



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01-06-2026

DATE OF DECISION : 17-06-2026

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CORAM

**THE HONOURABLE MR.JUSTICE P. VELMURUGAN
AND
THE HONOURABLE MRS.JUSTICE K. GOVINDARAJAN
THILAKAVADI**

OSA No. 210 of 2019

Dr.K.Senthilnathan
Carrying on business under the name
and style of Sri Devi Hospital
No.1620-A, 16th Main Road
Anna Nagar, Chennai-600 040

Appellant

Vs

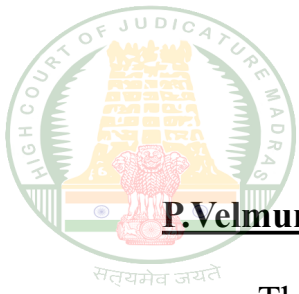
1. Official Assignee
High Court, Madras
2. M.Sathyanarayana
S/o Subba Rao
No.216, Govindappa Naicken Street
Chennai-600 001

Respondents

Memorandum of Grounds of Original Side Appeal under Order XXXVI, Rule 9 of the Original Side Rules read with Clause 15 of the Letters Patent, against the order of the learned single Judge dated 22.10.2018 made in Application No.19 of 2016 in I.P.No.39 of 2013.

For Appellant: Mr.S.Sundaresan

For Respondents: Mr.S.Santhanakumar
Official Assignee for R1
Mr.T.Srikanth for R2



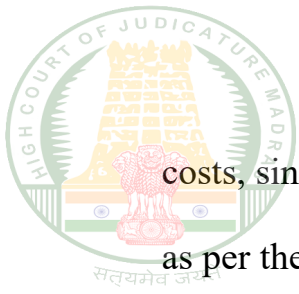
JUDGMENT

P.Velmurugan J.

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The present intra-Court appeal is directed against the order dated 22.10.2018 passed by the learned single Judge in Application No.19 of 2016 in I.P.No.39 of 2013.

2. The appellant is the Debtor and the second respondent is the Petitioning Creditor in I.P.No.39 of 2013. The second respondent instituted the above insolvency proceedings against the appellant on the ground that in spite of the decree passed by the City Civil Court, Chennai in O.S.No.3368 of 2012 dated 28.02.2012, the appellant failed to pay the decretal amount. Therefore, the second respondent filed an application in I.N.No.4 of 2013 before the Insolvency Court for issue of insolvency notice to the appellant. Accordingly, insolvency notice was sent by pre-paid registered post with acknowledgment due and the said notice was served on the appellant on 18.02.2013. Even after service of the insolvency notice, the appellant failed to make the payment nor filed any application to set aside the insolvency notice. Since the period of 35 days specified in the insolvency notice for compliance already expired, the second respondent filed the I.P.No.39 of 2013 under Sections 9 to 13 of the Presidency Towns Insolvency Act, 1909 to declare the appellant as insolvent and to direct that the estate of the debtor be vested in the Official Assignee of Madras for the benefit of the general body of creditor of the debtor along with



costs, since the amount due and payable by the debtor to the petitioning creditor as per the Insolvency Notice is Rs.1,31,379.50 and an amount of Rs.1,37,379.50

became due as on the date of the I.P. Before the Insolvency Court, the petitioning creditor examined himself as PW1 and marked three documents as Exs.P1 to P3. However, there was no representation on behalf of the debtor. Therefore, the Insolvency Court, by order dated 11.11.2013, after hearing the learned counsel for the petitioning creditor and considering the oral and documentary evidence, allowed the I.P.No.39 of 2013 and adjudged the debtor as insolvent with a direction that the estate of the debtor shall vest with the Official Assignee for the benefit of the general body of creditor of the debtor and that the costs of the petition shall come out from the estate of the debtor to the petitioning creditor. The time for discharge was fixed as eighteen months. It is also admitted by the parties that similar insolvency proceedings were also instituted by various other creditors against the appellant and orders of adjudication were passed adjudging the appellant as insolvent, which are not the subject matter in this appeal.

3. However, the appellant, as defendant in the suit filed by the second respondent, filed an application in I.A.No.13114 of 2012 in O.S.No.3368 of 2012 under Order XXXVII, Rule 3 of CPC seeking for leave to defend the suit before the learned XIV Assistant Judge, City Civil Court, Chennai, on the



ground that the second respondent is a stranger to him and he neither borrowed any money nor executed any promissory note as alleged by the second respondent. However, the learned XIV Assistant Judge, City Civil Court, Chennai dismissed the said interlocutory application by order dated 28.09.2012.

4. Meanwhile, the appellant filed Application No.19 of 2016 seeking to set aside the ex parte adjudication order dated 11.11.2013 made in I.P.No.39 of 2013 and the learned single Judge dismissed the said application vide order dated 22.10.2018, which is reproduced hereunder:-

“The prayer in this application is for a setting aside of exparte adjudication dated 11.11.2013. The insolvency petition in the present case has been filed by a petitioning creditor on the basis of a decree passed in O.S.No.3364 of 2012 on the file of the City Civil Court, Chennai. The decree has, admittedly, not been contested in a manner known to law, till date.

