



Appln.No.267 of 2024

Application(IP)No.267 of 2024
in I.P.No.45 of 1999

K.KUMARESH BABU,J.

When the matter had been taken up for hearing a report had been filed by the Official Assignee indicating that suit had been filed by the legal heirs of the insolvent in O.S.No. 559 of 2003 seeking for a declaration that the mortgage deed to have been executed by the insolvent/first defendant in favour of the second defendant on various dates as null and void and to divide the suit properties into three equal shares and to allot to the parties to the suit.

2. She would contend that the said suit had been dismissed for default on 03.08.2023. She had also submitted that no steps have been taken by the respective parties to restore the said suit. If, the suit is decreed as per the claim of the suit, then the legal heirs therein would be entitled for a sum of Rs.18,30,000/- and therefore, the applicant would only be entitled for a declaration of the dividend for the Rs.4,62,000/- at the rate of 0.42 Paise in a Rupees as dividend from the total admitted claim amount and the applicant would have to wait till the outcome of the suit.

3. It is not disputed that the claim of the applicant had been adjudicated and also been affirmed by this court in A.No.397 of 2011 as early as on 14.11.2011.

The report of the Official Assignee indicates that there maybe an impediment on the official Assignee to receive certain funds on a decision that may be arrived at



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a suit which had been filed by the legal heirs of the insolvent. It is to be noted that they had filed a suit as early as in the year 2003 and they have allowed the suit to be dismissed for non prosecution in the year 2023. More than a year had been gone and no application had been taken by them to restore this suit. It is to be noted that insolvent had failed in his attempt against the order of attachment.

4. In such an event I do not find any impediment in allowing the application as prayed for. The official Assignee is directed to release the adjudicated amount to the applicant within a period of four weeks from the date of receipt of a copy of this order.

Gba

28.10.2024

Index :Yes/No

Internet:Yes/No



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