



C.M.A.No.12 of 2009

M.DHANDAPANI, J.

This matter is listed before this Court under the caption “for being mentioned” at the instance of the learned counsel for the appellant.

2. It is brought to the notice of this Court that though the appellant has deposited the amount ordered by this Court with the Registrar General of this Court to the credit of this petition, however, the same was not placed at the time of hearing which has resulted in this Court directing the appellant to withdraw the amount deposited before the court below. Therefore, it is prayed that necessary modification be made in para-39 of the order dated 31.01.2025 so as to enable the appellant to withdraw the said amount.

3. Upon hearing the learned counsel and perusing the order, more particularly para-39 of the order dated 31.1.2025, it is seen that a direction has been issued to the appellant to withdraw the amount already deposited before the court below by filing appropriate application. In view of the aforesaid submission, para-39 of the order dated 31.01.2025



shall stand substituted with the following :-

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M.DHANDAPANI, J.

sp

“39. For the reasons aforesaid, the impugned order dated 01.11.2007 passed in Insolvency Petition No.51 of 1999 by the 1st Addl. Sub Court, Coimbatore, deserves to be set aside and, accordingly, the same is set aside by allowing this civil miscellaneous appeal. There shall be no order as to costs in this appeal. The appellant is directed to file a memo for withdrawal along with a copy of this order before the Registrar General of this Court for withdrawal of the amount and on such memo being filed, the Registrar General is directed to disburse the amount to the appellant within a period of two weeks from the date of filing of the memo.”

4. Registry is directed to carry out the aforesaid corrections and issue fresh order copy to the parties.

14.02.2025

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C.M.A.No.12 of 2009



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
27.01.2025	31.01.2025

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

C.M.A. NO. 12 OF 2009

Dr. Sangeetha

.. Appellant

- Vs -

1. N.Balakrishnan

2. Tmt. G.Bhavani Sankari

3. K.Sivarajan

4. P.N.Krishnan

.. Respondents

Civil Miscellaneous Appeal filed u/s 75 of the Provincial Insolvency Act, 1920, praying this Court to set aside the decree and judgment dated 01.11.2007 made in Insolvency Petition No.51 of 1999 on the file of the 1st Addl. Sub Court, Coimbatore u/s 75 of the Provincial Insolvency Act, 1920.

For Appellant : Mr. B.Vijay, for
M/s. Mohd. Uduman
For Respondents : Mr. A.V.Arun, for
M/s. P.Kumaran for R-1
R-2 – No representation
RR-3 & 4 – No Appearance



JUDGMENT

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Challenging the order in and by which the court below had declared the 2nd respondent herein as insolvent and the sale deed executed and registered by the 2nd respondent in favour of the 3rd respondent and thereafter by the 3rd respondent in favour of the 4th respondent were declared as null and void with a further direction to the 2nd respondent herein to hand over the property to the 1st respondent herein, the present appeal has been filed by the appellant challenging the order passed in I.P. No.51/1999.

2. It is the case of the appellant, as pleaded by the 1st respondent before the court below that a sum of Rs.50,000/- was lent to the 2nd respondent by the 1st respondent on 18.9.1996 under a promissory note in which the 2nd respondent had undertook to pay the said amount along with interest at the rate of 24% p.a. However, the 2nd respondent did not pay any amount to the 1st respondent; rather the 2nd respondent executed a power of attorney in favour of the 3rd respondent and on the strength of the said power of attorney, the 3rd respondent sold the property in favour of the 4th respondent without receiving any monetary consideration only to defeat the rights of the 1st respondent. It is



the further case of the 1st respondent that the subject property was alleged to have been sold for a sum of Rs.3,10,000/- though the value of the property is more than Rs.7,00,000/- and the said sale will not bind the 1st respondent and other persons, who have lent money to the 2nd respondent.