2. Notice was issued in the Insolvency Petition and an order of adjudication was passed on 11.11.2013. The properties of the insolvent vest in the Official Assignee of this Court consequent upon the order of adjudication.

3. A report has been filed by the Official Assignee dated 20.04.2016 that reveals that the applicant/insolvent has also been adjudicated insolvent in other Insolvency Petitions, I.P.Nos.40, 53. 54. 55 & 57 of 2013 and I.P.Nos.58, 59 & 61 of 2014 on various dates between October 2013 and February 2015.



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4. Admittedly, the order of adjudication was served on the insolvent on 20.10.2013 and he was called upon to attend the office of the Official Assignee(in short O.A.), along with his Schedule of Affairs. Though his counsel appeared on a few dates before the O.A., no Schedule of Affairs has been filed and neither has the Insolvents' statement been recorded.

5. Staff from the office of the O.A. were deputed on 28.02.2014, 12.03.2015 and 24.07.2015 to a private hospital in Anna Nagar, Chennai admittedly owned and managed by the Insolvent for taking inventory of the items contained therein. On account of the stiff resistance posed by the Insolvent and the staff in the hospital, the process of inventorisation could not be completed.

6. Communications sent from the office of the O.A. to the Insolvent, duly received by him, seeking information concerning his bank accounts, income and other details have received no favour of response thus far.

7. The insolvent appears to be managing and running two hospitals in Chennai. He is also stated to be indebted to a secured creditor, the Assets Reconstruction Company India Limited, Bombay to the extent of Rs. 41,92,24,005/- and proceedings have been initiated before the D.R.T. Chennai in the year 2014 in this regard.

8. Ninety seven (97) claims have been received by the Official Assignee amounting in all, to a sum of Rs.1.25,85,901/- and the matter is under adjudication before the Official Assignee. It is in the aforesaid circumstances that the present application has been filed.



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9. When the application was first listed for hearing, requests were made by the learned counsel for the parties for reference of the matter to the Tamil Nadu Mediation and Conciliation Centre, High Court, Madras, for settlement by Mediation.

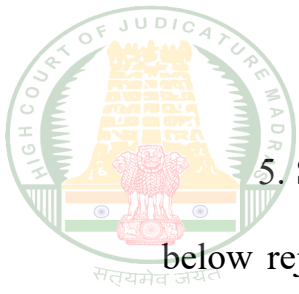
10. A report has now been received from the Tamil Nadu Mediation and Conciliation Centre, High Court, Madras dated 04.09.2018 to the effect that the insolvent has not bothered to appear before the Mediator despite several opportunities granted to him and the counsel who appeared on his behalf only repeatedly sought time. No progress was thus made in the proceedings for mediation and the matter has been returned to the file of this Court.

11. Even today, Mr.Pugaleanthi, learned counsel appearing for the insolvent, only requests for more time to enable settlement of the admitted outstandings of the creditor. However, I am of the view that sufficient opportunity has been granted to the insolvent and am not inclined to entertain the request of the applicant any further. If at all the request of the applicant to settle is bonafide, he may do so even when the matter is under adjudication before the Official Assignee.

12. In these circumstances I see no merit in this application and dismiss the same. Consequently the request for stay is also rejected.

13. Adjudication to go on before the Official Assignee who will file a report of further progress in the matter after four (4) weeks.

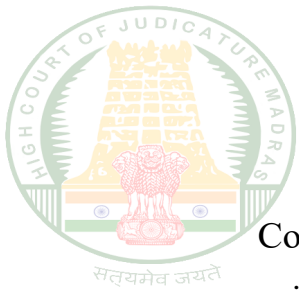
14. List on 31.11.2018.”



5. Subsequently, assailing the order dated 28.09.2012 passed by the Court below rejecting the application seeking leave to defend the suit, the appellant filed C.R.P.No.941 of 2017, which was disposed of along with C.R.P.Nos.937 to 940 of 2017 vide order dated 04.08.2025, observing as follows:-

“4.This Court has earlier allowed the batch of revision petitions filed by the petitioner herein and set aside the orders of dismissal in few applications. It is now stated that the order of this Court has reached finality and there is no challenge whatsoever made by the respondents therein. However, it is further submitted that, pursuant to the dismissal of the applications seeking leave to defend the suits, insolvency proceedings have commenced and certain orders have also been passed against the petitioner by the Official Assignee. Therefore, though this Court has set aside the dismissal orders in the earlier batch of revision petitions and granted permission to the petitioner to contest the suits, in order to balance the interest of the parties, this Court is of the view that the petitioner shall deposit the principal together with interest to the credit of the respective suits.

