

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL NO.34 OF 2011
IN
NOTICE OF MOTION NO.72 OF 2009
IN
INSOLVENCY NOTICE NO.N/42 OF 2009**

Vinod T. Seth alias Sheth Hasmukh
T. Seth alias Sheth

.... Appellant/

versus

Videocon Industries Limited

... Respondent

.....

- Mr.Dineshkumar A. Dubey, Advocate for the Appellant.
- None for the Respondent.

**CORAM : SMT. VASANTI A. NAIK &
SARANG V. KOTWAL, JJ.
DATE : 20th DECEMBER, 2017.**

P.C. :

By this intra-court appeal, the appellants have appealed against the order of the learned Single Judge, dated 13/08/2010 rejecting the prayer made in the notice of motion for setting aside the insolvency notice issued to the appellants.

The creditor of the appellants, viz. respondent-Videocon Industries Ltd. had filed a suit against the appellants for recovery of lease equipment and the arrears of lease money. During the pendency

of the suit, a compromise was arrived at and in view of the consent terms, the suit was disposed of. As per the consent terms, the appellants had agreed to pay the plaintiffs an amount of Rs.3 Crores within a time frame. Since the appellants did not abide with the consent terms, an application was moved by the respondent under Order 12 Rule 6 of the Code of Civil Procedure before the learned Single Judge. The said application was however rejected with an observation that the respondents were entitled to take up appropriate proceedings for the execution of the decree. Since the amount was not paid by the appellants, insolvency proceedings were initiated by the respondents against the appellants. The Court issued the insolvency notice dated 05/09/2009 against the appellants which was duly served. In the insolvency proceedings, a notice of motion was filed by the appellants for setting aside the insolvency notice. The learned Single Judge, however by the order dated 13/08/2010 rejected the prayer made by the appellants in the notice of motion and held that the insolvency notice dated 05/09/2009 could not be set aside. The order of the learned Single Judge is appealed against, in this intra-court appeal.

The learned counsel for the appellants submits by referring to the provisions of section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985, that the suit was not maintainable against the appellants as at the relevant time the matter pertaining to the industry of the appellant was pending before the board for industrial and official reconstruction. It is submitted that the learned Single Judge has erroneously held that the insolvency suit was not barred by the provisions of section 22 of the SICA. It is submitted that after having

observed in the order appealed against, that the reference before the BIFR was abated on 03/02/2010, it was necessary for the learned Single Judge to have set aside the insolvency notice dated 05/09/2009. The learned counsel relied on the judgment in the case of ***Paramjeet Singh Patheja Vs. ICDS Ltd. reported in (2006) 13 SCC 322***, to substantiate his submission that the insolvency proceedings could not have been entertained by the Court during the pendency of the proceedings pertaining to the Sick industry of the appellant before the BIFR and the insolvency notice ought to have been set aside.

We have heard the learned counsel for the appellants at length and have perused the order of the learned Single Judge dated 13/08/2010. It appears that the suit filed by the respondent against the appellant was a composite suit in which the respondent had sought the recovery of the lease equipment and also the lease money. The said suit was compromised between the parties and in terms of the compromise, the appellants were required to pay a sum of Rs.3 crores to the respondents. Since the amount, as agreed was not paid by the appellants, the respondents were required to file the proceedings under Order 12 Rule 6 of the CPC and the present insolvency proceedings after the application filed by the respondent under Order 12 Rule 6 was disposed of without granting relief in their favour. The learned Single Judge found that the respondent was made to run from pillar to post to secure the amount payable by the appellants in terms of the decree and for serving the notice on the appellants, considerable exercise was required to be done by the respondent as the appellants had evaded service of notice.

The learned Single Judge did not find any merit in the submission made on behalf of the appellants that the insolvency proceedings could not have been continued against the appellants as the notice served on the appellants was bad in law, inasmuch as at the relevant time, the matter pertaining to the sick industry of the appellants was pending before the BIFR. The learned Single Judge observed that the appellants did not furnish any information as to when the reference was made before the BIFR and whether or not it was pending at the material time. The learned Single Judge found that BIFR had rejected the appellant's reference and the appeal was pending before the AAIFR on 13/06/2007. It was found by the learned Single Judge that the appeal had abated on 03/02/2010. In view of the admission made on behalf of the appellants that the appeal had abated on 03/02/2010, the learned Single Judge held that the insolvency proceedings could not be dismissed. It was also observed by the learned Single Judge that the decree did not pertain only to the arrears of lease money but pertained to a suit for recovery of the lease equipment and such a matter could not be barred by the provisions of section 22 of the SICA. Admittedly, as on this date, nothing is pending either before the BIFR or the appellate authority. The learned Single Judge has held on a consideration of the judgment in the case of Paramjit Singh (Supra) and rightly so that the said judgment would not apply to the case in hand as the question in the case before the Hon'ble Supreme Court was whether the insolvency notice could be issued u/s 9 (2) of the Presidency Towns Insolvency Act, 1909 on the basis of an arbitration award. On the other hand, the learned Single Judge relied on two judgments of the Bombay

High Court to hold that the insolvency proceedings could go on and the insolvency notice could not be set aside. We find that the learned Single Judge was justified in the circumstances of the case in rejecting the prayers made in the notice of motion filed by the appellants. The submission made on behalf of the appellants that since the insolvency proceedings are stayed by the Gujarat High Court, this Court may consider staying the insolvency proceedings, cannot be considered in this intra-court appeal, as this Court is not hearing the insolvency proceeding and is considering the correctness of the order passed by the learned Single Judge.

In the result the appeal fails and is dismissed with no order as to costs.

(SARANG V. KOTWAL, J.)

(SMT. VASANTI A. NAIK, J.)