

Sharayu Khot.

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

INSOLVENCY PETITION NO. 28 OF 2018

Naresh Gopaldas Valecha

**...Petitioning
Creditor**

Versus

Umesh Prakash Kela

...Debtor

Mr. Pratap B. Kapadia, for the Petitioning Creditor.

Ms. Aarti Suvarna, for the Debtor.

Mr. Naresh Gopaldas Valecha present in Court.

CORAM : R.I. CHAGLA J.

DATE : 04 June 2019

ORDER :

1. The learned Advocate appearing for the Judgment-Debtor seeks discharge from appearance for the Judgment-Debtor. She has stated that despite several emails addressed to

the Judgment-Debtor, the Judgment-Debtor has not given any instructions in the matter and has accordingly, informed the Judgment-Debtor that she will be taking a discharge in the matter.

2. I grant discharge to the learned Advocate from appearing for the Judgment-Debtor. The Judgment-Debtor has refused to remain present in the Court and the Petitioning-Creditor is accordingly applying that the Petition to be made absolute. He states that the Judgment-Debtor is indebted to the Petitioning-Creditor for a sum of Rs. 1,62,000/- together with further interest on Rs. 1,50,000/- at 6 percent per annum from July 2018 till payment/realization being the amount due under the decree dated 3rd October 2017 passed by the City Civil Court at Mumbai in Summary Suit No. 303 of 2017. He states that despite Insolvency Notice No. N/52 of 2017 dated 29th November 2017 being issued by this Court against the Judgment-Debtor and the notice having been served on the Judgment-Debtor on 25th May 2018, the Judgment-Debtor has

not taken out Notice of Motion within 35 days to set aside the notice nor paid the decretal amount within statutory period of 35 days. Hence, the Judgment-Debtor has committed an act of insolvency on 30th June 2018.

3. In the light of the submissions of the learned Counsel for the Petitioning-Creditor and considering that the Judgment-Debtor has neither paid the decretal amount under the said Insolvency Notice within a statutory period of 35 days not taken any steps to set aside the Insolvency Notice within that period, I find that he has committed an act of insolvency on 30th June 2018. Accordingly, I pass the following order:-

(i) Petition is allowed in terms of prayer clauses (a) and (c).

(ii) The Official Assignee is hereby appointed of the properties of the Insolvent wherever situated which shall vest in the Official Assignee and

shall become divisible amongst the Petitioning Creditor.

- (iii) The Official Assignee also to take necessary steps in accordance with the Circular dated 14th October 2011 issued by Ministry of Finance, Department of Revenue (Central Board of Direct Taxes), New Delhi and to invest the amount so realised from the Insolvent with any of the Nationalised Banks.

[R.I. CHAGLA J.]