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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.01.2026

PRONOUNCED ON : 20.02.2026

CORAM

**THE HONOURABLE MR JUSTICE C.V. KARTHIKEYAN
AND
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU**

**OSA No. 88 of 2019
and
CMP Nos.8636 of 2019 & 13744 of 2024**

Vijayakumar

Appellant(s)

Vs.

1. M/s.Cathedral Chits Private Limited,
Rep by its Director K.V.Thomas,
Having its office at No.6-A,
“Rajestic Cottage”, No.48, Arcot Road,
Saligramam, Chennai 600 093.

2.M/s M.B.F.Chits Private Limited,
Rep by its Director K.V.Thomas,
Having its Office At 19,
Rajestic Garden, 48, Arcot Road,
Saligramam, Chennai 600 093.

3.Titus Eapen

4.Sheela Eapen

5.The Official Assignee,
High Court, Madras.

6.Arihant Bardia

7.Alpana Bardia

8.C.Paraslal Bardia

Respondent(s)



PRAYER: Appeal filed under Order XXXVI Rule 1 of O.S.Rules read with Clause 15 of Letters Patent Act, to set aside the order and decretal order dated 29-10-2018, passed in Application 193 of 2010 in IP No.99 of 1997.

For Appellant(s): Mr.Sharath Chandran
for M/s.V.Srimathi

For Respondent(s): Mr.J.Balagopal for R6 to R8
Mr.C.Ramesh for R5
R1 & R2 – Served
R3 & R4 – Not ready in notice

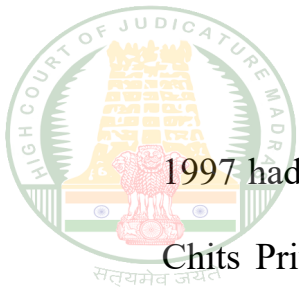
JUDGMENT

(Judgment of the Court was made by C.V.Karthikeyan, J.)

This appeal has been filed questioning the order dated 29.10.2018 in application No.193 of 2010 in IP No.99 of 1997.

2.The appellant herein as third party to the proceedings in IP No.99 of 1997, had filed an application in A.No.193 of 2010 seeking to direct the Official Assignee to release the subject property at Flat No.3A, III Floor, Parkland Apartments, No.2, Kamalabai Street, T.Nagar, Chennai – 17.

3.The appellant herein had entered into an agreement of sale, dated 28.01.1992, with Titus Eapen, the third respondent herein, with respect to Flat No.3A, III Floor, Parkland Apartments, No.2, Kamalabai Street, T.Nagar, Chennai – 17, for a total consideration of Rs.9,00,000/-. IP No.99 of



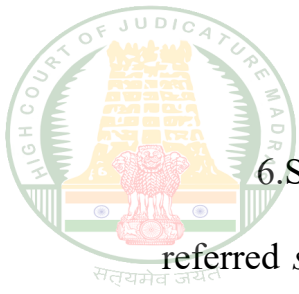
1997 had been filed by the first and second respondents herein, M/s. Cathedral Chits Private Limited, represented by its Director K.V.Thomas and M/s.MBF Chits Private Limited, represented by its Director K.V.Thomas, seeking to adjudicate the third and fourth respondents herein, Titus Eapen and Sheela Eapen as insolvents. In the petition, it had been stated that the said respondents, Titus Eapen and Sheela Eapen were carrying on business in finance and stock broking and joined in the chit business of the petitioning creditors and had also bid at the auction and had taken the prize money. They had then failed to repay the same. The petitioning creditors then filed petitions before the Registrar for Central Madras Chit Fund cases and obtained orders for payments of the amounts due.

4.It had been contended that the amount due to the first petitioning creditor, M/s.Cathedral Chits Private Limited, was Rs.42,868/- and the amount due to the second petitioning creditor, M/s.MBF Chits Private Limited was Rs.83,332/-. It had been further contended that the third and fourth respondents had departed from their dwelling house and usual place of business and had therefore committed acts of insolvency within the meaning of Sections 9 (d) (i) (ii) & (iii) of the Presidency Towns Insolvency Act. It was further contended that the third and fourth respondents own immovable properties including Flat No.3A, III Floor, Parkland Apartments, No.2, Kamalabai Street, T.Nagar, Chennai – 17. It was under those circumstances that the said petition in



I.P.No.99 of 1997 was filed. By an order dated 27.04.1998, the said respondents, Titus Eapen and Sheela Eapen were adjudicated as insolvents. On and from that date, their assets stood vested in the office of the Official Assignee.