3. It is the further case of the 1st respondent that the 4th respondent, in turn, sold the property in favour of the appellant and the act of the 2nd respondent in selling the property is nothing but to defeat the legitimate rights of the 1st respondent to realise the amount due and payable on the promissory note. Therefore, praying that the power deed executed by the 2nd respondent in favour of the 3rd respondent and the sale of the property by the 3rd respondent in favour of the 4th respondent and its subsequent sale to the appellant are null and void and to declare the 2nd respondent as insolvent, the insolvency petition was filed before the court below.

4. Countering the aforesaid averments, respondents 3 and 4 herein, filed counter contending that the 1st respondent had not proved the receipt of Rs.50,000/- by the 2nd respondent. It is the further averment of respondents 3 and 4 that they are strangers and that the 2nd and 3rd respondents had entered



into an agreement of sale as early as on 17.12.1996 in respect of the subject property for a sum of Rs.3,00,000/- and towards the same, an amount of Rs.1,50,000/- was given initially given by the 3rd respondent to the 2nd respondent and the balance amount was to be settled within a period of six months. Thereafter, a sum of Rs.25,000/- and later a sum of Rs.1,25,000/- was given to the 2nd respondent after grant of extension of time. However, for certain reasons, the 3rd respondent had sought for return of money as the execution of the sale deed could not be undertaken and as the 2nd respondent was unable to return the amount, the 2nd respondent executed a power of attorney in favour of the 3rd respondent so as to enable the 3rd respondent to sell the property. Thereafter, on the basis of the power of attorney, the 3rd respondent sold the property to the 4th respondent for a sum of Rs.3,10,000/- and, thereafter, the 4th respondent, vide sale deed dated 18.08.1999 sold the said property in favour of the appellant and the appellant purchased the said property upon obtaining loan from the State Bank of India and, thereafter, the property was sold by the appellant to some third party. It is therefore the averment of the 3rd and 4th respondents that the entire transaction had taken on the basis of good intention and there was no ill-will to defeat the interests of the 1st respondent as alleged and, therefore, the insolvency petition at the behest of the 1st respondent was contended to be liable for dismissal.



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5. Counter was filed by the appellant in the insolvency petition contending that the property was purchased upon ascertaining that there was no encumbrance on the said property and that it was purchased with good intention and since the date of purchase, viz., 18.8.1999, the appellant is in possession and occupation of the property and that the appellant was not aware of the monetary dealing between the 1st and 2nd respondents. It is the further contention of the appellant that if the 2nd respondent was due and payable a particular amount to the 1st respondent, the 1st respondent ought to have realised the same by filing appropriate petition and not by means of resorting to declaring the 2nd respondent as an insolvent and that the petition had been filed belatedly and the 1st respondent has no right to question the right and title of the appellant over the said property and, accordingly, sought for dismissal of the petition.

6. Before the trial court on the side of 1st respondent herein, who was the petitioner therein, P.W.s 1 and 2 were examined and Exs.P-1 to P-7 were marked and on the side of the respondents therein, the respondents 2 and 3 therein were examined as R.W.s 1 and 2 and Exs.R-1 to R-7 were marked. The court below, after hearing the parties and upon perusing the evidence, both



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oral and documentary, allowed the insolvency petition in favour of the petitioner/1st respondent herein by declaring the 2nd respondent herein as insolvent and also cancelling the power of attorney executed by the 2nd respondent in favour of the 3rd respondent and also the sale deed executed by the 3rd respondent in favour of the 4th respondent and the subsequent sale deed executed by the 3rd respondent in favour of the appellant as null and void with a direction to the 2nd respondent herein to hand over the property and time was given by a period of six months to come out of the rigours of the debt. Challenging the said order, the present appeal has been filed by the appellant, who had purchased the property from the 3rd respondent therein.

7. Learned counsel appearing for the appellant submitted that the appellant is a bona fide purchaser of the property as no encumbrance was attached to the property at the time of sale, which is a pertinent fact, which has not been properly appreciated by the court below.

