

Radha Vs. Ramamoorthy

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Court : Chennai

Decided On : Apr-18-2016

Judge : P.R. Shivakumar

Appeal No. : C.R.P (PD) No. 1197 of 2016 & C.M.P. No. 6570 of 2016

Appellant : Radha

Respondent : Ramamoorthy

Judgement :

(Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order in I.A.No.40 of 2015 in I.P.3 of 2011 on the file Principal District and Sessions Judge, Ariyalur dated 25.11.2015.)

1. The debtor against whom a creditor's petition came to be filed under Section 9 of the Provincial Insolvency Act, 1920 in I.P.No.3 of 2011 on the file of Principal District and Session Judge, Ariyalur for adjudging him as insolvency, is the petitioner in the present revision.

2. Contending that no act of insolvency was averred in the creditor's petition and the creditor's petition was not filed within three months from the date of alleged commission of the Act of insolvency, the debtor filed an application in I.A.No.40 of 2015 in the above said I.P.No.3 of 2011 for the rejection of the debtor's petition under Order VII Rule 11 CPC.

3. The learned Principal District Judge, Ariyalur, after hearing both sides, passed the impugned order dated 25.11.2015 dismissing the said application holding that an act of insolvency has been alleged and the petition came to be filed within three months from the date of commission of the act of insolvency. The said order of the learned Judge of the Insolvency Court is sought to be challenged in the present revision filed under Article 227 of the Constitution of India invoking the power of superintendence of this Court over the subordinate Courts. The matter stands listed today for admission.

4. The arguments advanced by Mr.V.Raghavachari, learned counsel for the petitioner are heard. The certified copy of the impugned order and copies of the other documents produced in the form of typed-set of papers are also perused.

5. It is the contention of the learned counsel for the petitioner that though an act on the part of the revision petitioner in going underground has been sought to be projected as an act of insolvency, the insolvency petition, as originally filed, recited the date of commission of such act of insolvency as 16.10.2010; that when the Court returned the petition questioning as to how the petition was filed in time in the light of Section 9(1)(c) of the Provincial Insolvency Act, the respondent herein/creditor corrected the date to 20.10.2010 and re-presented the same and that the same will show the act of insolvency alleged in the insolvency petition was illusory.

6. This Court is not in a position to accept the said contention. Of course, the act of insolvency, namely going underground as contemplated under Section 6(1)(d)(ii) and 6(1)(d)(iii) of the Provincial Insolvency Act would have started on 10.10.2010 or even prior to that. But, so long as the debtor does not surface and make him available to be approached by the creditors, every moment of such retreat shall amount to a fresh act of insolvency. Clear averment has been made in the insolvency petition that from 20.10.2010, the revision petitioner/debtor went underground disabling the creditors to communicate him and that debtor was not available in his dwelling house. As the said act of hiding and making inaccessible to the creditors continued on 20.10.2010, within three months from which date the insolvency petition came to be filed by the creditor, the revision petitioner cannot

contend that the condition stipulated in Section 9(1)(c) of the Provincial Insolvency Act has not been complied with warranting rejection of the insolvency petition.

7. For the above said reasons, this court hereby holds that there is no defect or infirmity in the order passed by the trial Court dismissing the interlocutory application filed by the revision petitioner under Order VII Rule 11 CPC for the rejection of the insolvency petition. The revision does not even merit admission and the same deserves dismissal at the threshold.

Accordingly, the revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

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