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Application (IP) No. 173 of 2017

IN

I.P.No. 25 of 2014

DR.G.JAYACHANDRAN, J.

and

C.V.KARTHIKEYAN, J.

This Application has been filed by the Official Assignee, Madras High Court under Sections 7, 36, 68 and 90 of the Presidency Towns and Insolvency Act 1908 seeking a Judgment and Decree against the second respondent Prabhu Kannappan to pay a sum of Rs.50,00,000/- together with interest at 18% p.a., from 30.04.2013 till the date of realisation and also for costs of the recovery proceedings.

2. In the report of the Official Assignee, it had been contended that on a creditor's application filed in I.P.No. 25 of 2014 by one Chitra Desai, a petitioning Creditor on 10.03.2014 against the first respondent, Arjunlal Sunderdas seeking to declare him as an insolvent, this Court, by an order dated 21.04.2014 had adjudicated the first respondent as insolvent. Pursuant to such



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adjudication, all properties of the insolvent vested with the Official Assignee.

It had been further stated that the insolvent was engaged in finance and real estate business under the name “Arjunlal Sunderdas”. He also incorporated the following companies under the provisions of the Companies Act, 1956 namely, (i) Sunil Anand & Co. (P) Ltd., (ii) International Sea Food Private Ltd., (iii) Manyal Reality Private Ltd., and (iv) Manyal Foundation Private Ltd. It had been further contended that the insolvent did not file his schedule of affairs within the stipulated time and did not produce books of accounts maintained by him.

3. During the course of investigation and from the statements made by the insolvent during this examination on 25.05.2014, 08.09.2014 and 09.09.2014 before the Official Assignee, he disclosed some assets and liabilities which were not brought on record. It had been stated that on the date of filing of the petition, there were 257 claim petitions for a total sum of Rs.117.00 crores from the estate of the insolvent.



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4. It had been further stated that the Official Assignee had to rely on the statements of accounts given by the Chartered Accountant, Mr.Ranga Ramanujam and since that was insufficient, further assistance was sought from M/s. Annamalai Associates, Chartered Accountants, to verify the list of debtors and creditors with the computer generated statement and to furnish the correct position as on the date of the adjudication.

5. It had been further stated that the insolvent did not produce any accounts books with relevant vouchers for the transactions relating to the entries and only computer generated statements had been produced. It had however been stated that the transactions were supported by the account statements furnished by the bank and by the statement furnished by the Chartered Accountant, Ranga Ramanujam.

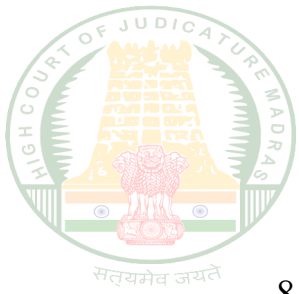
6. It had been further contended that the second respondent had received a sum of Rs.50,00,000/- from the insolvent on 11.07.2008 and that this amount was shown as due and pending as on 13.03.2013. It had also been stated that



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there were no subsequent transactions showing discharge of the above amount by the second respondent. It had been further stated that as per the statement of accounts furnished by the auditor, the sum of Rs.50,00,000/- was reflected in the account as due and payable by the second respondent as on 21.04.2014. It had been further stated that the second respondent had been retaining the amount due to the estate, and enjoying the benefits. The applicant had claimed that the second respondent was liable to repay the amount together with interest to the estate of the insolvent. It had been further contended that the counsel for the insolvent had issued a letter on 07.04.2014 disclosing the list of bad debts of the debtors to the estate. It had been stated that the name of the second respondent was also found in the said list. It had been further contended that the borrowal of the sum of Rs.50,00,000/- was a loan transaction.

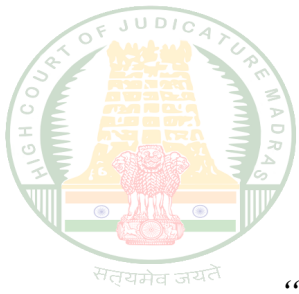
7. It was under those circumstances, since there has been no repayment either in part or in entirety. The amount payable has been claimed in this application together with interest and costs.



