

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

NOTICE OF MOTION NO.55 OF 2017

IN

INSOLVENCY NOTICE NO.19 OF 2017

M/s. S.P. Builders and Ors.

....Applicants

Re: M/s. S.P. Builders and Ors.

.....Judgments debtors

Creation Publicity Pvt. Ltd.

....Judgment Creditor

Mrs. K.S. Lalwani for judgment creditor.

Mr. Firoz Bharucha a/w. Mr. Siddharth Samantaraj I/b. Mr. Amit Sheth for applicants/judgment debtors.

Mr. Paresh T. Vora, judgment creditor.

Mr. Ramesh Seth, judgment debtor no.3 present in person.

CORAM : K.R.SHRIRAM, J.

DATE : 4th OCTOBER 2018

P.C.:

1 This notice of motion is taken out on behalf of judgment debtors to set aside insolvency notice dated 10th March 2017 taken out by judgment creditor. Affidavit in support is filed by Mr. Ramesh Samarthmal Seth, judgment debtor no.3.

2 Judgment creditor had taken out an application for issuance of insolvency notice armed with a decree dated 20th March 2007 passed by this Court in summary suit no.2983 of 2006. It is stated by applicants that this was an ex-parte decree that was passed but from 2007 till date applicants have not taken any steps to set aside the said decree. Applicants have not even averred anywhere as to why applicants did not take any steps to set

aside the said decree. In the entire affidavit in support the averments are totally irrelevant to the application prayed for. The affidavit in support particularly deals only with judgment debtor no.4 and judgment debtor no.5. It is stated that judgment debtor no.4 is 80 years old and does not understand English and judgment debtor no.5 has nothing to do with the business of judgment debtor no.1 and that judgment debtor no.4 had suffered heart attack and undergone bypass surgery in July 2012. Beyond that I find nothing in the affidavit in support even to consider if the application is worth the paper it is printed on. The decree in the summary suit is more than 11 years old. The fact that judgment debtor has not been in a position to even pay decretal amount confirms the fact that judgment debtors have to be declared as insolvents.

3 Mr. Bharucha, counsel for applicants states that judgment debtors have got asset, which is worth much more than the decretal amount and therefore, the question of judgment debtors being declared as insolvents does not arise. Mr. Bharucha also states that judgment debtors are willing to dispose of the asset to satisfy the judgment decree. This means that judgment debtors are accepting that the decree is binding upon them and they have to satisfy the decretal amount. This offer could have been made 11 years ago.

4 Therefore, I am not inclined to entertain this notice of motion. It is open to judgment debtors to deposit the decretal amount with Prothonotary and Senior Master, High Court, Bombay and take such steps thereafter, for discharge of this notice.

5 Notice of motion dismissed with costs in the sum of Rs.50,000/-. The cost to be paid by way of cheque drawn in favour of the advocate for judgment creditor within two weeks from today.

(K.R. SHRIRAM, J.)

Gauri
Amit
Gaekwad

Digitally signed
by Gauri Amit
Gaekwad
Date:
2018.10.06
18:21:55 +0530