



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 06.01.2026

Order pronounced on : 30.01.2026

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THE HONOURABLE MR JUSTICE P.B. BALAJI

CRP.No.1864 of 2020

Ganesan

... Petitioner

Vs.

1.K.Sengottaiyan
2.Arunachalam
3.K.Palanisamy
4.Palaniammal
5.Ganesan
6.Muthusamy
7.Ganesh
8.Sampathkumar
9.Mohan Kumar
10.Mohanavel
11.Ponnusamy
12.Kaliyammal
13.M.Saruvamalai
Respondents

...

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order in I.A.No.55 of 2010 in I.P.No.16 of 1988 dated 19.12.2019 pending on the file of the learned Principal Subordinate Judge, Namakkal.



For Petitioner : Mr.N.Umapathi

For Respondents : Mr.T.Dhanyakumar for R12

Mr.K.Myilsamy for R13

No appearance for RR1, 3, 8 & 11

R7 died (steps taken)

RR 2, 4, 5, 6, 9 & 10 not ready in notice

ORDER

The judgment debtor in insolvency proceedings is the revision petitioner.

2.I have heard Mr.N.Umapathi, learned counsel for the revision petitioner, Mr.T.Dhanyakumar, learned counsel for the 12th respondent and Mr.K.Myilsamy, learned counsel for the contesting 13th respondent.

3.Mr.N.Umapathi, learned counsel for the revision petitioner would contended that the revision petitioner was declared insolvent, at his instance in insolvency proceedings in I.P.No.11 of 1989 on the file of the Sub-court, Salem. The petitioner had moved an application in I.A.No.55 of 2010 for annulling the adjudication of the revision petitioner as an insolvent. He would further contend that all the creditors had been fully settled by the petitioner and unfortunately, the liquidator had not brought it to the notice of the Court. Further, the Court also dismissed the



application on a technical ground that the auction purchaser had not been included by the revision petitioner. He would further contend that excepting the 10th creditor, the claims of all other creditors had been fully settled and satisfied and colluding with his grandson, the auction purchaser, the 10th creditor has refused to receive the amounts tendered, in full and final settlement.

4.The learned counsel for the revision petitioner would also invite my attention to the memo filed by the petitioner seeking permission to deposit the amounts due and payable to the 10th creditor. The learned counsel for the petitioner would therefore state that when the petitioner had settled the claims of all the creditors, he was entitled to an order, annulling his adjudication as an insolvent. He would further contend that the provisions of Order XXI Rule 95 of CPC were not complied with at the time of taking possession, after the auction purchaser purchased the subject property and that the signature of the petitioner was not obtained at the time of delivery.

5.Lastly, Mr.N.Umapathi, learned counsel for the petitioner would contend that the execution petition ought to have been filed by the petitioner within one year, but admittedly, the E.P was not filed within the statutory period of limitation. He would therefore pray for the matter



being remitted to enable the revision petitioner to establish payment and full satisfaction of claims of all creditors.

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6.Per contra, Mr.K.Myilsamy, the leaned counsel appearing for the contesting 13th respondent would contend that the E.P was filed way back in the year 1989 and the petitioner was declared as an insolvent as early as on 28.03.1989.The auction was held on 05.02.2009 and the 13th respondent purchased the property at the auction in 2010. He would further contend that the documents that are filed along with the typeset of papers contain copies of alleged receipts from certain creditors and they have all been created for the purpose of filing of the present revision petition. They have not been filed before the Court below and no steps were taken to even summon the originals from the liquidator. If really the petitioner had settled all the claims, then the original receipts could have been filed and according to Mr.K.Myilsamy, the receipts are self-serving, the authenticity or genuineness of which has also not been proved or established.

7.Further, the learned counsel for the 13th respondent, Mr.K.Myilsamy would also contend that the alleged receipts of the year 2024 cannot be looked into by the revisional Court as they have not been



exhibited before the Sub-court. He would therefore contend that there is no merit in the revision and the order passed by the Sub-court being a well-reasoned order, does not require to be interfered with in the revision.

8.I have carefully considered the submissions advanced by the learned counsel for the parties. I have also gone through the impugned order passed by the learned Principal Subordinate Judge, Namakkal, dismissing the application filed for annulment of the insolvency petition.