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8. A counter statement had been filed by the second respondent wherein he had stated that a sum of Rs.50,00,000/- was received from the first respondent on 05.07.2008 as advance for purchase of property at Anna Nagar, Chennai. Subsequently, the first respondent expressed inability to pay the balance sale consideration and requested refund of the advance. It had been stated that accordingly, in the financial year ending 31.03.2011, the said advance amount of Rs.50,00,000/- had been repaid to the first respondent. It was therefore contended that there was no amount due and payable to the first respondent. It had also been contended that the jurisdiction of this Court to examine the issue is also questionable since a civil suit for recovery of the amount had not been filed. It had been stated that the application is misconceived and should be dismissed.

9. On the basis of the pleadings, the following points arise for determination:-



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“(i) Whether the Official Assignee had proved the debt?;

(ii) Whether the claim by the Official Assignee is barred by limitation?

(iii) Whether the Official Assignee is entitled for a decree as claimed? and

(iv) To what other reliefs?”

10. The parties were then directed to tender evidence.

11. Accordingly, R.Padma, Sub Assistant Registrar, Office of the Official Assignee, Madras High Court was examined as PW-1. She marked Exs. A-1 to A-4. They included Ex.A-1 which was a true copy of the relevant pages from the report of the auditor, Ranga Ramanujam and Ex.A-2 a true copy of the demand notice sent on 13.04.2017 to the applicant and Ex.A-3 a true copy of the letter dated 07.04.2017 sent by the counsel for the second respondent, and Ex.A-4 a true copy of the statement of accounts.

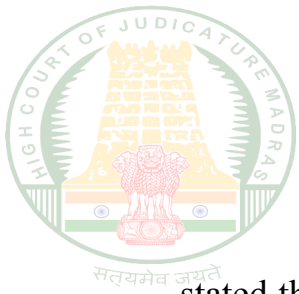


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12. On the side of the respondent, B.Kamala Kannan, Manager of the second respondent was examined as RW-1. The respondent marked two documents. Ex.R-1 certified copy of the sale deed dated 20.06.2007 executed by M.Radhakrishna Gupta in favour of K.Prabhu and Ex.R-2 the original undated receipt for payment of Rs.50,00,000/-. The document was marked recording the objections of the respondent.

13. Heard arguments advanced by Mr.K.V.Ananthakrushnan, learned counsel for the Official Assignee / applicant and Mr.M.Sriram, learned counsel for the second respondent.

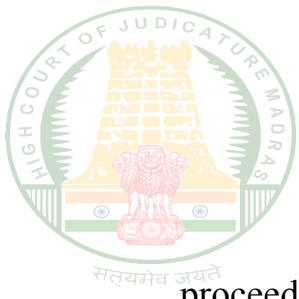
14. Mr.K.V.Ananthakrushnan, learned counsel for the Official Assignee / applicant took the Court through the facts of the case and pointed out that the first respondent, Arjunlal Sunderdas had been adjudicated as insolvent on 21.04.2014. He had however not co-operated with the investigation and had filed his statement of accounts very belatedly. He further pointed out that the first respondent was running a business in finance and real estate. He further



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stated that the statement of accounts as presented by the auditor were examined by the Official Assignee and it was found that the second respondent had received a sum of Rs.50,00,000/- as loan advance and the same had not been repaid. With respect to the issue of limitation, the learned counsel contended that the second respondent had been adjudicated as insolvent on 21.04.2014 and the cause for institution of any claim against the debtors to the estate arose only then. The learned counsel stated that the application had been filed within three years from that particular date and therefore contended that the application is not barred by the law of limitation. The learned counsel pointed out that the respondent had not produced any admissible document to show discharge of the amount. It was therefore contended that the application should be allowed.