8. It is the further submission of the learned counsel that the sale of the subject property is much prior to the filing of the insolvency petition and, therefore, the appellant cannot be held to be in connivance insofar as sale of the property is concerned.



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9. It is the further submission of the learned counsel that the borrowal of the sum of Rs.50,000/- by the 2nd respondent, as alleged by the 1st respondent from the 1st respondent ought to be established and even then, the avenue for realising the said amount is not by way of an insolvency petition, but to follow the due process of law for recovery of the said amount, as the claim of insolvency has to be established and mere non-payment of a particular sum, which is alleged to have been lent on the basis of a promissory note cannot be the subject of adjudication under an insolvency petition

10. It is the submission of the learned counsel that the proper procedure to be resorted to for realising the amount in debt is through proceedings under Order 37 of the Code of Civil Procedure and the property, which had been sold even prior to the initiation of the insolvency proceedings and there being no encumbrance on the said property on the said date, as reflected in the records, the purchase of the appellant has to be held bona fide and the cancellation of the sale deed by the trial court is wholly perverse and erroneous.

11. It is the further submission of the learned counsel that on the date when the property was sold for the first time and also the subsequent sale to the appellant, there is no whisper that the purchaser had knowledge of the



proceedings initiated, which alone would vitiate the transfer. However, as stated above, no proceedings stood initiated on the date the property was initially sold and also subsequently sold and the proceedings being subsequent to the sale, the transfer cannot be said to be mala fide, which would vitiate the transfer.

12. It is the further submission of the learned counsel that the materials available on record and the scope of the petition filed u/s 9 r/w 13 (2) of the Provincial Insolvency Act is wholly without jurisdiction as the insolvency, which is pleaded had not happened within the time prescribed u/s 9. Further, the petition u/s 9 is not maintainable as the 1st respondent has not brought on record the fact of insolvency of the 2nd respondent herein and without appreciating the above, the court below has passed the order, which is grossly erroneous.

13. In fine, it is the submission of the learned counsel that when the 1st respondent has not established that there exists a debt, which is payable by the 2nd respondent to the 1st respondent and had further not established that the 2nd respondent has no means to pay the debt and only for the purpose of defeating the legitimate rights of the 1st respondent the sale of the property had taken



place, the order passed by the court below declaring the 2nd respondent as insolvent and also setting at naught the acts, which had resulted in the execution of the sale deeds and cancelling the sale deed is perverse, erroneous and arbitrary and the same deserves interference at the hands of this Court.

14. In support of the aforesaid submissions, learned counsel for the appellant placed reliance on the following decisions :-

- i) *T.Senthilvelan – Vs – A. Senthil Kumar & Ors.*
(2022 (3) MWN (Civil) 666); and
- ii) *Enforcement Directorate, Foreign Exchange Regulation Act – Vs – T.T.V.Dhinakaran* (2023 (3) MWN (Civil) 792)

15. Per contra, learned counsel appearing for the 1st respondent submitted that the 2nd respondent herein, who was the 1st respondent before the court below, remained *ex parte* before the court below and did not take any steps to counter the claim of the 1st respondent with regard to the debt, which clearly establishes that the 1st respondent herein had proved the debt.

16. It is the further submission of the learned counsel that the sale of the property by creating a power of attorney and selling the property to third parties



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is only to defeat the legitimate rights of the 1st respondent and to frustrate the promissory note executed for the purpose of the debt. The act of the 2nd respondent herein alienating the property after executing the promissory note and also after receiving the money from the 3rd respondent herein would clearly show that even the money, which was received towards realisation of the sale amount was not paid to the 1st respondent herein towards the discharge of the liability and, therefore, it is a clear attempt on the part of the 2nd respondent in connivance with the 3rd and 4th respondents to defeat the rights of the 1st respondent, which cannot be permitted and rightly appreciating the same, the court below had allowed the petition which does not deserve interference at the hands of this Court.

