

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
IN
NOTICE OF MOTION NO.39 OF 2014
IN
INSOLVENCY PETITION NO.2 OF 2013

M/s. Computer Link ... Applicant

IN THE MATTER OF :

M/s. Computer Link ... Petitioning Creditor

Versus

Dinesh N. Karia Insolvent

And

The Official Assignee, High Court, Bombay Respondent

Mr. S.N.Vaishnava i/b. M/s. N.N. Vaishnava and Company for the Applicant / Petitioning Creditor.

Ms.V.S.Avasare, 1st Assistant to Official Assignee, present.

Mr. Dinesh Nanji Karia, Insolvent, present.

Mr. Tejas D. Karia, son of Insolvent, present.

CORAM : S.J. KATHAWALLA, J.
DATED : 10TH FEBRUARY, 2015

P.C.

1. The above Notice of Motion is taken out by the Applicant / Petitioning Creditor inter alia for the following reliefs :

“(a) That this Hon'ble Court be pleased to initiate contempt proceedings against the Insolvent ;

(b) The Official Assignee, High Court, Bombay to take possession of the property being Shop No.5, situate at Janmabhoomi Marg, Opposite Rohit Chambers, Hasam

Premji House, Near Janmabhoomi Press, Fort, Mumbai-400 001, with further direction to take forcible possession from whosoever found in possession of the said shop”.

2. Briefly set out are the facts in the matter :

2.1 The Applicant / Petitioning Creditor – M/s. Computer Link had filed a Summary Suit being No. 1289 of 2011 against the Insolvent / Judgment Debtor – Dinesh Nanji Karia and M/s. Nayna Traders. In the said Summary suit, the Petitioning Creditor took out Notice of Motion No. 1725 of 2011 seeking reliefs under Order XXXVIII Rule 5 of the Code of Civil Procedure, 1908. In the said Notice of Motion, by an order dated 21st June, 2011 this Court recorded the statement of Judgment Debtor that he will not dispose of, alienate, encumber or part with possession of his office premises being Shop No. 5 situate at Janmabhoomi Marg, Opposite Rohit Chambers, Hasam Premji House, Near Janmabhoomi Press, Fort, Mumbai-400 001 (the said premises). In the said Summary Suit, by consent of the parties a money decree was passed against the Insolvent / Judgment Debtor by order of this Court dated 21st February, 2012. In the said order, it was provided by this Court that till the amounts mentioned in the said order are paid in full, the Judgment Debtor shall not sell, dispose of, alienate, encumber, part with possession and / or create any third party rights in respect the said premises without giving the Applicant /

Petitioning Creditor and their Advocates notice of at least two weeks with liberty to the Applicant / Petitioning Creditor to apply.

2.2. As the Judgement Debtor failed to pay the amount due under the consent decree, the Applicant / Petitioning Creditor served a notice being Notice No. N/40 of 2012 on the Judgment Debtor on 19th October, 2012. The Judgment Debtor committed an act of insolvency on 6th December, 2012. In view thereof, the Applicant / Petitioning Creditor filed the above Insolvency Petition No. 2 of 2013 seeking adjudication of the Judgment Debtor as insolvent.

2.3 In the said Insolvency Petition No. 2 of 2013, the Judgment Debtor filed his Affidavit dated 1st April, 2013 stating that despite making lot of efforts to dispose of the said premises, he is not successful in doing so. He has further stated in the said Affidavit that he now has a buyer for the premises but the proposed buyer is not in a position to pay monies upfront and is ready and willing to make payment in instalments.

2.4. By an order dated 29th April, 2014, the said Insolvency Petition was allowed. In view thereof, the said Judgment Debtor - Dinesh N. Karia was now adjudicated insolvent.

2.5. Pursuant to the order of adjudication, the Official Assignee by his letter dated 26th June, 2013 inter alia fixed an appointment for preparing an inventory of the movables and immovables belonging to the

Insolvent and to take formal possession of the said premises on 3rd July, 2013.

2.6. On 3rd July, 2013, the representative of the Official Assignee along with the representative of the Petitioning Creditor visited the said premises, when the Insolvent informed the representative of the Official Assignee that he is in possession of the said premises. However, the Insolvent refused to give possession of the said premises to the Official Assignee or to prepare an inventory.

