

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

**NOTICE OF MOTION NO. 23 OF 2019
IN
INSOLVENCY PETITION NO. 40 OF 1999**

Hemant Shah ... Applicant/Intervener

In the matter of

Anil Mithalal Shah ... Insolvent

Ex-parte :

Century Financial Services Ltd. ... Petitioning Creditor

And

The Official Assignee of Bombay & Ors. ... Respondents

Ms. Radha Agrawal i/b Ashwin Ankhad & Associates for the Applicant/Intervener.

Mr. Anil Bagwe for Insolvent.

Mr. E.B. Shivkumar, Deputy Official Assignee, present.

CORAM : R.I. CHAGLA, J.

DATED : 3rd SEPTEMBER, 2019.

P.C. :

1 This Notice of Motion has been taken out seeking permission to intervene in the proceedings between Century Financial services Limited and the Official Assignee and others, as third party Respondent. The learned Counsel for the Applicant states that under arbitration proceedings an award was secured by the Applicant against the Insolvent and it was

provided in the award that if the award is silent on interest, the award should carry interest @ 18% p.a. from the date of the award to the date of payment. She states that her claim for @ 18% p.a. interest has not been paid and hence, has claimed the same from the Official Assignee.

2 Considering that a claim has already been made by the Applicant before the Official Assignee, it would not be appropriate to permit the Applicant to intervene in these proceedings between Century Financial Services Limited and the Insolvent.

3 Under Rule 23(1) of the second Schedule of the Presidency Towns Insolvency Act, 1909 at Rule 23 thereof it is provided :

“that on any debt or sum certain whereon interest is not reserved or agreed for, and which is overdue when the debtor is adjudged an insolvent and which is provable under this Act, the creditor may prove for interest at a rate not exceeding 6% p.a. ...”

4 Thus, the Official Assignee has only the power to grant interest not exceeding 6% p.a. It would therefore be appropriate for the Applicant to pursue her claim before the Official Assignee.

5 Accordingly, the Notice of Motion is dismissed with no order as to costs.

(R.I. CHAGLA, J.)