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Application (IP) No. 174 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 seeking a Judgment and Decree against the second respondent, Sri Thiruvettai Ayyanar Spinners Private Limited, Madurai, to pay a sum of Rs.3.50/- crores together with interest at 18% p.a., from 30.04.2013 till date of realisation and for costs of the recovery proceedings.

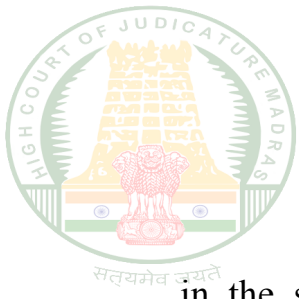
2. In the report of the Official Assignee, it had been contended that in an Insolvency Petition in I.P.No. 25 of 2014 filed by a petitioning creditor, Chitra Desai on 10.03.2014 against the first respondent Arjunlal Sunderdas, the first respondent was adjudicated as insolvent by order dated 21.04.2014. It had been contended that the estate of the insolvent then vested with the Official Assignee from that date. The insolvent was engaged in finance and real estate



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business under the name of “Arjunlal Sunderdas”. He had also incorporated four companies, namely, (i) Sunil Anand & Co. (P) Ltd., (ii) International Sea Food Private Ltd., (iii) Manyal Reality Private Ltd., and (iv) Manyal Foundation Private Ltd., and held a majority share in them.

3. The insolvent did not file the Schedule of Affairs within the stipulated time. Several persons then filed claim petitions and as on the date of filing of the application, there were 257 claim petitions claiming a sum of Rs.117/- crores from the estate of the insolvent. The Official Assignee had to rely on the statement of accounts produced by the Chartered Accountant, Ranga Ramanujam. While perusing the said statement of accounts, it was found that the second respondent had received a sum of Rs.3.50/- crores from the insolvent and that the same was shown as due and outstanding as on 30.04.2013. A perusal of the statement did not reveal any further transactions reflecting discharge. It had been further stated that a letter had been subsequently forwarded by the counsel for the insolvent giving the list of debtors. It had been stated that in view of the fact that the borrowal is reflected



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in the statement of affairs and there was no discharge of the borrowal, a Judgment and Decree must be passed against the insolvent for the said sum to be paid together with interest and costs.

4. A counter statement had been filed by the second respondent clarifying that the name of the second respondent is “Sri Thiruvettai Ayyanar Spinners Private Ltd.,” a registered company registered on 28.03.1994. It had been stated that the second respondent had business transactions with the first respondent in December 2006 for the promotion of the said company. It had been further stated that in order to purchase the shares of the company, the first respondent had invested a sum of Rs.3.50/- crores and in due compliance, shares were also issued in favour of the first respondent in the year 2006-2007. It had been further stated that in the year 2012-2013, the preferential shares were redeemed and as consideration, equity shares were issued. The equity shares were then sold to a third party, Senthamarai by the first respondent. It had been therefore stated that the transactions ended there and the first respondent did not have any further stake in the company. It had been



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therefore contended that the application should fail. It had been further contended that the applicant has resorted to the recovery by filing an application instead of instituting a civil suit.

5. The following points arise for consideration:

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

(ii) Whether application should fail owing to the incorrect description of the second respondent?

(iii) Whether the contention of the second respondent that the first respondent had invested in the company and had been allotted non-preferential redeemable shares, and on redemption, equity shares were allotted and they were sold to a third party has been established by the second respondent?

(iv) Whether the Official Assignee had proved the claim?

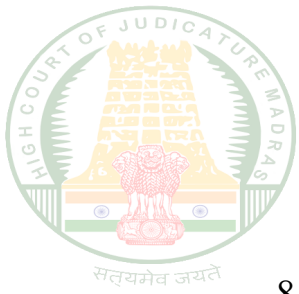
(v) To what other reliefs are the parties entitled to?



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6. The parties were then directed to tender evidence. Accordingly, R.Padma, Sub Assistant Registrar in the office of the Official Assignee was examined as PW-1 and she marked Ex.A-1, the relevant pages from the report of the Chartered Accountant, Ranga Ramanujam, Ex.A-2 the copy of the letter dated 07.04.2017 issued by the counsel for the insolvent and Ex.A-3, the true copy of the demand notice dated 13.04.2017 issued by the Official Assignee to the second respondent. Exs.A-4 and A-5 are the letters from the Registrar of Companies.