5.The appellant herein had then entered into an agreement with the petitioning creditors on 30.04.1999 that on payment of a sum of Rs.90,000/- to them, the petitioning creditors would withdraw the insolvency petition. It was contended that the appellant herein was a tenant under Titus Eapen and Sheela Eapen. In the agreement, the fact that I.P.No.99 of 1997 had been filed was disclosed, the fact that the said property was shown as a property in the insolvency petition was also disclosed. The fact that the property stood vested with the Official Assignee was also disclosed. It was contended that if it so vests, then the appellant herein would be deprived of his possession and to prevent that eventuality, he had entered into an agreement with the petitioning creditors overriding the rights of the office of the Official Assignee. Thereafter, the petitioning creditors addressed a letter to the Official Assignee on 08.05.1999, calling upon him to withdraw the insolvency petition against the insolvents. He also addressed a letter to his counsel instructing him not to proceed with the case.



6. Seeking specific performance of the agreement of sale dated 28.01.1992 referred *supra*, the appellant herein also filed O.S.No.4732 of 2003 before the City Civil Court at Chennai. By judgment dated 31.03.2004, the III Additional Judge, City Civil Court, Chennai, the suit directing the appellant to deposit the balance sale consideration and directing the defendants to execute the sale deed, failing which, the Court shall execute the sale deed. Thereafter, the Court had also executed the sale deed on 19.12.2005 of the said property in favour of the appellant herein. The order of the attachment of the said property was also raised by order dated 24.11.2008 by the X Assistant Judge, City Civil Court, Chennai in E.A.No.6209 of 2008 in E.P.No.782 of 2008.

7. The appellant then filed A.No.193 of 2010 in I.P.No.99 of 1997 seeking to release the said property from insolvency. That application came to be considered by a learned Single Judge of this Court and by an order dated 29.10.2018 dismissed the said application. Challenging that order, the present appeal has been filed.

8. In the said order, the learned Judge had noted that on adjudication as insolvents, all the immovable properties of the insolvents vested in the office of the Official Assignee and should be equally distributed among the creditors. The Official Assignee had filed a report stating that efforts were taken to serve the adjudicating order on the appellant herein, but the appellant evaded such



efforts. The Official Assignee then proceeded to bring the property to sale by public auction on 26.05.2010. The creditors have been impleaded as sixth to eighth respondents in the application and also as sixth to eighth respondents in this appeal.

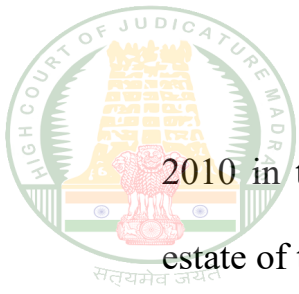
9.The learned Judge examined the decree passed in the suit for specific performance and observed that the Official Assignee was not a party to the said suit and held that therefore, the sale deed executed in favour of the appellant by the Court would not bind the Official Assignee. It was further held that the appellant had knowledge of the insolvency proceedings and had also visited the office of the Official Assignee and therefore, the decree obtained without impleading the Official Assignee cannot be taken to his advantage by the appellant herein. Permission was however granted to the appellant to file a claim petition before the Official Assignee who was directed to consider and adjudicate the same.

10.Heard arguments advanced by Mr.Sharath Chandran, learned counsel for the appellant and Mr.C.Ramesh, learned counsel for the Official Assignee and Mr.J.Bala Gopal, learned counsel for R6 to R8. There is no representation for the petitioning creditors and for the insolvents.