15. Mr.M.Sriram, learned counsel for the second respondent however strongly argued that the application is barred by the law of limitation and further argued that the amount was not a loan transaction but an advance paid for property to be sold and since the first respondent had taken a decision not to



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proceed further, the said amount had been returned back to the insolvent. The learned counsel argued that it was not a simplicitor loan transaction but rather an advance paid for the purchase of property by the insolvent and when that agreement fell through, the second respondent had returned the amount of Rs.50,00,000/- back to the insolvent, under Ex.R2, which was the original of the signed receipt given by the insolvent. The learned counsel therefore stated that there was no amount payable by the second respondent to the insolvent. He further pointed out that the insolvent had not questioned the non repayment of the said amount till he was alive. He died only on 07.05.2018. This amount was also not reflected in the schedule of affairs by the insolvent. The learned counsel further pointed out that the letter given by the counsel for the insolvent indicated this amount as a bad debt to the estate. It was pointed out that the transaction was of the year 2008 and till the year 2011, the insolvent had not taken steps to recover the said amount and it was therefore contended that the adjudication cannot be resurrected. The learned counsel therefore contended that the application should be dismissed.



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16. We have carefully considered the arguments advanced.

Point No. (i):

17. This application has been filed by the Official Assignee on the strength of an outstanding shown in the books of accounts of the insolvent in the name of the second respondent to a sum of Rs.50,00,000/-. It must be stated that on an application filed by one Chitra Desai on 10.03.2021 in I.P.No. 25 of 2014 against the first respondent Arujunlal Sunderdas, the first respondent was adjudicated as insolvent by order dated 21.04.2014. The Official Assignee took over the estate of the insolvent on and from that date. The first respondent had not co-operated during the process of enquiry. The Official Assignee therefore had to take the assistance of an auditor Ranga Ramanujam, who produced the statement of accounts of the insolvent. While perusing that statement of accounts, it came to the knowledge of the Official Assignee that the second respondent herein had borrowed a sum of Rs.50,00,000/- and had not repaid the same.

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18. Admittedly, the amount of Rs.50,00,000/- had been transferred by way of a cheque in favour of the second respondent on 11.07.2008. This amount of Rs.50,00,000/- had been carried over by the insolvent in his books of accounts. It was kept alive and not closed.

19. It is the contention of the second respondent that the amount had been given as advance for property to be purchased by the first respondent. The first respondent had thereafter taken a decision not to purchase the property. It is contended that the amount of Rs.50,00,000/- had been returned back to the insolvent and the same was adjusted towards the advance amount received. It had thus been contended that there was no amount due and payable to the first respondent.

20. RW-1 in his cross examination had also admitted the receipt of the amount, which is as follows:-



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“Q: Is it correct to state that as per Ex.A4, Mr.Arjunlal Sunderdas has given Rs.50 lakhs by way of cheque and the same has been credited in the account of Mr.Prabhu Kannappan?”

A: Yes. It is true that the said amount was received as an advance for the sale agreement in respect of the property as Shanthi Colony.”

21. In this connection, the learned counsel for the second respondent placed very strong reliance on Ex.R-2 which he claimed was the receipt given by the first respondent for a sum of Rs.50,00,000/- to the second respondent.

22. The scanned copy of Ex.R-2 is produced below for better appreciation:-



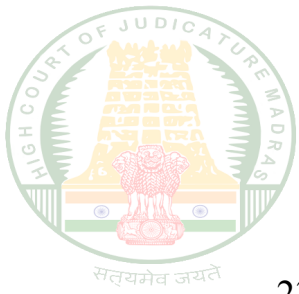
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For the payment made to Prabhu Kannappan the sum of Rs.50,00,000/- (Rupees Fifty Lakhs only) through instrument No. 179196

Received in above mentioned D.D. amount by
Cash in full This day.





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23. We have very carefully examine Ex.R-2. We are of the firm opinion that the document had been created for the purpose of the case. There is no date in the receipt. The first two lines had been typed in single line space. It also appears that, that portion had been stuck in the document. Thereafter, there is a writing that the above mentioned DD had been “*received by cash in full this date*”. But however, the date is not given. The receipt can never be taken to be in discharge of the amount payable by the second respondent. It does not mention about advance paid for property to be purchased or return of the advance amount.

