IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06-10-2025

CORAM

THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

APPLN No. 40 of 2025
in IP No.79 of 2008

V.Balaji

Applicant(s)

Vs

The Official Assignee
High Court, Madras.

Respondent(s)

PRAYER Petition filed under Order II Rule 1 of Insolvency Rules read with Section 38 of the Residency Towns of Insolvency Act, to grant unconditional discharge to the applicant.

For Applicant: Mr.J.Balagopal

For Respondent: Mr.Gowtham
Official Assignee

ORDER

This application has been filed for granting unconditional discharge to the applicant.

2.The applicant was adjudicated as an Insolvent by an order dated 10.07.2008. Thereafter, notice was served to all the creditors for making their claims before the Official Assignee. After the service of notice of adjudication to all the creditors, the insolvency petition was posted for public examination. The public examination commenced on 24.01.2018 and it was completed. The applicant has shown nearly 67 unsecured creditors to the tune of Rs.74,45,000/- and the assets to the tune of Rs.50,000/-

3.The specific case of the applicant is that the administration of the estate of the applicant has been completed long back and the applicant is continuing to be an insolvent. It is under these circumstances, the present petition came to be filed before this Court for the unconditional discharge of the applicant.

4.When the matter came up for hearing on 11.08.2025, this Court took into consideration the report filed by the Official Assignee and passed the following order:

> *A report has been filed by the Official Assignee as a counter to Appln. No.40 of 2025 filed by the insolvent. As seen from the report of the Official Assignee, out of the 68 un-secured creditors, only 15 un-secured creditors were served with the notices sent by the Official Assignee and the notices sent to the remaining 53 un-secured creditors were returned un-served.*
>
> *2.This application has been filed by the insolvent seeking for the grant of unconditional discharge.*
>
> *3.Since some of the un-secured creditors have not been served, the Official Assignee is directed to effect advertisement, disclosing the details of the un-secured creditors to put them on notice about Appln. No.40 of 2025 filed by the insolvent seeking for unconditional discharge.*

Post the matter on 15.09.2025.

5.Pursuant to the above order, the Official Assignee has effected advertisement in Malai Malar on 11.09.2025 and the same has also been placed before this Court.

6.Heard the learned counsel for the applicant and the Official Assignee.

7.This Court had an occasion to deal with a similar case in I.P.No.65 of 2025. The relevant portions are extracted hereunder:

7. The law on the scope of Section 39 of the Act is now too well settled. This Court has repeatedly held that the law of bankruptcy does not expect that the debtor should always be the slave of the creditors and that the object is to release the debtor at the appropriate time taking into consideration several factors referred to in Section 39 of the Act, which states that the Court has no discretion to reject the discharge if the insolvent has not *committed any offence either under the Act or under the IPC.*

8. In so far as the second limb of Section 39 of the Act is concerned, it is left to the discretion of the Court to refuse discharge or suspend discharge for a specified time or grant conditional discharge. While exercising this discretion, the Court must take into consideration several factors set out under Section 39(2) of the Act. The objection raised by the Official Assignee, by itself, is not a deciding factor and it is one of several circumstances, the Court has to take into consideration while dealing with an application for discharge.

9. In the case in hand, the applicant continues to be an undischarged insolvent for more than 20 years and the applicant has completed his 66th year and probably, it is high time that he is relieved of this stigma viewed with utmost contempt by the society at least in the evening of his life.

10. This Court had an occasion to deal with the scope of Section 39(2)(a) of the Act in the case of N.M.Rajesh Vs. Official Assignee, High Court, Madras [reported in 2014 (6) CTC 423] wherein the principles were carved out at paragraph 6, which is *extracted as hereunder :*

"6. The principles laid down by our High Court in the judgments referred to above are that ~~

(i) The proceedings in insolvency shall be dealt with as expeditiously as possible and the creditors shall be satisfied as expeditiously as possible from the property of the insolvent and that the insolvent shall then be free to start life again unburdened by his debts.

(ii) The law of bankruptcy does not expect that the debtor should always be the slave of the creditors, but he has to be released at the appropriate time by taking into consideration several factors referred to in Section 39 of the Presidency Towns Insolvency Act.

(iii) It is the discretion of the court to refuse discharge or suspend discharge for a specified time or grant conditional discharge, having regard to totality of all the factors enumerated in Section 39(2).

(iv) The absolute order of discharge does not put an end to the administration of the insolvent-s

property.

(v) It is for the Court to decide whether the property should, even after annulment of adjudication, continue to vest with the official receiver or not. Whether the administration of the particular insolvency is brought to an end by the Court-s order of granting the absolute order of discharge and is depending upon the nature of the order made.

(vi) Once there is an unconditional absolute order of discharge, the official receiver has no longer power to bring any of the properties of the ex~insolvent to sale and any dealing of the property by the official receiver in a given situation is against law and is liable to be set aside.

The relief sought for herein, if viewed in the light of the principles drawn from the authorities cited above, the same would compel this Court to grant the relief as sought for herein.“

11. As was held by this Court in the said decision, the applicant did not commit any act, which disentitles him to seek for *an order of discharge. Considering the age of the applicant, the status of the applicant need not be continued.*

8.In the case in hand, the applicant continues to be an un-discharged insolvent from the year 2008 onwards. The report submitted by the Official Assignee at Paragraph No.15 states as follows:

> *15. It is submitted that in the event of admitting the above said 11 unsecured claims for a sum of Rs.23,52,914/- with the available amount of Rs.32,247/-. The insolvency estate is not in a position to declare dividend of at least 0.25 paise in a rupee as provided under section 39 (2) (a) of Presidency Towns Insolvency Act, 1909, which is a pre-requisite for granting discharge.*

9.In the light of the above development, it is high time that the applicant is relieved of this stigma and it is also seen that the applicant did not commit any act, which dis-entitles him to seek for an order of discharge. This Court also takes into consideration the fact that the applicant is nearly sixty years old.

10.In the light of the above discussion, this application is ordered as prayed for. No Costs.

06-10-2025

Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No
ssr

To

1.The Official Assignee
High Court, Madras.

N.ANAND VENKATESH J.

ssr

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