

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
OFFICIAL ASSIGNEE'S REPORT NO.28 OF 2015
IN
INSOLVENCY PETITION NO.16 OF 1999
WITH
MISCELLANEOUS PETITION NO.4 OF 2015
IN
INSOLVENCY PETITION NO.16 OF 1999**

Re: (1) Parmanand S. Pandey
(2) Dayanand S. Pandey ... Insolvents

Ex-parte:

Gopaldas Lilaram Valecha & Anr. ... Petitioning Creditors

Ms. Nusrat Shah a/w Ema Almeida & Kevin Gala i/b Mrs.Naazish Shah for petitioners.

Mr. Prakash A. Kadam for insolvent.

Mr. Pratap B. Kapadia for petitioning creditors.

Smt. U. A. Srivastava, Deputy Official Assignee present.

**CORAM : K. R. SHRIRAM, J
DATE : 17th November, 2015**

P.C.:-

. This miscellaneous application is taken out for grant of leave under section 17 of the Presidency Towns Insolvency Act 1909 to prosecute a legal proceeding viz., Suit No.237/2014 filed by the applicants/petitioners against the insolvent Shri Parmanand Sitlaprasad Pandey pending in the Bombay City Civil Court (Dindoshi) and also to join the Official Assignee as a party defendant in the said proceeding.

2. The learned counsel for the insolvent strongly opposes the application.

3. This Court in the matter of ***Ramgopal Khanna, Shakuntala Chawla and Another vs. Official Assignee, AIR 1981 Bombay 443*** has held that under the provisions of section 17 of the Presidency Towns Insolvency Act 1909, leave can be granted before commencement of the suit or the proceeding and it can also be granted in the suit or proceeding instituted after adjudication of insolvent.

4. Though the learned counsel appearing for the insolvent has opposed this application, in an application filed by the insolvent in the suit before the City Civil Court, the insolvent has applied to the City Civil Court for a direction to the applicant herein to apply to the Insolvency Court to join the Official Assignee as a party defendant to the said suit.

5. In fact, it is necessary to reproduce the averments in paragraph 8 of the said application and also prayer clause (a).

“8. I say and submit that the Plaintiffs filed the suit in the court in the respect of suit property after the date of Order of Adjudication it is necessary as per section 17 of P. T. Act 1909 Official Assignee must be party to the proceedings and for that before filing suit the Defendant have to take leave of the Insolvency Court, High Court,

Bombay and order passed without joining Official Assignee of Bombay as a party Defendant whatever order/ad-interim order passed by the court may set aside.”

“a. The Plaintiffs be directed to apply to the Insolvency Court, High Court, Bombay by taking out Notice of Motion for joining Official Assignee, High Court, Bombay as a party Defendant in the above suit filed by the Plaintiff's in respect of Suit property.”

6. The Official Assignee has also filed a report bearing No.28/2015 from which it appears that the Official Assignee has no objection to application.

7. In the circumstances, the miscellaneous application is allowed in terms of prayer clauses (a) and (b) and is accordingly disposed of. Prayer clauses (a) and (b) read as under:

“a. That this Hon'ble Court be pleased to grant leave under section 17 of the Presidency Towns Insolvency Act, 1909 to prosecute the legal proceedings namely Suit No.237 of 2014 filed by the petitioner against the insolvent Shri Parmanand S. Pandey in the Bombay City Civil Court, Dindoshi.

b. That this Hon'ble Court be pleased to permit the petitioner to implead the Official Assignee as party Defendant No.2 in the said City Civil Court proceedings namely Suit No.237 of 2014.”

8. As regards the report of the Official Assignee, the same is allowed in terms of prayer clauses (a) (b) and (c), which read as under:

“(a) The Official Assignee may be permitted to appoint an

Advocate from the panel of this Office for defending the City Civil Court Suit No.237 of 2014 filed by the Petitioners against the Defendants for and on behalf of the Defendants, for the benefit of the general body of the creditors;

AND/OR

(b) The Insolvents may be directed to appoint an Advocate for and on behalf of the Official Assignee and the cost of the professional fees may be borne out by the well wisher of the Insolvents and the Insolvents may be directed to file an Undertaking cum Indemnity Bond and to intimate to the Official Assignee the outcome of the said Suit;

(c) If the Insolvent fails to pay the professional fees of the Advocate so appointed for defending the Suit filed in the City Civil Court, Dindoshi, Mumbai, then the Official Assignee, High Court, Bombay may be permitted to pay the professional fees from the funds available with Unclaimed Divident Account"

(K. R. SHRIRAM, J)