

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
IN ITS INSOLVENCY JURISDICTION**

**NOTICE OF MOTION NO.24 OF 2016
IN
INSOLVENCY PETITION NO.13 OF 2015**

M/s S.P. Builders And Another	...	Applicants
M/s S.P. Builders And Others	...	Judgment debtor Nos.1 and 3.
Ex-parte :		
Shrikrishna Murlidhar Khandelwal	...	Judgment Creditor/ original Petitioner

.....

Mr. Amit Seth for Insolvent Nos. 1 and 3.
Mr. A.P. Bagwe for Petitioning Creditor.
Mr. M.D. Narvekar, Official Assignee.
The Petitioning Creditor absent.

.....

CORAM : S.C.GUPTE, J.

DATE : 20 DECEMBER 2016.

P.C. :

. The Advocate originally appearing for the petitioning creditor in the insolvency petition submits that he has already been discharged after the insolvency petition was disposed of and that he has no authority to appear in this notice of motion on behalf of the petitioning creditor. The Official Assignee informs the Court that the petitioning creditor knew about today's date of hearing and even approached the Official Assignee making inquiry about the matter.

2 None appears for the petitioning creditor. Even on the last occasion, i.e. on 6 December 2016, none had appeared for the petitioning creditor.

3 This motion seeks recall of an ex-parte order of adjudication passed in the insolvency petition against judgment-debtor Nos.1 and 3. Judgment-debtor No.2 has already expired. It is submitted by insolvents/judgment-debtor Nos. 1 and 3 that they had taken out a notice of motion for setting aside the insolvency notice. That notice of motion was dismissed. However, the present insolvency petition filed after the disposal of the notice of motion was not served on the judgment-debtors. The judgment-debtors learnt about their insolvency and filing of the insolvency petition only after the adjudication order was passed on 5 January 2016, when one of their close relatives informed them about the newspaper notice concerning their insolvency. There is no reply on behalf of the petitioning creditor contesting these averments. The insolvents/judgment-debtors have made out a case for setting aside the ex-parte order of adjudication passed on 5 January 2016.

4 Accordingly, the present notice of motion is made absolute in terms of prayer clause (a).

5 Insolvents/judgment-debtor Nos. 1 and 3 have offered to pay the cost of the Official Assignee incurred towards insolvency. The Official Assignee's cost is, accordingly, quantified at Rs.50,000/- which shall be paid by the insolvents/judgment-debtor Nos. 1 and 3 within four weeks from today. The amount paid by the insolvents/judgment-debtor Nos.1 and 3

shall be available to the Official Assignee to incur general expenses pertaining to administration in insolvency.

(S.C.GUPTE, J.)