

C.M.A.(MD) No.19 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 09.01.2025

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.(MD)No.19 of 2025

Xavier Selva

... Appellant/Petitioner/
Debtor

vs.

1.Sriram Transport Finance Company Ltd.,
Office situated at D.No.1/3064,
2nd Floor, "R" Square, VOC Nagar,
Madurai-Rameswaram Main Road,
Ramanathapuram Town.

2.S.Albert Mickilin Raja

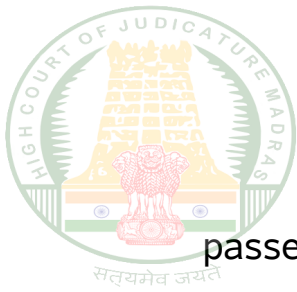
3.Steepher Raj

4.Ragu

5.Rajasekaran

... Respondents/Respondents/
Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 75 of the Provincial Insolvency Act, 1920 against judgment and decree dated 19.06.2024 made in Insolvency Petition No.02 of 2017



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passed by the Principal District Judge, Ramanathapuram.

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For appellant : Mr.A.Haja Mohideen
For Respondents : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the petitioner in Original Petition against the order of dismissal made in Insolvency Petition No.2 of 2017 on 19.06.2024 by the Principal District Judge, Ramanathapuram.

2. Despite the receipt of notice, the respondents 2 to 5 neither appeared nor represented through counsel and hence, they were set *ex parte* by the Trial Court.

3. Heard the learned counsel for the appellant/petitioner.

4. The case of the petitioner is that the petitioner purchased Tavera Car on finance from the first respondent. As he failed to pay EMI, the vehicle was seized by the first respondent from the



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petitioner. The first respondent issued a notice to the petitioner to pay the amount of Rs.2,23,956/- on 22.02.2017.

5. The petitioner purchased a JCB vehicle by applying loan for a sum of Rs.20,00,000/- from the first respondent. Notice was issued to the petitioner by the first respondent to repay the said loan of Rs.20,00,000/-. The petitioner obtained another loan from the second respondent for a sum of Rs.20,00,000/- for improvement of his business. For the same purpose, again the petitioner borrowed a sum of Rs.10,00,000/- each from the respondents 3 and 4. Again he borrowed a sum of Rs.20,00,000/- from the fifth respondent. In all, the petitioner borrowed a sum of Rs.82,32,956/- from the respondents 1 to 5.

6. It is her further case that the loan amounts have not been discharged by the petitioner till date. He has no source of income to repay the loan amounts. He is being threatened by the respondents to repay the money and they have lodged a complaint against the petitioner before the Police Station. The petitioner has been appearing before the Police in the morning as well as evening. He



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has no property except the petition mentioned properties. Six months prior to the filing of the petition, he did not sell any movable or immovable properties. A declaration is sought for to declare him as pauper.

7. Per contra, on behalf of the first respondent, it was contended that this petition is filed with ulterior motive to cheat the creditors without paying the amount borrowed from the first respondent. The petition is filed to cheat the Court through process of law and the first respondent sought for dismissal of the petition.

8. It is further contended by the first respondent that the petitioner is a first class contractor and he availed a loan of Rs.18,00,000/- on 20.11.2014 for purchasing the JCB vehicle. He purchased Telcon 2013 model bearing registration No.TN-06-W-6148 by availing loan. One J.V.Jagan stood as guarantor for the abovesaid loan. He has executed Deed of guarantee, dated 29.11.2014 in favour of the first respondent. The petitioner is a chronic defaulter. Despite the repeated demands made by the first respondent, the petitioner has not paid the loan amount borrowed



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from the first respondent. Only thereafter, the vehicle was seized from him by the first respondent.

9. It is the further contention of the first respondent that on notice to the petitioner, the vehicle was brought for public auction and sold for a sum of Rs.7,70,000/- and the said amount is credited to the loan amount availed by the petitioner and the said fact is also intimated to the petitioner.

10. As per the terms of the agreement, in order to recover the balance loan amount from the petitioner, the first respondent moved Arbitration case No.50 of 2017 before the Arbitral Tribunal, Madurai. The petitioner did not chose to contest the case and award was passed on 17.06.2017 against the petitioner and the guarantor. In order to escape from the liability to pay the amount, he has filed this petition.