2.7. Thereafter, on 6th August, 2013 the representative of the Official Assignee once again visited the said premises to take possession of the same and to prepare an inventory as regards the movables lying in the said premises. On reaching the said premises, the representative of the Official Assignee noticed a board of Supreme Electric & Hardware on the said business premises. On making inquiry from the Insolvent who was present, the Insolvent informed the representative of the Official Assignee that he has surrendered the said premises to Hasam Premji, the trustee of the said premises about two years ago and he therefore has no right in the said premises.

2.8. Thereafter, the Advocate for the Insolvent by his letter dated 27th September, 2013 addressed to the Official Assignee alleged that the Insolvent has surrendered the said premises to the landlord on 30th

August, 2011.

2.9. The Petitioning Creditor therefore filed the present Notice of Motion setting out the false and incorrect statements made by the Insolvent from time to time including the statements made on oath. The learned Advocate appearing for the Petitioning Creditor has also pointed out that in fact the Insolvent has in a magazine Kutch Wagad Khabar Patrika on 29th August, 2012 issued an advertisement for sale of the said premises on pagadi basis and has also given his telephone number being 9620761688, which clearly demonstrates that it is the Insolvent who was in possession of the said premises on 26th August, 2012 and therefore the question of handing over of the premises to the landlord on 30th August, 2011 does not arise.

3. The learned Advocate appearing for the Insolvent had on an earlier occasion submitted that the Insolvent is willing to forthwith deposit an amount of Rs.22 Lacs in Court. This Court without prejudice to the reliefs sought by the Petitioning Creditor in the above Notice of Motion granted time to the Insolvent to deposit a sum of Rs.22 Lacs in Court to establish his bonafides. However, the Insolvent failed to deposit the said amount and has informed the Court that he is not in a position to deposit more than Rs.4,50,000/-.

4. From the aforesaid facts, it is clearly established as follows :

- a) That by an order dated 21st June, 2011 this Court had restrained the Insolvent from selling, disposing of, alienating, encumbering, **parting with possession** and / or creating third party rights in respect of the said premises without giving the Applicant / Petitioning Creditor and their Advocate notice of at least two weeks ;
- b) That on 29th August, 2012 the Insolvent / Judgment Debtor issued an advertisement in a magazine namely Kutch Wagad Khabar Patrika for sale of the said premises on pagadi basis and has also given his telephone number being 9620761688 ;
- c) That on 1st April, 2013 the Insolvent / Judgment Debtor has filed his Affidavit before this Court and has stated on oath that he has a buyer for the said premises but the said buyer is not in a position to pay monies upfront and is ready and willing to make payment in installments ;
- d) That on 3rd July, 2013 when the representative of the Official Assignee along with the representative of the Applicant / Petitioning Creditor visited the said premises, the Insolvent came to the said premises and made statement that he was in possession of the same.
- e) That on 6th August, 2013 when the representative of the Official Assignee visited the said premises, the Insolvent informed him that he had handed over the possession of the said premises to the landlord in the year 2011 and he has no rights in the said premises.

f) That on 27th September, 2013 the Insolvent through his Advocate's letter addressed to the Official Assignee alleged that he has surrendered the said premises to the landlord on 30th August, 2011.

g) In view of what is stated in clauses (a) to (f) above, the stand taken by the Insolvent that he has surrendered the said premises to the landlord on 30th August, 2011 is false and incorrect to his knowledge and the Insolvent in collusion with the landlord is wrongly preventing the office of the Official Assignee from taking possession of the said premises. The Insolvent is well aware that by an order dated 21st June, 2011 he is inter alia restrained from parting with possession of the said premises. The Insolvent has by his aforesaid conduct committed breach of the orders passed by this Court and has from time to time made false statements on oath and obstructed the process of administration of justice. In view thereof, I pass the following order :

i. Office is directed to issue notice to the Insolvent – Mr. Dinesh Nanji Karia, asking him to show cause as to why he should not be tried and punished for having committed both civil and criminal contempt of this Court. A copy of this order be forwarded along with the show cause notice to Mr. Dinesh Nanji Karia. Show cause notice is made returnable on 16th March, 2015.

- ii. The Official Assignee shall forthwith take possession of Shop No. 5 situate at Janmabhoomi Marg, Opposite Rohit Chambers, Hasam Premji House, Near Janmabhoomi Press, Fort, Mumbai-400 001.
- iii. The local police shall render all assistance to the Official Assignee in complying with this order.
- iv. The Official Assignee shall file his report before this Court on 16th March, 2015.
- v. The above Notice of Motion is accordingly disposed off.

(S.J. KATHAWALLA, J.)