17. In support of the aforesaid submission, learned counsel for the 1st respondent placed reliance on the decision of this Court in ***A.K.Seenu @ Chenniappan & Ors. – Vs – K.Rajendran & Ors. (CMSA No.36/2008 – Dated 22.02.2021 – MHC).***

18. This Court gave its careful consideration to the submission advanced by the learned counsel appearing on either side and perused the materials available on record and also the decisions relied on, on behalf of the respective



parties.

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19. It is borne out by record that except for filing the petition to declare the 2nd respondent herein as insolvent, the 1st respondent, viz., the petitioner in the insolvency petition had not taken any steps to have the debt cleared in the manner known to law.

20. It is to be noted that encumbrance certificate with regard to the property between the date of purchase by the 2nd respondent till the date of sale to the appellant herein has been marked as Exs.P-3 and P-4 before the court below. It transpires from the said documents, that there is no encumbrance with regard to the aforesaid property and based on the said encumbrance certificate, the property had transferred hands by means of sale through the 2nd respondent to the appellant through the 3rd and 4th respondents.

21. P.W.2, the witness to the promissory note between the 1st and 2nd respondent had been examined, who had spoken about the amount of Rs.50,000/- having been given by the 1st respondent to the 2nd respondent. The said promissory note has been marked as Ex.P-1, which is dated 18.9.1996. R.W.2, who has been arrayed as the 3rd respondent herein had been



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examined before the court below to whom the 2nd respondent herein had executed a power of attorney, Ex.R-3 dated 24.4.1997, which was pursuant to the agreement of sale entered into between the 2nd and 3rd respondent on 17.12.1996, marked as Ex.R-1. It is the case of the 3rd respondent that the sale did not fructify on account of the 3rd respondent having purchased another property and the 2nd respondent not in a position to repay the amount received towards the sale consideration and as a consequence of which the 2nd respondent had given the power of attorney to the 3rd respondent to sell the property and realise the amounts through the sale proceeds. However, this act between the 2nd and 3rd respondent has been doubted by the court below.

22. Based on the power of attorney, Ex.R-3, the property had been sold to the 4th respondent herein by way of sale deed dated 24.6.1997 and, thereafter, resold to the appellant herein by the 4th respondent on 18.8.1999. It is in this backdrop, claim has been made by the 1st respondent that only to defeat his rights from realising the debt, the property has been sold fraudulently by filing the insolvency petition on 8.9.1999, just before the expiry of the period of limitation.



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23. The 2nd respondent, the alleged debtor had not appeared before the court below nor has appeared before this Court. The debt has been sought to be established through the evidence of P.W.2, who has deposed that the 2nd respondent herein had received a sum of Rs.50,000/- from the 1st respondent towards which the promissory note, Ex.P-1 is alleged to have been given by the 2nd respondent. However, the 2nd respondent, as stated above, remained ex parte before the trial court as also before this Court.

24. The promissory note, Ex.P-1, has been given on 18.9.1996 and according to the 1st respondent, between 18.9.1996 and the sale to the appellant on 18.8.1999, it is alleged that the 2nd respondent had not paid any money on the promissory note and, therefore, the 1st respondent has come up with the insolvency petition. However, what is pertinent to note here is the fact that the 1st respondent, between the date of giving the amount and execution of the promissory note and the sale of the property to the appellant, has not stated the steps taken by him to realise the amount from the 2nd respondent. Without putting the 2nd respondent on notice and without resorting to the other legal remedies, straightaway the 1st respondent had filed the insolvency petition. There is no material available on record to show that the 1st respondent had



called upon the 2nd respondent to pay the debt along with interest.

Furthermore, what is relevant to point out here is the fact that the insolvency petition had come to be filed at the 11th hour of limitation and in the interregnum between the alleged borrowal and the sale of the property, no steps have been taken by the 1st respondent with respect to the sum which had been lent to the 2nd respondent.

