



C.M.A.(MD)No.1312 of 2013

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Dated: 12.03.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

C.M.A.(MD)No.1312 of 2013

and

M.P(MD) No.1 of 2013

P.R.K.Pajus

...Appellant/1st Respondent

Vs.

1. Bhajandas Thakurdas
- 2.M.K and Company
3. Raheja and Company
4. Seth Mangoomal Ramsingh
- (Respondents 1 to 4 are represented by their power agent B.Kumar Raheja)
- 5.Subbuthai
6. Tamil Nadu Mercantile Bank
Palakkarai Branch
Trichy
7. Lakshmi Vilas Bank Ltd,
Thillai Nagar Branch
Trichy
- 8.Murali
- 9.M.Rajappa
10. T.Ramaniammal
11. R. Vijayakumar
12. Ramesh Babu
13. P.Uma Maheswaran

..Respondents 5 to 13/
Respondents 2 to 10

Prayer : This Civil Miscellaneous Appeal filed under Section 75 of the Provincial Insolvency Act against the judgment and decree dated 30.11.2012 passed in I.P.No.48 of 2004 on the file of the II Additional District and Sessions Judge, Tiruchirapalli.



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For Appellant : Mr. M.R.Srinivasan

For R1 to R4 : Mr.H.Lakshmi Shankar

For R5 to R13 : Given up

JUDGMENT

This Civil Miscellaneous Appeal has been preferred as against the order passed in I.P.No.48 of 2004 on the file of the II Additional District and Sessions Judge, Tiruchirapalli, wherein the respondents 1 to 4 herein have filed petition before the trial Court under Section 9 of the Provincial Insolvency Act to adjudge the first respondent as an insolvent and to appoint official receiver and the Official Receiver administrate the property. The trial Court allowed the application and the first respondent was adjudged as insolvent. Six months time was given for discharge.

2. As against the order passed by the trial Court the first respondent herein has filed this appeal.

3. For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking in the Tribunal.



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4. The brief facts of the case before the Tribunal are as follows:

The first respondent is a debtor and the petitioner and the respondents 3 to 11 are the creditors. The liability of the first respondent to the various creditors is listed in the A scheduled property of this petition. The petitioner is doing coffee grinding roasting business as sole proprietor of Trichy, P.Karupiah Nadar and Company. The first respondent borrowed a sum of Rs.5,00,000/- on 08.04.1999 and Rs.10,00,000/- on 09.04.1999 and Rs.5,00,000/- on 10.04.1999 and Rs.5,00,000/- on 07.06.1999 from the petitioner and executed four promissory notes in favour of the petitioner for the said loan transactions. The original pronote dated 08.04.1999 for which Rs.5,00,000/- was produced in the Court in O.S. No.881 of 2000 on the file of the Sub court, Trichy. The first respondent paid interest in all the loan transaction to the petitioner till 08.08.1999 and thereafter he defaulted to pay the monthly income to the petitioner inspite of repeated demand request. The loans were borrowed by the first respondent from the petitioner for his business purpose. From September 1999, the first respondent has made his presence in the business premises as scares and on several occasions he was keeping his shop locked. The first respondent not



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only stopped payment of any amount after 08.08.1999 to the petitioner but he is not in a position to pay any debts to other creditors.

4.1.The first respondent was taking steps to alienate the immovable property in order to defeat, defraud and delay the claim of his creditors. The first respondent executed sale deed of the buildings bills in S.F. No.328 for a sum of Rs.4,95,000/- on 02.05.2001 to the second respondent. The sale transaction is an act of insolvency committed by the first respondent and it has to be viewed as an act to be done with intention to place beyond the reach of creditors valuable immovable property in order to defeat the claims. The first respondent also partitioned the business premises and replaced the name board containing the words 'Joseph Coffee' by a new name board containing the same words to give an appearance that management was changed to a different hand. All the above act committed by the first respondent are not bonafide acts and his intention is only to cheat the creditors. His aim is to secret most of his assets and cash for the view of his creditors. Four more creditors have also filed suit in O.S. No.173 of 2000 , 521/2000 on the file of this Court against the first respondent for recovery of money. One G. Subbu Reddiyar of Vadipatti, Madurai District filed a Creditor Insolvency Petition against the first respondent in Madurai



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Sub Court in September 1999. Another one Gurusamy of Virudhunagar has filed I.P No.24/2000 as creditor as against the first respondent. Another creditor namely S.Gunavathi has filed I.P No.17/2001 against the first respondent on the file of this Court. The list of assets belonging to the first respondent is given 'B' scheduled property and abstract was also given. Therefore this respondent has to be adjudged as insolvent.

