinion the learned Judge was right; in overruling this objection.* ***The fact that if Dr. Hussain had sued for specific performance he might be out of time does not necessarily prevent an officer of Court under directions from the Court from doing what would be just and proper. The bar of limitation is only a bar to the enforcement of claims. The lapse of time does not necessarily extinguish either a debt or a claim.*** *The Official Assignee as an officer of Court is quite justified in applying to the Court for directions and the learned Judge was justified in making what he considered a proper order having regard to the fact that Dr. Hussain had paid the entire purchase price."*

[Emphasis Supplied]

67. The only point which therefore will have to be emphasised is that it was just and proper, viewed from the angle of the creditors, that this amount is recovered to be paid back to the estate. The facts stare in the face of the second respondent. It has been held that the amount of Rs.3.12/- crores was received as a loan. The receipt of the amount is not denied. There is no plea of discharge. The loan was kept alive in the books of accounts by the insolvent. The Official Assignee, as stated by the Division Bench, "as an Officer of the Court is quite justified in applying to the Court for directions." He had so applied within three years from the date of adjudication of the first respondent as insolvent. We hold that the claim is not barred by the law of limitation.

68. The Point No.2 is answered accordingly.

69. In the result, this Application stands allowed as prayed for with costs..

(Dr.G.J.J.,) (C.V.K.J.,)
02.08.2024

vsg

1. **List of Witnesses examined on the side of the Petitioner:-**

1. P.W.1 – Mrs. R. Padma

2. **List of witnesses examined on the side of the Respondent:-**

   1. RW1- P.C.Somani

3. **List of Exhibits Marked on the side of the Petitioner:-**

   1. Ex.A1 = the true copy of the relevant pages from the report of the Auditor "Ranga Ramanujam" dated 05.08.2015, concerning the second respondent herein;

   2. Ex.A2 = the true copy of the letter dated 07.04.2017 sent by the counsel for the insolvent to the Official Assignee;

   3. Ex.A3 = the true copy of the demand notice dated 13.04.2017 sent by the Official Assignee to the second respondent herein along with the true copy of the acknowledgment;

   4. Ex.A4 = the true copy of the reply notice dated 02.05.2017 to the notice sent by the Official Assignee; and

   5. Ex.A-5 = the statement of accounts in account No. 422156084 of Indian Bank for the period from 01.08.2008 to 31.08.2008.

List of Exhibits Marked on the side of the Respondent:-

1. Ex. R-1 = the Company's Board Resolution authorizing me to appear and depose before the Hon'ble Madras High Court in the matter relating to A.No. 176 of 2017 in I.P.No. 25 of 2014 dated 29.10.2018;

2. Ex.R-2= the photocopy of Demand Draft for a sum of Rs.3,12,00,000/- received from M/s. A.R.A.P Enterprises Private Limited towards the sale of fixtures and other things dated 07.08.2008;

3. Ex.R-3= the photocopy of Demand Draft for a sum of Rs.4,24,50,925/- received from M/s. A.R.A.P Enterprises Private Limited towards the sale consideration for the land and buildings of the second respondent's Pondicherry Uni dated 11.09.2008;

4. Ex.R-4= the extract of the e-mail received from Mr.Prabakaran of M/s. A.R.A.P Enterprises Private Limited requesting the second respodnent to raise the invoice for hte sale of fixtures in the name of Mr.Arjunlal Sunderdas along with affidavit under Section 65B of the Indian Evidence Act 1872;

5. Ex.R-5 =the photocopy of sale invoice dated 29.9.2008 for the sale of fixtures and other things to M/s. A.R.A.P Enterprises Private Limited and invoice raised in the name of Mr.Arjunlal Sunderdas as per the instructions given by Mr.Prabakaran of M/s. A.R.A.P Enterprises Private Limited vide his email dated 23.09.2008 (Marked with objection raised by the Counsel for Official Assignee as it is a phtocopy);
6. Ex.R-6 = the certified copy of sale deed dated 22.09.2008 executed in favour of M/s. A.R.A.P Enterprises Private Limited conveying the land and buildings of the second respondent's Pondicherry Unit, registered as Doc.No. 5454 of 2008 dated 29.09.2008 in the Office of the Sub-Registrar, Villanur;

7. Ex.R-7= the photocopy of the letter from the second respondent

addressed to M/s. A.R.A.P Enterprises Private Limited dated 15.11.2017;

8. Ex.R-8= the original reply dated 19.11.2017 received from the counsel for M/s. A.R.A.P Enterprises Private Limited ;

9. Ex.R-9 = the original letter from the counsel for the second respondent addressed to the counsel for M/s. A.R.A.P Enterprises Private Limited dated 05.12.2017;

10. Ex.R-10= the original reply from Mr.Prabakaran, the Director of M/s. A.R.A.P Enterprises Private Limited dated 19.12.2017; and

11. Ex.R-11= the original balance sheet and the schedules forming part of hte balance sheet in respect of the second respondent's Pondicherry Unit relating to the year ending 31.03.2009 disclosing the current liability of the company as Rs.0/-.

02.08.2024

vsg

Dr. G. JAYACHANDRAN, J.
&

C. V. KARTHIKEYAN, J.

vsg

Pre-Delivery Order made in
Application (IP) No. 176 of 2017
in
I.P.No.25 of 2014

02.08.2024