7. On behalf of the second respondent, Thiru.S.Lakshmana Perumal was examined as RW-1 and he marked Ex.R-1 which was the information about the second respondent furnished by the Ministry of Corporate affairs. He also marked Exs. R2 to R-5 the computer generated audited Balance Sheet for the years 2010-2013.

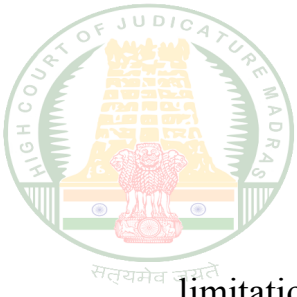


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8. Heard arguments advanced by Mr.K.V.Ananthakrushnan, learned counsel for the Official Assignee / applicant and Mr.M.Sriram, learned counsel for the second respondent.

9. It must be noted that the first respondent had died on 07.05.2018.

10. 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 applicant had established borrowal by the second respondent to a sum of Rs.3.50/- Crores by producing the statement of accounts furnished by the Auditor Ranga Ramanujam which showed that there was an existing balance payable by the second respondent to a sum of Rs.3.50/- crores to the insolvent. Further under Ex.R2, the statement produced by the counsel for the insolvent also reflected that a sum of Rs.3.50/- crores was payable by the second respondent. The Official Assignee had issued notices prior to the filing of the petition but the second respondent had ignored the same. The learned counsel insisted that the application had also been filed within the period of



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limitation. He pointed out that the debt was carried forward in the books of accounts. The insolvent was adjudicated and declared as insolvent on 21.04.2014 and the application had been filed within the period of three years from that date. It was therefore contended that the application was filed well within the period of limitation.

11. Mr.S.Sriram, learned counsel for the second respondent however pointed out that initially the application had been filed in the name of a wrong company and only thereafter the name was corrected. The learned counsel stated that the claim was barred by limitation. He further asserted that the amount had been repaid by allotment of shares to the applicant herein. He contended that necessary documents in this regard had been produced and argued that the application should be dismissed.

12. We have carefully considered the arguments advanced and perused the materials available on record.



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Point No. (i):

13. 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.

14. In the report of the Official Assignee, it had been contended that the liability had been kept alive till 31.03.2011. 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.

15. 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 th 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”



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16. 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.

17. 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.

18. 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.



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19. The Article under Section 137 of the Limitation Act will apply has not specific period of limitation had been given. Article 137 of the Limitation Act is as follows:-

<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.

20. Since the petition had been filed within three years from the date of adjudication taking into consideration the principle of Relation Back, we hold that the petition has been filed within the period of limitation.

21. 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. The point is answered accordingly.



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Point No.(ii):

22. This point revolves around the allegation that the name of the second respondent had been wrongly given as 'Thiruvattu Ayya Spinners Private Ltd.,' instead of the correct name 'Sri Thiruvettai Ayyanar Spinners Private Ltd.'. The learned counsel for the second respondent pointed out that this wrong description is fatal to the case of the applicant.

23. We do not agree.

24. The application has been filed in the name as provided in the Statement of Accounts. Immediately on knowing about the misdescription, application had been filed to correct the name and amendment had also been permitted.

25. In ***Jai Jai Ram Manohar Lal Vs. National Building Material Supply, Gurgaon, (AIR 1969 SC 1267)***, the Hon'ble Supreme Court had held as follows in paragraph No.5:



*“5. The order passed by the High Court cannot be sustained. Rules of procedure are intended to be a handmaid to the administration of justice. **A party cannot be refused just relief merely because of some mistake, negligence, inadvertance or even infraction of the Rules of procedure.** The Court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting mala fide, or that by his blunder, he had caused injury to his opponent which may not be compensated for by an order of costs. However negligent or careless may have been the first omission, and, however late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side. In *Amulakchand Mewaram v. Babulal Kanlal Taliwala* [1933 SCC OnLine Bom 72 : (1933) 35 Bom LR 569] , Beaumont, C.J., in delivering the judgment of the Bombay High Court set out the principles applicable to cases like the present and observed:*

“... the question whether there should be an amendment or not really turns upon whether the name in which the suit is brought in the name of a non-existent person or whether it is merely a misdescription of existing persons. If the former is the case, the suit is a nullity and no amendment can



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cure it. If the latter is the case, prima facie, there ought to be an amendment because the general rule, subject no doubt to certain exceptions, is that the Court should always allow an amendment where any loss to the opposing party can be compensated for by costs.”