5. The brief facts of the counter filed by the first respondent are as follows:

The petition is not maintainable because there is no act of insolvency. The second respondent is bonafide purchaser of the property. The third and fourth respondent stated that there is no due to them. The other respondents are very close relatives to the petitioner. They are hand in glove with the petitioner. The petitioner filed suit in O.S. No.881 of 2001 on alleged pronote with application for attachment before judgment. This respondent offered immovable security more value than the alleged due, hence he could not get an order. Enraged and motivated thereby he filed this petition. The respondents 5 to 11 are not creditors they are close relatives of the petitioners. The first respondent did not borrow such huge amount as alleged by the petitioner. The pronotes



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referred in para 7 of the petition are not supported by consideration and materially altered. There was no loan from the petitioner that too for business purpose. The sale transaction is not an act of insolvency and there is no intention to defraud or defeat the creditors. The debt is not liquidated sum payable immediately. There is no act of insolvency, hence the petition is liable to be dismissed.

6. Before the Trial Court, on the side of the petitioner he has examined P.W.1 and marked exhibits Ex.P.1 to P.28 and on the side of the respondent R.W.1 was examined and Exhibits R.1 and R.2 were marked.

7. The trial Court after considering the evidences adduced on both sides allowed the petition and the first respondent was adjudged as insolvent. Time for discharge was granted six months. As against the order passed by the trial Court, the first respondent has preferred the present appeal.

8. The learned counsel appearing for the appellant would contend that the petitioners have not come to this Court with clean hands and there is no any act of insolvency committed by the



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appellant/first respondent. The petitioners filed suit as against this appellant/respondents and the respondents 5 to 11 in the main petition are also relatives of the petitioner. The petitioners have failed to prove the ingredients to attract Section 9 of the Provisional Insolvency Act. The appellant is the permanent residence of his dwelling house and he has not been disposed from his dwelling house or his usual place of business. There is no intention on the part of the appellant to cheat any of the creditors. The appellant bonafidely transferred the property and the second respondent is the bonafide purchaser. Some of the debts are claimed barred debts. Even according to P.W.1 claim is based on four promissory notes each for Rs.1,00,000/-. The appellant can discharge the said loan. The above said aspect has not been considered by the trial Court ,hence the order passed by the trial Court is liable to be set aside.

9. The learned counsel appearing for the respondents 1 to 4 would contend that the appellant/first respondent borrowed loan from various persons and his liability is more than the value of the property and he in order to defeat the valuable right of the creditors alienated the property to the second respondent and thereby the petitioners filed Creditor Original Petition , therefore the trial Court



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after taking into consideration all the evidences adduced on either side correctly allowed the petition and adjudged the first respondent as insolvent and six months time was granted for discharge. Therefore the present appeal is liable to be dismissed.

10. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal the point for determination in this appeals is :

i) whether the appeal is liable to be allowed or not?

11. In this case initially one Umamaheswaran has filed the petition as against the first respondent and others and thereafter respondents 12- 15 filed application to transpose them as petitioners and the same was allowed through I.A. No.262 of 2012 dated 21.06.2012. According to the appellant he has not committed any act of insolvency and the petitioners have filed petition with false averments and the other creditors are not real creditors and they are the close relatives of the petitioners. According to the respondent the first respondent in the main petition alienated the property to the second respondent in order to defeat the valuable right of other creditors thereby they filed application before the trial Court.



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12. Before the trial Court on the side of the petitioner they have examined P.W.1 and marked documents Ex.P.1 to Ex.P.28 and on the side of the respondents they have examined R.W. 1 and marked documents Ex.R.1 and Ex.R.2. P.W.1 has deposed about the the borrowal of the amount by the first respondent and the execution of pronote. The first respondent was examined as R.W. 1 and he admitted the receipt of amount from the petitioner and also admitted the sale of property to discharge some debt and also admitted that he sold some property and paid the amount to some of the creditors to discharge the amount and did not come forward to discharge the debts payable to these petitioners. The above said act of the petitioner itself constitute the act of insolvency. It is not the case of the appellant /first respondent that he has other properties and the debts is not more than the value of the property. The above said act of alienation of the property to settle the dues only to some of the creditors shows his malafide intention and thereby he committed the act of insolvency. The trial Court also in this context elaborately discussed about the evidences adduced on both sides and fairly came to conclusion that the first respondent committed the act of insolvency. Therefore the order passed by the lower court is in order and warrants no interference. Therefore the present appeal is liable to be dismissed.



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13. In the result, the Civil Miscellaneous Appeal stands dismissed. No costs. Consequently connected miscellaneous petition is closed.

12.03.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To:

1. The II Additional District and Sessions Judge, Tiruchirapalli.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL,J.

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