



O.S.A.Nos.268 and 269 of 2021

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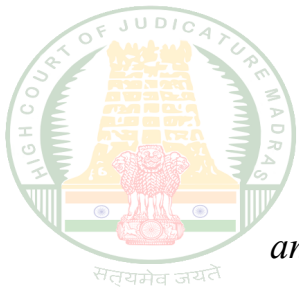
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C.V.KARTHIKEYAN, J.

The Hon'ble the Chief Justice, by noting dated 28.08.2025 had nominated this Court under Clause 36 of the Letters Patent to hear the point on which the Division Bench [*S.S.Sundar* and *Dr.A.D.Maria Clete, J.J.,*] had differed while delivering the common judgment in O.S.A.Nos.268 and 269 of 2021 on 29.04.2025.

2. A perusal of the judgment of the Division Bench shows that both learned Judges did not specify the exact point of difference, as required under Clause 36 of the amended Letters Patent. However, I am fortified by the decision reported in **2007 (2) MLJ 129 [All India Anna Dravida Munnetra Kazhagam, Chennai vs. State Election Commissioner and others]**, wherein at Paragraph 182, it has been held as follows:-

"182.Even though Clause 36 of the Letters Patent requires that if the opinion of the Judges should be equally divided, "they shall state the point upon which they differ and the case shall then be heard upon that point by one or more of the other Judges



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and the point shall be decided according to the opinion of the majority of the Judges who have heard the case including who those first heard it”, no specific point on which difference has arisen has been specified. When the matter was placed before me, at the threshold this aspect was highlighted by me and the learned counsels appearing for all the parties have stated that even though points of difference have not been specifically pointed out by the Division Bench, the difference as apparent from various discussions and conclusions of the two learned Judges should be culled out and should be decided on that basis without returning the matter for spelling out the difference."

3. I heard Mr.H.Karthik Seshadrai, learned counsel for the appellant in both the appeals and Ms.Shubharanjani Ananth, learned counsel for the first respondent in both the appeals. The learned Official Assignee for the second respondent is also present.

4. The learned counsels pointed out that both the Original Side Appeals arise from a common order dated 14.06.2021, passed by a learned Single Judge of this Court [*P.T.Asha, J.*] in Appln.Nos.298 and 299 of 2018



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in I.P. No.5 of 2013.

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5. Let me not traverse further into the facts of the case. The primary point on which the learned Judges differed was regarding the mandatory applicability of Section 12(2) of the Presidency Towns Insolvency Act, 1909. *Justice S.S.Sundar* was of the view that compliance with the said provision was not mandatory to initiate insolvency proceedings. He opined that non-compliance would neither affect the status of insolvency nor constitute a valid ground to annul the insolvency.

6. However, *Dr.Justice A.D.Maria Cleto* held a contrary view, stating that compliance under Section 12(2) of the Presidency Towns Insolvency Act, 1909 is mandatory and constitutes a pre-requisite for initiating insolvency proceedings. She further opined that failure to comply would extend to annulling the order of adjudication, effectively meaning that the insolvent would stand discharged from being categorized as an insolvent.

7. The issue therefore revolves around interpretation and scope of



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Section 12(2) of the Presidency Towns Insolvency Act, 1909 and the requirement of its compliance / effect of non-compliance.

8. List the matter again on **07.10.2025 at 04:30 p.m.**

9. If it is convenient to the learned counsels, arguments could be advanced on **09.10.2025 at 02:15 p.m.**

11.09.2025

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