11. Mr. Sharath Chandran, learned counsel for the appellant took the Court through the facts of the case. He pointed out that the appellant had entered into a rental agreement with the insolvents, with reference to Flat No.3A, III Floor, Parkland Apartments, No.2, Kamalabai Street, T.Nagar, Chennai – 17 and was in possession of the same. He had also entered into an agreement of sale with the insolvents. He had paid substantial portion of the sale consideration. Thereafter, independent of this, I.P.No.99 of 1997 had been filed by the first and second respondents seeking to adjudicate the third and fourth respondents as insolvents. By order dated 27.04.1998, the third and fourth respondents were adjudicated as insolvents. The appellant had then entered into an agreement with the petitioning creditors/first and second respondents and had settled their claims against the estate of the insolvents, and the petitioning creditors/first and second respondents had agreed to withdraw I.P.No.99 of 1997. They had addressed letters to the Official Assignee and to their counsel requesting withdrawal of the insolvency petition. The appellant herein had also filed a suit seeking specific performance of the agreement of sale. The learned counsel pointed out that the suit had been filed only for enforcement of the agreement and a decree *in personam* was obtained against the insolvents. They however did not come forward to execute the sale deed. The Court had therefore executed the sale deed in favour of the appellant. The learned counsel therefore contended that the appellant had become the absolute owner of the said property. It was under those circumstances, the appellant had filed A.No.193 of

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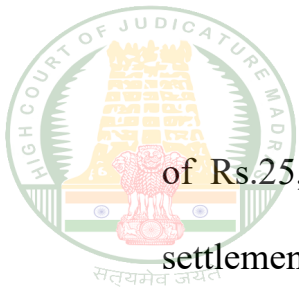


2010 in the insolvency petition seeking to release the said property from the estate of the insolvents.

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12.The learned counsel further pointed out that the report of the Official Assignee shows that the estate was a surplus estate and there was sufficient amount available with the office of the Official Assignee to pay out any other creditor who might lay a claim against the second and third respondents. The learned counsel stated that under these circumstances, the property could be released and no harm or prejudice would be caused to anyone, much less to the office of the Official Assignee.

13.Mr.C.Ramesh, learned counsel for the Official Assignee stated that the Official Assignee had taken every effort to serve the order of adjudication of insolvency on the appellant herein, but he resisted receipt of the same though he was in possession of the suit property. He contended that after following due procedures, the immovable properties were brought for sale in public auction. Insofar as the auction of the property at T.Nagar is concerned, there were no bidders. Thereafter, the matter had travelled in appeal in OSA No.88 of 2019 and a Division Bench had issued directions on 12.03.2021, directing the parties to present a compromise agreement. Accordingly, a compromise agreement was also presented, according to which, on 15.02.2021, the appellant had paid a sum



of Rs.25,00,000/- to the sixth to eighth respondents herein as full and final settlement of their claims. It was contended that the suit filed by the appellant without impleading the Official Assignee was not maintainable and the decree obtained would not bind the Official Assignee. In the meanwhile it was informed that the Managing Director of one of the petitioning creditors, K.V.Thomas also died. The petitioning creditors have not placed any further claim against the estate of the appellant. It was also informed that the appellant had paid all dues payable to the petitioning creditors.

14. We have carefully considered the arguments advanced and perused the material records.

15. This appeal has been filed against an order of a learned Single Judge refusing to release a property/flat which stood vested with the Official Assignee on adjudication of the third and fourth respondents as insolvents on a petition filed by the first and second respondents. The appellant was in possession of the flat on the strength of a decree of specific performance, whereby the flat was also conveyed to him. A careful examination of the facts reveal that the appellant herein had settled the dues of the first and second respondents against the estate of the insolvents. It is a fact that he had not impleaded the office of the Official Assignee as a defendant in the suit filed by him seeking specific



performance of the agreement of sale entered into by him with the insolvents.

However, the fact that he had paid the entire sale consideration is neither denied nor disputed. He had also settled the claim of the petitioning creditors, M/s. Cathedral Chits Private Limited and M/s.MBF Chits Private Limited. There is also no dispute over that particular fact. He had also paid the claim of the sixth, seventh and eighth respondents herein. There is again no dispute over that fact.

