

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 1382 OF 2017

M/s. Bhawani Jewellers
Through The Proprietor

...Petitioner

Versus

The Nav Jeevan Cooperative Bank Ltd.
And Ors.

...Respondents

....

Mr.R.S. Apte, Senior Advocate i/b. N.R. Bubna, Advocate for the
Petitioner.

Mr.Purshottam Khanchandani, Advocate for Respondent No.1.

....

CORAM : R. G. KETKAR, J.

DATE : 10th FEBRUARY, 2017

P.C.

1. Not on board. At the request of Mr.Apte taken up in the production board.
2. Heard M.R.S. Apte, learned Senior Counsel for the petitioner and Mr.Purshottam Khanchandani, learned Counsel for respondent No.1, at length.
3. Mr. Khanchandani has tendered additional reply of Rajesh Rochlani dated 10.2.2017.
4. By this Petition under Article 227 of the Constitution of

India, the petitioner has challenged the judgment and order dated 9.10.2015 below Exhibit-5 as also judgment and order dated 9.10.2015 below Exhibit-28 passed by the learned 3rd Jt. Civil Judge, Senior Division, Kalyan in Insolvency Petition No.1/2013 as also the judgment and order dated 23.12.2016 passed by the learned District Judge-3, Kalyan in Misc. Civil Appeal No.100/2015. By these orders the Courts below dismissed the application Exhibit-5 filed by the petitioner, hereinafter referred to as the 'plaintiff' for appointment of the Court Receiver as also dismissed the application at Exhibit-28 filed by the plaintiff for injunction restraining defendant No.1 from selling and/or disposing the property of the plaintiff pending the Petition.

5. Mr. Apte states that the proprietor of the petitioner Mr.Hiro Hotchand Pahuja is present in Court today. He has tendered a photo copy of his Aadhaar Card, which is taken on record and marked 'X' for identification.

6. Mr. Apte has invited my attention to Section 75 of the Provincial Insolvency Act, 1920. He submitted that in view of the second proviso to Section 75, the petitioner has a remedy of

instituting the substantive Second Appeal in this Court on the grounds mentioned in Section 100(1) of C.P.C. He, therefore, seeks permission to withdraw this Petition with liberty to file Second Appeal. He further states that to enable the petitioner to file Second Appeal, the interim order dated 3.2.2017 may be continued for a period of one week from today.

7. In view thereof on the motion made by Mr. Apte, permission to withdraw the Petition with liberty as prayed for is granted. Office is directed to return the certified copies to the petitioner. It is made clear that I have not examined the maintainability of Second Appeal or otherwise. All contentions of the parties in that regard are expressly kept open. Notwithstanding disposal of the petition, interim order dated 3.2.2017 is continued for a period of one week from today. During this period, the petitioner shall obtain suitable orders from the appropriate Court and the interim relief continued for a period of one week from today shall thereafter stand dissolved automatically without further reference to the Court. Order accordingly.

(R. G. KETKAR, J.)