5.Accordingly, it is now submitted before this Court that the petitioner has deposited the principal along with interest in respect of these revision petitions. Further, the counsel for the respondents has filed a memo to the effect that the amounts have been settled vide counsel for the petitioner's letter dated 07.03.2014 in respect of C.R.P.Nos.937, 938, 939, 940 and 941 of 2017. The said memo dated 04.08.2025 is taken on record.



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6. Therefore, the impugned orders passed by the trial Court dismissing the applications seeking leave to defend the suits, are set aside and the petitioner is permitted to contest the suits on merits. It is well open to the parties to take all the legal pleas and defence available to them before the trial Court. The trial Court is directed to dispose of the suits after hearing the parties, on their own merits, as expeditiously as possible. It is also open to the petitioner to file necessary application for annulment of the insolvency proceedings pending against him.

7. Accordingly, these Civil Revision Petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.”

6. Meanwhile, challenging the order dated 22.10.2018 passed by the learned single Judge rejecting his application to set aside the ex parte adjudication order dated 11.11.2013 made in I.P.No.39 of 2013, the appellant has filed the present appeal before this Court.

7. The learned counsel appearing for the appellant would submit that the impugned order is unsustainable, as the learned Judge failed to consider that the amount involved in the decree has been settled and nothing survives in the I.P. The learned Judge ought to have seen that the suit itself is frivolous and vexatious with bald allegations and the same cannot stand in the eye of law, as this Court, while disposing of the civil revision petition, has categorically stated



that the appellant has to be given opportunity to prove his case.

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8. The learned counsel appearing on behalf of the second respondent would submit that the appellant has not filed any application for annulment of the insolvency proceedings pending against him as on date, as the proceeding acts in rem. The learned counsel also filed a memo of compliance stating that the second respondent creditor has deposited a sum of Rs.1,52,400/- received from the debtor before the Official Assignee as directed by this Court. Therefore, the impugned order requires no interference, as the appellant can always approach the Official Assignee for adjudication of the claims covered in the insolvency proceedings.

9. We have considered the submissions and perused the materials available on record.

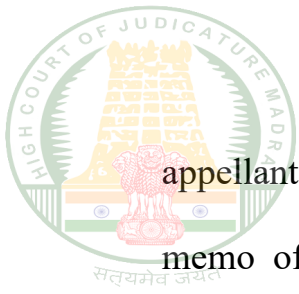
10. Admittedly, the insolvency proceedings in I.P.No.39 of 2013 came to be instituted by the second respondent against the appellant, since the appellant failed to settle the amount covered in the decree passed by the City Civil Court, Chennai in O.S.No.3368 of 2012. Therefore, after following the procedures and considering the oral and documentary evidence let in by the second respondent, the Insolvency Court adjudged the appellant as insolvent vide order dated



11.11.2013 with a direction that the estate of the debtor shall vest with the Official Assignee for the benefit of the general body of creditor of the debtor. It

is also not in dispute that similar insolvency proceedings were initiated by various other creditors against the appellant and orders of adjudication came to be passed adjudging the appellant as insolvent, which are not the subject matter of this appeal. However, when the appellant challenged the order passed by the learned XIV Assistant Judge, City Civil Court, Chennai rejecting his application seeking leave to defend the suit in C.R.P.No.941 of 2017, the said revision petition came to be allowed by order dated 04.08.2025 by placing on record the memo dated 04.08.2025 filed by the appellant herein that he has deposited the principal along with interest to the credit of the suit as directed by the Court. The appellant was also permitted to contest the suit on merits. The appellant has also been permitted to file necessary application for annulment of the insolvency proceedings pending against him.

11. This Court, by order dated 27.01.2026, considering the fact that the insolvent has settled the creditor directly without going through the office of the Official Assignee and any settlement should be made through the office of the Official Assignee and preferential settlement cannot be encouraged or accepted by the Court, as all the creditors should have the benefit of proportionate settlement, directed the second respondent to deposit the amount settled by the



appellant herein to the office of the Official Assignee. Pursuant to the above, a memo of compliance has been filed by the learned counsel for the second respondent that a sum of Rs.1,52,400/- has been deposited before the Official Assignee. The report of the Official Assignee also acknowledges the said deposit. Similarly, as per the memo dated 04.08.2025 filed in C.R.P.No.941 of 2017, the appellant has also deposited the principal amount along with interest to the credit of the main suit. Since the appellant has deposited the amount concerned in this appeal before the Official Assignee and the appellant has also been permitted to contest the suit on merits, leaving it open to the appellant and the second respondent to adjudicate their claims before the Official Assignee in the manner known to law, which will be considered by the Official Assignee, this original side appeal stands disposed of. There shall be no order as to costs.

(P.VELMURUGAN J.) (K.GOVINDARAJAN THILAKAVADI J.)
17-06-2026

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

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OSA No. 210 of 2019



To

1. The Official Assignee
High Court, Madras



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OSA No. 210 of 2019



**P.VELMURUGAN J.
AND
K.GOVINDARAJAN
THILAKAVADI J.**

SS

**Judgment in OSA
No.210 of 2019**

17-06-2026