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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 16.12.2024

Pronounced on: 21.12.2024

CORAM

THE HONOURABLE **MR.JUSTICE P.B.BALAJI**

A.No.308 of 2024
in IP. No.157 of 2004

R.S.Rajan @ R.Sondararajan,
S/o.Mr.G.S.Raman,
No.34, East Mada Street,
Thiruvanmiyur, Chennai – 600 041.

... Petitioner

VS.

The Official Assignee,
High Court, Madras.

... Respondent

PRAYER: This Application is filed under Order II Rule 1 of Insolvency Rules Read with Section 90(5) of the Presidency Towns of Insolvency Act, to condone the delay of 6712 days caused in filing an Application for discharge.

For Applicant : Mr.J.Balagopal

For Respondents : Mrs.C.B.Meena,
Official Assignee



ORDER

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This Application has been filed for condonation of the delay of 6712 days in filing the Application for discharge of the insolvent.

2. I have heard Mr.J.Balagopal, learned counsel for the Applicant and Mrs.C.B.Meena, learned Official Assignee.

3. The learned counsel for the Applicant would submit that on his own petition, the Applicant was adjudicated as an Insolvent by order dated 16.02.2004. Subsequently, the Applicant has also filed his schedule of affairs and after serving notice to all Creditors, the Insolvency Petition was posted for public examination and public examination commenced on 30.11.2016 and completed on the same day. The Applicant has shown 32 unsecured Creditors to the tune of Rs.22,56,900/- and one secured Creditor to the tune of Rs.5,25,000/- and assets to the tune of Rs.9,25,000/- and debts due from debtors to the tune of Rs.2,30,000/-

4. According to the applicant, the Administration in the Estate has



been completed and after his adjudication as insolvent, the Applicant has not contracted any debt or committed any offence under provisions of the Presidency Towns of Insolvency Act or provisions of the Indian Penal Code. The Applicant has therefore filed this Application to grant an unconditional discharge, as according to the Applicant, no useful purpose be served by continuing the order of adjudication as Insolvent.

5. With regard to delay, the Applicant states that after the public examination was completed on 30.11.2016, the Applicant was assisting the Official Assignee in the Administration of the Estate and thereafter, because of his ill health and mental depression, he could not contact his counsel to take steps to file the discharge petition. Hence, the delay of 6712 days in filing the discharge petition. He would also rely on the order of passed by this Court in A. (IP) No.153 of 2023 in I.P. No.16 of 2014, where this Court, discussing the earlier decisions on point and referring to Sections 38(2), 39(1) & 39(2) of the Act, held that the insolvent having not satisfied the value of asset criteria is not relevant and the Insolvency Court has to consider whether the property, even after the annulment of adjudication, should continue to vest with the Official Receiver or not.



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6. Per contra, the learned Official Assignee referring to the report dated 02.12.2024 would submit that the assets of the Insolvent vested with the Official Assignee, pursuant to the order of adjudication dated 16.12.2004 in I.P. No.157 of 2004. The Official Assignee would further submit that a sum of Rs.1,50,000/- is available in the Estate as on date and that on Enquiry, the Official Assignee has ascertained that the insolvent is having an outstanding due in respect of a loan amount to the tune of Rs.1,55,194.08/-. She has further submitted that two debt files are still pending and the enquiry is being conducted in that regard. The Official Assignee has strongly objected to the delay in approaching this Court, especially delay being huge and inordinate, viz., 6712 days. She would further submit that there is deficit of Rs.2,09,736/- to be paid and unless the said amount is paid, the Applicant cannot be discharged from insolvency.

7. I have carefully considered the submissions advanced by learned counsel for the Applicant and the learned Official Assignee.



8. Considering the fact that the two debt files are still pending enquiry, the administration process is still incomplete and the Application is premature. In any event, I am not satisfied with the reasons for the delay as well. In view of the decisions relied upon by the learned counsel for the Applicant, the Applicant may be entitled to reliefs, but not at this stage. This Application is **dismissed** with liberty to the Applicant to move this Court once the administration process is completed.

21.12.2024

rkp

Neutral citation: Yes/no

Index : Yes/No

Speaking/Non Speaking

To:

The Official Assignee,
High Court, Madras.



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P.B.BALAJI, J.,

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Pre-delivery Order in
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