

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
IN INSOLVENCY
NOTICE OF MOTION NO.11 OF 2019
IN
INSOLVENCY NOTICE NO.N/25 OF 2018**

Re :

Raj Kantilal Shah

... Applicant/Debtor

Ex-Parte :

M/s. Sanskar Gem Pvt. Ltd.

... Petitioning Creditor

Mr. Farhan Khan with Mr. Rubin Vakil, Mr. Manish Doshi i/by Vimadalal and Co., for
Petitioning Creditor.

Mr. Sunil Kadam, for Debtor.

CORAM: S.J. KATHAWALLA, J.

DATE: 5th NOVEMBER, 2019

P.C.:

1. The above Notice of Motion is taken out by the Applicant/Judgment Debtor for setting aside the Insolvency Notice No.N/28 of 2018 dated 16th October, 2018 taken out by the Petitioning Creditor. Affidavit in support is filed by the Applicant/Judgment Debtor.

2. The Petitioning Creditor has taken out the above Insolvency Notice pursuant to a consent decree dated 9th February, 2017 passed by this Court in Summary Suit No.657 of 2016.

3. From the perusal of the Affidavit in support of the Insolvency Notice, it appears that the Applicant is not disputing the consent decree dated 9th February, 2017 passed by this Court. However, due to financial problems, he is not in a position to

pay the decretal amount to the Petitioning Creditor. He submits that he owns properties at Surat which have a market value of Rs.10 to 12 Crores. He further submits that he is in the process of selling/disposing off his properties and the sale proceeds thereof, would be utilized towards full and final satisfaction of the decretal amount of the Petitioning Creditor. He submits that if the Applicant is declared as Insolvent, no purpose would be served.

4. On the last date of hearing, the learned Advocate for the Applicant/Debtor had stated that the matter between the parties would be settled. The decree in the Summary Suit is of the year 2017. The judgment debtor is not even in a position to pay the decretal amount. I am not satisfied that the judgment debtor has assets which have a market value of Rs.10 to 12 Crores. In any event, the Judgment Debtor himself states that it is not possible to find a purchaser to buy the said property. In view thereof, I am not inclined to entertain the above Notice of Motion. However, it is open to the judgment debtor to deposit the decretal amount with the Prothonotary and Senior Master, High Court, Bombay and take such steps thereafter, for discharge of this Notice. The Notice of Motion is therefore, dismissed.

(S.J.KATHAWALLA,J.)