9.The petitioner moved the insolvency Court under Section 35 to annul the adjudication of insolvency in I.P No.16 of 1988. The petitioner was adjudged insolvent on his application before the insolvency Court by an order dated 28-03-1989. The application for annulment was taken out in the year 2010. In order to substantiate his case, the petitioner relied on Ex.P1 to Ex.P11. Ex.P1 to Ex.P9 were photocopies of receipts issued by various creditors between the dates 27-01-2009 and 03-02-2009. It was claimed by the petitioner that the originals were submitted to the Official Receiver. No steps were taken by the petitioner to summon the originals.

10.In fact, on a perusal of the photocopies of the alleged receipts in Ex.P1 to Ex.P9, the learned Principal Sub-court found that the principal



amount alone had been settled to various creditors and there was no proof of the interest component being settled. The Court, rightly interpreting

Section 35 of the Insolvency Act, held that the petitioner has not established full satisfaction of all debts of the insolvent. In fact, the 10th creditor, whose grandson is the auction purchaser, has admittedly not been paid his dues. Even assuming for the sake of argument that the 10th creditor evaded a tender made by the petitioner, in order to ensure that the sale in favour of his grandson is intact, even in respect of other creditors, the petitioner has not been able to establish full satisfaction of all debts.

11.No doubt, one of the reasons for the learned Principal Sub-judge to dismiss the application was that the auction purchaser had not been included. However, I find that it is not the sole ground on which the petition has been dismissed. The said reason is only an additional factor that has weighed in the mind of the Court below. Strangely, an additional typeset of papers, containing 9 receipts, have been filed before this Court in April 2024. All the receipts are dated 02-04-2024. On a perusal of the said receipts, which have been executed by 9 sets of creditors, I am able to see that though the creditors have confirmed the payment of principal amount in 2009, it is only on 02-04-2024 that they even acknowledge receipt of the interest component payable to them. Therefore, by the

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petitioner's own showing, as on the date of application in I.A.No.55 of 2010, there was no full satisfaction of all claims of creditors. Therefore, I do not see any reason whatsoever to interfere with the order passed by the learned Principal Subordinate Court.

12.Of course, it shall be open to the petitioner to move a fresh application for annulling the adjudication of insolvency subject to establishing before the insolvency Court that all claims of creditors have been finally fully settled and satisfied. This order shall not come in the way of any such application being made by the petitioner. At the same time, under the guise of such annulment, the petitioner, at this belated stage of over 20 years and more, from the date of a valid auction purchase made by the 13th respondent, cannot seek to unsettle his purchase. Therefore, making it clear that the revision petitioner is at liberty to refile a proper application for annulment of his status as an insolvent, without seeking for setting aside the sale in favour of the 13th respondent.

13.Though Mr.N.Umapathi, learned counsel for the revision petitioner has relied on the judgment passed by me in _____, where I held that if the signature of the judgment debtor is not obtained in the _____

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sale, in the receipt by the Court bailiff, it would not amount to proper delivery of possession of the property in auction and the decision in

, where this Court held that the execution petition filed beyond the period of 12 years would be barred by limitation under Article 136 of the Limitation Act. I am unable to apply the ratio laid down in the above cases to the facts of the present case, for the simple reason that the petitioner is not challenging the auction sale in favour of the 13th respondent, but only moved the Insolvency Court for annulling his adjudication in the year 2010. Therefore, at this belated juncture, it is not open to the petitioner, who has not chosen to question or challenge the auction purchase made by the 13th respondent to canvass these grounds in the present revision petition, which is only a challenge to an order refusing to annul the adjudication of the petitioner as an insolvent. For all the above reasons, I did not find any infirmity in the order of the Learned Principal, Subordinate Court, Narmakkal, warranting interference and intervention.

14. In fine, the Civil Revision Petition is dismissed with the above observation and directions. No costs.

30.01.2026



Neutral Citation: Yes/No
Speaking Order/Non-speaking Order
Index : Yes / No
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To

The Principal Subordinate Judge, Namakkal.

P.B. BALAJI,J.

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Pre-delivery order made in
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