11. The first respondent secured another vehicle from the petitioner and it was sold in public auction after intimating the fact to the petitioner. The said vehicle was sold through public auction



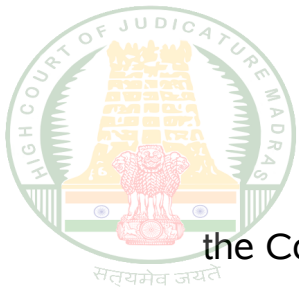
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for Rs.1,70,000/- and the said fact is also intimated to him. The said amount was credited to the loan amount of the petitioner and the outstanding amount is Rs.2,32,956/-. The first respondent filed another case before the Arbitral Tribunal in Arbitration Case No.60 of 2017 and an order was passed on 17.06.2017.

12. The petitioner is a man of means and he owns movable properties and cash balance in his bank account. He is a contractor, doing real estate business and money lending business. The petitioner has got residential house at Ramanathapuram and at Karaikudi town. He is having source of income to repay the loan to the first respondent and the respondents 2 to 5 are bogus persons.

13. At trial, the petitioner has examined himself as P.W.1 and no document was marked by his side. On the first respondent side, one witness is examined and seven documents were marked.

14. A person, who seeks exemption from payment of Court fee on the ground that he is an indigent person, will have to satisfy

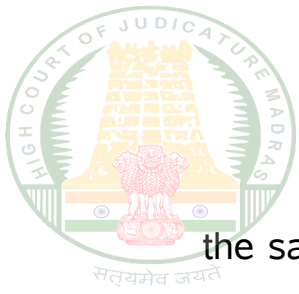


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the Court that he does not have economic capacity to pay the Court fees. His bald statement to this effect is not suffice and he has to substantiate his case to the satisfaction of the Court.

15. The petitioner has filed his proof affidavit in line with the details of his petition. During his cross-examination, when a question was posed to him to the effect that whether his father was owning ancestral properties at Thalayarenthal, he has stated that he does not know about the same. From 2000-05, he was doing business in the name and style of 'Sam Earth Movers' and he was owning two JCBs purchased by availing loans i.e., one is for Rs.13,00,000/- and another one is for Rs.18,00,000/-, from the first respondent/Finance company. He also purchased a car (Tavera Car) by availing loan from the first respondent.

16. It is also his evidence that he has invested Rs.80,00,000/- in the business. He was also running a Training Institute by keeping the said vehicle. He has obtained permission from the Government for running the said business. Whereas, a suggestion was posed to him as to whether he is a Government Contractor, he has denied



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the same. It is inferable from his evidence that he was maintaining a savings and current bank account at Indian Overseas Bank, Ramanathapuram from the year 1999. When a question was posed that he has purchased a plot in the year 1999 to an extent of 6 ½ cents, he answered that he did not remember the same. As regards the property bearing Survey No.205/2 part, patta stands in his name in patta No.1982, he has answered that he did not remember about the same.

17. Except the first respondent, the respondents 2 to 5, despite the receipt of notice, did not appear before the Trial Court and they were set *ex parte*.

18. For the below stated reasons, it has to be decided that the petition is moved with *malafides*:

1.He has not produced two bank passbooks which stand in his name.

2.He does not know whether his father is owning ancestral property or not at Thaliyarenthal, as he came out from the village in 1988 itself.



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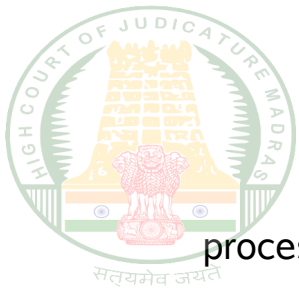
3.He had been doing business in the name and style of 'Sam Earth Movers' at Ramanathapuram (as per his evidence).

4.A training institute was being run by him based on the permission obtained from the Government.

19. It is his evidence that he has invested a sum of Rs.80,00,000/- in the business. Based on the abovesaid answers of P.W.1, this Court is of the opinion that in order to cheat the first respondent from repaying loans, he has filed the petition with *malafides*.

20. When the petitioner in clear terms states that he has invested a sum of Rs.80,00,000/- in the business, his evidence to the effect that if he does not own any property is not believable and acceptable.

21. In the given circumstances, this Court does not have any hesitation to hold that the filing of this petition is sheer abuse of



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process of law. This Court does not find any good reason to disturb the findings of the trial Court.

22. Based on the aforestated discussions and observations, this Civil Miscellaneous Appeal stands dismissed. No costs.

09.01.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
apd

To

1.The Principal District Judge,
The Principal District Court,
Ramanathapuram.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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R.KALAIMATHI,J

apd

Pre-delivery order made in
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