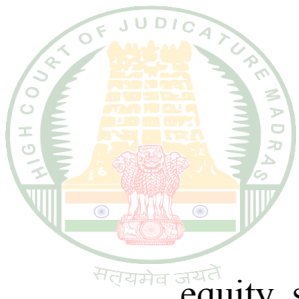
(Emphasis Supplied)

26. We therefore answer this point that the misdescription of the name of the second respondent is not fatal to the case of the applicant.

Point No.(iii):

27. The learned counsel for the second respondent pointed out that the second respondent had business dealings with the first respondent in and around December 2006. He contended that the first respondent had invested a sum of Rs.3.50/- crores and non cumulative preferential share redeemable in 7 years were allotted in his favour in the financial year 2006-2007.

28. In the year 2012-2013, the preferential shares were redeemed and



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equity shares were issued as consideration. It had been contended by the learned counsel that the equity shares were then sold to Senthamarai, a third party. It had therefore been contended that thereafter the first respondent had no further interest or right over the second respondent company.

29. It is to be however noted that the second respondent is a company incorporated under the Companies Act. The audited Balance Sheets for the years 2010, 2011, 2012 and 2013 had been produced as documents. The order for allotment of non cumulative preferential shares to the first respondent or the share transfer forms for sale have not been produced.

30. We hold that the said allotment order or share transfer forms have not been produced only because there was no such allotment of preferential shares to the first respondent and there was no sale of equity shares by the first respondent to Senthamarai.

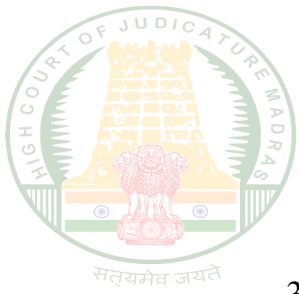


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31. In the notice sent by the Official Assignee, it had been very clearly stated that an amount of Rs.3.50/- crores was due and payable to the estate of the insolvent. This notice had been issued to Thiruvattu Ayya Spinners Private Ltd. at No.32, Bhagirathi Ammal Street, T.Nagar, Chennai – 600 017.

32. The crucial issue is about receipt of Rs.3.50/- crores by the second respondent from the insolvent. That receipt had been admitted by the second respondent. It was however contended that it was the investment in non cumulative preferential shares redeemable in 7 years. The allotment order had however not been produced before the Court.

33. It is not the case of the second respondent that the records have been lost. They have not been produced. Suppression of material documents amounts to fraud.



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34. In (1994) 1 SCC 1 [*S.P.Chengalvaraya Niadu (dead) by LRS., Vs. Jagannath (dead) by LRS and others*], the Hon'ble Supreme Court had examined the question of fraud and had widened the scope to also include non disclosure and suppression of relevant and material documents/facts. It had been held as follows in para 5 and 6:-

“5. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that “there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence”. The principle of “finality of litigation” cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-



dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.

6.A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party. ”

(Emphasis Supplied)

35. It is clear that the second respondent having admitted the borrowal had not produced documents to substantiate the reason advanced by him and has not disclosed the correct facts before the Court.

36. We therefore hold Point No.(iii) against the second respondent.



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Point Nos.(iv) and (v):

37. The Official Assignee has produced the relevant records to show transfer of Rs.3.50/- crores to the second respondent. The receipt of the said amount has also been admitted by the second respondent. The reasons advanced by the second respondent have been rejected by us.

38. We hold that the Official Assignee has proved the debt and is entitled for a decree as prayed for.

39. In the result, the application stands allowed. The applicant / Official Assignee is entitled for a Judgment and Decree as prayed for. The second respondent is directed to pay a sum of Rs.3.50/- crores together with interest at 18% pa., from 21.04.2014, the date of adjudication of the first respondent as insolvent till the date of realization and also for costs of the proceedings.

(DR.G.J.J.) & (C.V.K.J.)
20.08.2025

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Index : Yes/No
Neutral Citation : Yes/No
Speaking Order : Yes/No



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DR.G.JAYACHANDRAN, J.
and
C.V.KARTHIKEYAN, J.

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Pre-Delivery Order made in
Application (IP) No. 174 of 2017
IN
I.P.No. 25 of 2014

20.08.2025