24. The stand of the second respondent however establishes one fact namely that the second respondent had actually received a sum of Rs.50,00,000/- from the first respondent. In Ex.R-2, there is no date, the nature of the transaction or the purpose of the transaction is not mentioned and the name of the insolvent is also not given. The signature had been scribbled on the revenue stamps.



25. We hold that the second respondent had introduced a fraudulent document to claim discharge of the liability to the estate of the insolvent.

26. The Hon'ble Supreme Court in a Judgment reported in **2005 6 SCC 149 [State of A.P., and another Vs. T.Suryachandra Rao]**, had held as follows:-

*“9. A "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. (See **S.P. Changalvaraya Naidu v. Jagannath (1994 (1) SCC 1)**).*

10. "Fraud" as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed,



*innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, and injury enures therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. (See **Ram Chandra Singh v. Savitri Devi and Ors. (2003 (8) SCC 319).***

11.

12.....

13.



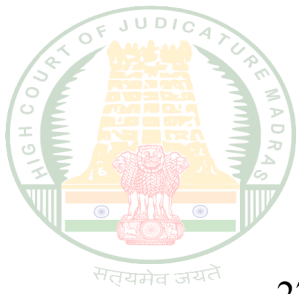
14. *Suppression of a material document would also amount to a fraud on the court. (see **Gowrishankar v. Joshi Amba Shankar Family Trust (1996 (3) SCC 310)** and **S.P. Chengalvaraya Naidu's case (supra)**).*

15. *"Fraud" is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. Although negligence is not fraud but it can be evidence on fraud; as observed in **Ram Preeti Yadav's case (supra)**.*

16. *In **Lazarus Estate Ltd. v. Beasley (1956) 1 QB 702**, : Lord Denning observed at pages 712 & 713, "No judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud. Fraud unravels everything."*

In the same judgment Lord Parker LJ observed that fraud vitiates all transactions known to the law of however high a degree of solemnity. “

[Emphasis Supplied]



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27. In 2024 SCC Online SC 1501 [*Vishnu Vardhan @ Vishnu Pradhan Vs. Sate of Uttar Pradesh and Others*], paragraph No. 61 is as follows:-

“61. In decisions abound, the Courts have consistently nullified orders obtained through fraudulent means. Key excerpts from some of these decisions read thus:

a. In United India Insurance Co. Ltd. v. Rajendra Singh, [2000 (3) SCC 581] this Court reiterated that fraud unravels everything:

3. “Fraud and justice never dwell together” (fraus et jus nunquam cohabitant) is a pristine maxim which has never lost its temper over all these centuries. Lord Denning observed in a language without equivocation that “no judgment of a court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for, fraud unravels everything” (Lazarus Estates Ltd. v. Beasley, [[1956] 1 Q.B. 702 : [1956] 1 All ER 341 : [1956] 2 WLR 502 (CA)]).

b. In Shrisht Dhawan (Smt) v. Shaw Bros., [(1992) 1 SCC 534] it was held:



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20. *Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer, Comus, who exulted in his ability to, 'wing me into the easy-hearted man and trap him into snares'. It has been defined as an act of trickery or deceit. In Webster's Third New International Dictionary fraud in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In Black's Legal Dictionary, fraud is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury.....*



c. In A.V. Papayya Sastry v. Govt. of A.P., [2007] 4 SCC 221] this Court held:

21. Now, it is well-settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed:

“Fraud avoids all judicial acts, ecclesiastical or temporal.”

22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non est in the eye of the law. Such a judgment, decree or order—by the first court or by the final court—has to be treated as nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings.

28. We are of the considered opinion that the second respondent had presented an argument which does not actually convince us to accept Ex.R-2 is a credible document. We hold that Ex.R-2 had been created for the purpose of the case.



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Point No. (ii):

29. The application had been filed on 17.04.2017. The first respondent was adjudicated as insolvent on 21.04.2014. The application had been filed within three years from that date.

30. The Insolvency Application had been filed on 10.03.2014. The right to sue accrued in favour of the Official Assignee on and from 21.04.2014, the date of adjudication of the first respondent as insolvent.