25. In *T.T.V.Dhinakaran case (supra)*, a Division Bench of this Court has held “*that the act of insolvency would occur only if the debtor fails to pay within 31 days from the date of issuance of a notice the money payable under an order, which has already become final*”. In the present case, neither an order nor a decree had been obtained by the 1st respondent against the 2nd respondent and no notice calling upon payment of the debt had been issued to the 2nd respondent by the 1st respondent as a consequence of the said order/decrece.

26. It is to be pointed that the intention of the debtor to defeat the rights of the creditor has to be proved to establish the act of insolvency. In *E.K.Gopal - Vs – C.Manoharan (2014 (4) CTC 871)* this Court has held that mere transfer of property without proof of the intention to defeat or delay the



creditor does not constitute an act of insolvency. In the case on hand, there is no material placed before this Court as well as the court below to establish that the transfer of property had been done specifically to defeat or delay the realisation of the amount by the creditor.

27. On the strength of the above decision, a cursory look at Section 6 of the Provincial Insolvency Act is required as the same is relevant to the adjudication of the present case and the said provision is quoted hereunder :-

6. Acts of insolvency.—1[(1)] *A debtor commits an act of insolvency in each of the following cases, namely: —*

(a) if, in [India] or elsewhere, he makes a transfer of all or substantially all his property to a third person for the benefit of his creditors generally;

(b) if, in [India] or elsewhere, he makes a transfer of his property or of any part thereof with intent to defeat or delay his creditors;

(c) if, in [India] or elsewhere, he makes any transfer of his property, or of any part thereof, which would, under this or any other enactment for the time being in force, be void as fraudulent preference if he were adjudged as insolvent;

(d) if, with intent to defeat or delay his creditors,-

(i) he departs or remains out of 3[the territories to which this Act extends],

(ii) he departs from his dwelling-house or usual place of business or otherwise absents himself,

(iii) he secludes himself so as to deprive his creditors of the means of communicating with him;



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(e) if any of his property has been sold in execution of the decree of any Court for the payment of money;

(f) if he petitions to be adjudged an insolvent under the provisions of this Act;

(g) if he gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts; or

(h) if he is imprisoned in execution of the decree of any Court for the payment of money.

[(2) Without prejudice to the provisions of sub-section (1), a debtor commits an act of insolvency if a creditor, who has obtained a decree or order against him for the payment of money (being a decree or order which has become final and the execution whereof has not been stayed), has served on him a notice (hereafter in this section referred to as the insolvency notice) as provided in sub-section (3) and the debtor does not comply with that notice within the period specified therein :

Provided that where a debtor makes an application under sub-section (5) for setting aside an insolvency notice —

(a) in a case where such application is allowed by the District Court, he shall not be deemed to have committed an act of insolvency under this sub-section; and

(b) in a case where such application is rejected by the District Court, he shall be deemed to have committed an act of insolvency under this sub-section on the date of rejection of the application or the expiry of the period specified in the insolvency notice for its compliance, whichever is later :

Provided further that no insolvency notice shall be served on a debtor residing, whether permanently or temporarily,



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outside India, unless the creditor obtains the leave of the District Court therefore.

(3) An insolvency notice under sub-section (2) shall -

(a) be in the prescribed form;

(b) be served in the prescribed manner;

(c) specify the amount due under the decree or order and require the debtor to pay the same or to furnish security for the payment of such amount to the satisfaction of the creditor or his agent;

(d) specify for its compliance a period of not less than one month after its service on the debtor or, if it is to be served on a debtor residing whether permanently or temporarily, outside India, such period (being not less than one month) as may be specified by the order of the District Court granting leave for the service of such notice;

(e) state the consequences of non-compliance with the notice.

(4) No insolvency notice shall be deemed to be invalid by reason only that the sum specified therein as the amount due under the decree or order exceeds the amount actually due, unless the debtor, within the period specified in the insolvency notice for its compliance, gives notice to the creditor that the sum specified in the insolvency notices does not correctly represent the amount due under the decree or order :

Provided that if the debtor does not give any such notice as aforesaid, he shall be deemed to have complied with the insolvency notice if, within the period specified therein for its compliance, he takes such steps as would have constituted a compliance with the insolvency notice had the actual amount due been correctly specified therein.



