

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

INSOLVENCY PETITION NO.8 OF 2017

Hemraj Devkarandas Metals & Minerals Ltd.)....Pet.creditor
V/s.

Sanket Dilip Mestry & Dilip Bhagwan Mestry)....Respondents

Mr.Anil Agarwal for petitioning creditor.
None for debtors/respondents.

**CORAM : K.R.SHRIRAM,J
DATE : 20.2.2018**

P.C.:-

1 The petition has been filed on the basis that the debtors Sanket Dilip Mestry and Dilip Bhagwan Mestry are indebted to the petitioning creditor in the sum of Rs.1,19,63,719/- together with further interest on the sum of Rs.93,91,822/- @ 12% p.a. from 4.10.2016 till realization. These amounts are payable under a decree dated 2.4.2016 passed by the City Civil Court, Bombay in favour of the petitioning creditor in Summary Suit No.61 of 2015.

2 The judgment debtors have filed an affidavit in reply and the defence is that the judgment debtors have taken out a Notice of Motion No.1478 of 2017 in Summary Suit No.61 of 2015 for setting aside the ex-parte judgment and decree dated 2.4.2016. The said

Notice of Motion came to be dismissed on 16.8.2017. Against the said order of dismissal of the Notice of Motion, the judgment debtors preferred a Writ petition no.11169 of 2017 in this court instead preferring an Appeal from Order. The said writ petition came to be dismissed by an order dated 9.10.2017. Copy of the order is taken on record and marked 'X' for identification. There is nobody appearing for the judgment debtors today.

3 While dismissing the writ petition, this court has observed that prior to institution of the suit in which petitioning creditor has got a decree, the judgment debtor has confirmed the outstanding dues and pursuant thereto also made part payment of Rs.14,15,360/- and the principal balance of Rs.93,91,822/- was outstanding. Against this outstanding, judgment debtor also handed over 11 cheques to the petitioning creditor.

4 I have considered the petition, the affidavit in reply and also heard Mr.Agarwal for the petitioning creditor. The fact is there is a decree against the judgment debtor. An application to set aside the decree has been dismissed. Writ petition challenging the dismissal of the application of judgment debtors has also been dismissed. Writ petition was dismissed on 9.10.2017 and there is nothing on record to

indicate that this petition has been stayed or there are some reasons based on which this petition should not be taken up for hearing. Nobody is present for the judgment debtors either.

5 In the circumstances, petition is allowed in terms of prayer clause-(a) and accordingly disposed.

6 The Official Assignee to take necessary steps in accordance with the law and procedure and to invest the amount so realized from the estate of the Insolvents/Insolvents Firms with any Nationalized Banks as per Circular issued by the Office of the Prothonotary & Senior Master, High Court, Bombay.

(K.R.SHRIRAM,J)