31. Section 51(a) of the Presidency Towns Insolvency Act, 1909 is as follows:-

“51. Relation of Assignee title.- The insolvency of a debtor, whether the same takes place on the debtor's own petition or upon that of a creditor or creditors, shall deemed to have relation back to and to commence at -



(a) *the time of the commission of the act of insolvency on which an order of adjudication is made against him, or”*

32. This doctrine of Relation Back very clearly holds that the insolvency shall be deemed to have Relation Back and to commence at the time of the commission of the Act of insolvency on which the order of adjudication is made against the insolvent.

33. In the instant case in I.P.No. 25 of 2014, it had been alleged that on and from December 2013, the first respondent/ Insolvent had failed to honour his commitments and had avoided claims to make payment of the debts owed by him and to return the monies borrowed by him. Therefore, the petition had been filed on 10.03.2014 seeking to declare him as insolvent and by order dated 21.04.2014, the first respondent had declared as insolvent. The acts of insolvency were a series of defaults committed by the first respondent commencing from December 2013 leading to the filing of the insolvency petition in March 2014 and the order of adjudication in April 2014.



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34. In view of this particular principle, if the date of adjudication is taken into consideration, then this petition which had been filed on 17.04.2017 is within the period of three years from 21.04.2014.

35. Additionally the second respondent had admitted to receiving Rs.50/- lakhs from the insolvent. This is directly implied from Ex.R-2 wherein he had produced a receipt for discharge of loan. When the second respondent pleads discharge, then necessarily he has to admit receipt of the amount from the first respondent. We have already held in answer to point No.(i) that the receipt produced as Ex.R-2 is a fraudulent document created for the purpose of the case. There is no date given in the said document. Therefore, we can only go back to the date of adjudication of the first respondent as an insolvent and examine whether the petition had been filed within three years from that particular date. It has been filed within the period of three years.

36. Article under Section 137 of the Limitation Act will apply. Article 137 of the Limitation Act is as follows:-



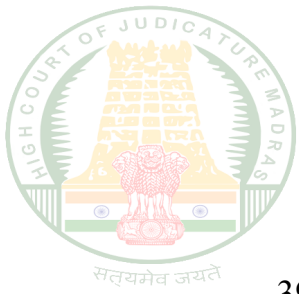
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<i>Description of application</i>	<i>Period of limitation</i>	<i>Time from which the period begins to run</i>
137. Any other application for which no period of limitation is provided elsewhere in this division	Three years	When the right to apply accrues.

37. Since the petition had been filed within three years from the date of adjudication taking into consideration the principle of Relation Back, and more particularly since the second respondent had admitted to the liability and had produced an undated receipt claiming discharge which had been marked as Ex.R2 and which document has been held to have been fraudulently prepared, we hold that the petition has been filed within the period of limitation.

Point Nos. (iii) and (iv):

38. In view of the above discussion, we hold that the claim of the Official Assignee had actually been admitted by the second respondent and that the explanation of discharge stated by the second respondent has to be rejected as being tainted with fraud.



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39. In the result, we hold that the applicant/Official Assignee is entitled for a Judgment and Decree for a sum of Rs.50,00,000/- together with interest at the rate of 18% p.a., from 21.04.2014 till the date of payment and for costs.

40. In the result, the application stands allowed with costs and a Judgment and Decree is passed directing the second respondent to pay a sum of Rs.50,00,000/- to the Official Assignee together with interest at 18% p.a., from 21.04.2014, till date of payment and also the costs of the recovery proceedings.

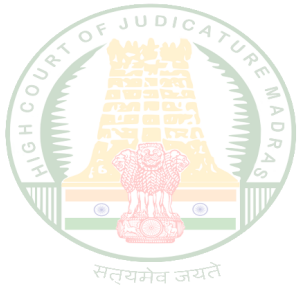
(DR.G.J.J.) & (C.V.K.J.)

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DR.G.JAYACHANDRAN, J.

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C.V.KARTHIKEYAN, J.

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Pre-Delivery Order made in
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