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(5) Any person served with an insolvency notice may within the period specified therein for its compliance, apply to the District Court to set aside the insolvency notice on any of the following grounds, namely :-

(a) that he has a counter-claim or set-off against the creditor which is equal to or is in excess of the amount due under the decree or order and which he could not under any law for the time being in force, prefer in the suit or proceeding in which the decree or order was passed;

(b) that he is entitled to have the decree or order set aside under any law providing for the relief of indebtedness and that-

(i) he has made an application before the competent authority under such law for the setting aside of the decree or order; or

(ii) the time allowed for the making of such application has not expired;

(c) that the decree or order is not executable under the provisions of any law referred to in clause (b) on the date of the application.]

Explanation.—For the purposes of this section the act of an agent may be the act of the principal.”

28. In the present case, the allegation of the 1st respondent falls u/s 6 (1)(b) of the Act as Section 6 (2) would not stand attracted to the case on hand, as the 1st respondent has not obtained any decree against the 2nd respondent towards payment of money. Further to attract the provisions of Section 6 (1)(b), Section 9 (1)(c) has to be satisfied, which is also satisfied in the present



case.

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29. However, what is material for the invocation of Section 6 (1)(b) is that the act of insolvency alleged to have been committed by the 2nd respondent is with a clear knowledge that he is a debtor and that he had, thereafter, transferred his property.

30. What is pertinent to point out here is the fact that the promissory note, Ex.P-1 is alleged to have been entered into on 18.9.1996 and the sale agreement between the 3rd respondent and the 4th respondent for the sale of property had taken place at the first instance during the year 1998, which was subsequently concluded in the year 1999 and, thereafter, the 4th respondent herein had sold the property to the appellant on 18.8.1999. As already aforesaid, during the period 18.9.1996 to the initial sale of the property in the year 1999 and, thereafter on 18.8.1999, the steps taken by the 1st respondent to realise the debt from the 2nd respondent has not been spelt out. In such a backdrop, the mere fact that P.W.2 had been examined to depose about the loan advanced to the 2nd respondent by the 1st respondent and the creation of the promissory note cannot form the basis to hold that there exists a debt, which is subsisting and that only to defeat the legitimate rights of the 1st respondent, the



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2nd respondent had parted with his property through clandestine means.

31. As stated above, the whole case is premised on the ground that the transfer is a fraudulent one and it is only done for the purpose of defeating the legitimate interest of the 1st respondent. When the 1st respondent presupposes his case by adverting to Section 6 (1)(b) of the Provincial Insolvency Act, necessarily the 1st respondent is bound to prove the fraudulent act and intent of the 2nd respondent in transferring the property and without proving the same, the rigours of Section 6 (1)(b) to invoke the Insolvency Jurisdiction would not enure on the 1st respondent.

32. The decision is ***P.R.Pajus (Debtor – Vs – P.Uma Maheswaran & Ors. (2012 (3) CTC 25*** has been relied on by the learned single Judge of this Court in *T.Senthilvelan case (supra)*, which has been pressed into service on behalf of the appellant, which is squarely applicable to the case on hand and the relevant portion of the same is quoted hereunder :-

“38. This Court in the judgment in P.R.Pajus (Debtpr) v. P.Uma Maheswaran and others, 2012 (3) CTC 25, had observed that burden of proof to prove that a transfer is fraudulent one lies on the person alleging so and unless this onus is discharged the Settlement Deed executed by the 1st respondent in favour of the 2nd respondent cannot be



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declared as a fraudulent one. The learned Judge in this case had stated that a mere averment in the petition is not sufficient to invoke the provision. The petitioner has to step into the box and make out prima facie strong case in support of the averments so raised. In the case on hand the petitioner has failed to prove his case.”