16.It is also stated by the learned Official Assignee that the estate of the insolvent is a surplus estate which will only indicate that the known debts had been paid out and there were amounts available in the estate. If there are no claimants, the said surplus amount would have to be paid back to the insolvents. Unfortunately, the insolvents could not be served. They had not come forward to the office of the Official Assignee enquiring about the status of the insolvency petition. They are also not within the jurisdiction of this Country.

17.Section 21 of the Presidency Towns Insolvency Act, 1909 is as follows:

21.Power for Court to annul adjudication in certain cases.- (1) Where, in the opinion of the Court, a debtor ought not to have been adjudged insolvent, or where it is proved to the satisfaction of the Court that the debts of the insolvent are paid in full, the Court shall, on the application of any person interested, by



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order annul the adjudication and the Court may, of its own motion or on application made by the official assignee or any creditor, annul any adjudication made on the petition of a debtor who was, by reason of the provisions of sub-section (2) of section 14, not entitled to present such petition.

(2) For the purposes of this section, any debt disputed by a debtor shall be considered as paid in full, if the debtors enters into a bond, in such sum and with sureties as the Court approves, to pay the amount to be recovered in any proceeding for the recovery of or concerning the debt, with costs, and any debt due to a creditor who cannot be found or cannot be identified shall be considered as paid in full if paid into Court.

18.In *R.M. Subramaniam vs N. Sundaram Iyer* reported in *AIR1963MAD217: (1963)IMLJ113: 1976 MADLW 40*, a Division Bench of this Court had held as follows:

The substratum of an insolvency petition is the act of insolvency. If what was visibly an act of insolvency on the date of the petition cannot be attributed that character when the petition comes on for orders, because of subsequent events, it is legitimate and proper that the Court should take stock of the actual situation as on the date of the disposal, instead of relying upon the past state of affairs which has ceased to exist. Any adjudication that may be made, leaving out of account the change



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*of circumstances affecting the act of insolvency, would be futile, as it would be annulled under **Section 21** of the Act.*

19.It is thus seen that it is legitimate and proper for the Court to take stock of the actual situation as on the date of disposal, instead of relying upon the past state of affairs which has ceased existence.

20.In the instant case, the fact that the insolvents were due and payable amounts to the petitioning creditors, is a fact which has ceased to exist since the appellant herein had paid the amount due to the petitioning creditors which has also been acknowledged by them. Further, the appellant herein had also paid the amount due and payable to the sixth, seventh and eighth respondents which again is a fact which is admitted and neither denied nor disputed. It is also a fact that the estate is, on this date, a surplus estate, which would indicate that there are no other claimants and there are surplus amounts available in the office of the Official Assignee which will have to be paid back only to the insolvents. In view of these facts, we hold that tying the appellant to insolvency and awaiting arrival of the insolvents, who are now not within the jurisdiction of this Court would result in failure of justice.

21.We are of the considered opinion that this Court should take a pragmatic view of the change in circumstances. The substantial change in



circumstances is that the estate, as on date is a surplus estate and the claims of all the known creditors have been paid. It would only be an exercise in futility to keep alive the adjudication order of the insolvents. Section 21 provides that any third party can seek annulment of insolvents. Here the relief sought is to release the property from insolvency. The appellant has satisfied the debts of the insolvents to the petitioning creditors. The Official Assignee is also aware of that fact.

22.For all these reasons, we hold that it would serve the ends of justice if the relief sought by the appellant is granted. The property at Flat No.3A, III Floor, Parkland Apartments, No.2, Kamalabai Street, T.Nagar, Chennai – 17 is released from the estate of the insolvents. The title of the appellant is upheld.

23.We allow this appeal and set aside the order of the learned Single Judge, dated 29.10.2018, passed in A.No.193 of 2010 in IP No.99 of 1997. No costs. Consequently, connected miscellaneous petitions are also closed.

**(C.V.K.J.,) (K.B.J.,)
20.02.2026**

Index: Yes/No
Speaking/Non-speaking order
Internet: Yes
Neutral Citation: Yes/No
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**C.V.KARTHIKEYAN, J.
AND
K.KUMARESH BABU, J.**

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To
The Official Assignee,
High Court, Madras.

**Pre-delivery Judgment
in OSA No. 88 of 2019**

20.02.2026