33. In the present case, except for marking Ex.P-1, promissory note and examining P.W.2 to show that the 1st respondent had lent money to the 2nd respondent, there is no material to show that the sale of the property was to defeat the rights of the 1st respondent from realising his debt. Further, it is not the case of the 1st respondent that there was connivance between the appellant and respondents 2 to 4 herein. The specific case of the appellant is that she is a bona fide purchaser and, therefore, in the absence of any allegation of connivance, the claim of the 1st respondent that the sale of property is on account of fraud being perpetrated on the 1st respondent is wholly unacceptable.

34. When the 1st respondent has not taken any steps to realise the debt, which is alleged to be due from the 2nd respondent and proceeded in accordance with law to obtain a decree to establish a debt, the insolvency court cannot presuppose that there exist a debt, which stood proved, which has not



been discharged, which in turn was account of the debtor being unable to pay and, thereby has become insolvent. When such a case is not made out and a decree obtained by establishing the same, there is no material for the insolvency court to hold that the debtor is insolvent. Such being the position, the mere factum of sale of the property cannot be held to be a fraudulent act to defeat the rights of the 1st respondent.

35. It is further to be pointed out that the promissory note is not a registered document. Though the court below had recorded that the promissory note provides the subject property is held on mortgage with regard to the alleged debt, however, there is no mention of such mortgage in the encumbrance certificates, which have been marked by the 1st respondent. When no encumbrance stood created by virtue of the alleged mortgage, the subsequent purchaser, viz., the appellant herein, cannot be said to have not purchased the property bona fide.

36. It is the specific case of the appellant that she is a bona fide purchaser for valuable consideration from the 4th respondent herein, who had, in turn, purchased the property from the 3rd respondent. When there is no material to show that the said purchase was not with intention to defeat or delay



the realisation of the debt amount by the 1st respondent, the mere sale of property in the absence of proof cannot lead to the finding that the act of the 2nd respondent is an act of insolvency. Merely because an ex parte order had come to be passed against the 2nd respondent, that cannot be put against the appellant, who is a subsequent bona fide purchaser. When no nexus has been established between the subsequent purchaser and the debtor, the sale cannot be held to be a sale, which has been carried out to defeat the legitimate interests of the 1st respondent.

37. Though the decision of the learned single Judge in *A.K.Seenu case (supra)* has been relied on by the 1st respondent, however, it is to be pointed out that the facts in the said case are not importable to the present case on hand, as in the said case, not only the debt is admitted, but the transfer of property was made to defeat the interests and right of the creditor, which is not the case in the present appeal. Therefore, the said decision is not applicable to the case on hand.

38. A perusal of the impugned order reveals that based on the averments of the 1st respondent and doubting the manner in which the power of attorney had been given to the 3rd respondent by the 2nd respondent, the court below had



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held that the intention of the 2nd respondent was to defeat the rights of the 1st respondent. However, as stated above, there is no material to show that the subsequent purchaser, viz., the appellant herein, was not a bona fide purchaser and had acted in connivance with the 2nd respondent/debtor to defeat the rights of the 1st respondent. In the absence of any affirmative material, the inference drawn with regard to the intention of the 2nd respondent and the subsequent purchasers by the court below is wholly flawed and without any semblance of material and, therefore, the said finding cannot be allowed to continue as it is against the specific provision u/s 6 (1)9B0 of the Act.

39. For the reasons aforesaid, the impugned order dated dated 01.11.2007 passed in Insolvency Petition No.51 of 1999 by the 1st Addl. Sub Court, Coimbatore, deserves to be set aside and, accordingly, the same is set aside by allowing this civil miscellaneous appeal. There shall be no order as to costs in this appeal. The appellant is permitted to withdraw the amount, which has been already deposited before the court below on the basis of the interim order of this court by filing appropriate application.

31.01.2025

Index : Yes / No



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