

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

**NOTICE OF MOTION NO. 19 OF 2013
WITH
NOTICE OF MOTION NO. 20 OF 2014
IN
INSOLVENCY PETITION NO. 88 OF 2006**

Bharti Pravin Gandhi	...Applicant
IN THE MATTER OF	
Digamber M. Bagwe & Ors.	...Insolvents
Ex-parte	
Sicom Limited.	...Petitioning Creditor
Vs.	
The Official Assignee of Bombay & Anr.	...Respondents

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Mr. Gaurang Mehta a/w Sneha Shukla i/b Amit Sheth for the Applicant.
Mr. Gauraj Mehta for Insolvent No.3.
Jamala Raut for Petitioning Creditors
Mr. K.K. Trivedi, O.A. present.
Mr. E.B. Sivakumar, Deputy OA.

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CORAM : S.C. GUPTE, J.
DATE : JANUARY 07, 2020

P.C.:

Heard Learned Counsel for the Applicant and the Petitioning Creditor and also Official Assignee.

2. This Notice of Motion has been taken out by one Bharti Pravin Gandhi, who claims to be the wife of Insolvent No.3. The Notice of Motion seeks directions against United Bank of India, Saibaba Nagar, Borivali(W) Branch, Mumbai, where the Applicant has a saving account and three fixed deposit accounts connected to that, for release of amounts lying to the credit of these four accounts and directions to the

Official Assignee to write suitable letters to the bank in that respect. It is the case of the Applicant that these amounts belong to the Applicant alone, though the Insolvent and his son Milan Gandhi are also the joint holders of these accounts.

3. It is submitted that the savings account referred to in prayer clause (a), on which the Applicant is the first holder, discloses various credits into the account. These credits have come out of the Applicant's transactions in investment as well as trading in shares and also partly from sale of immovable property held by the Applicant. It is submitted that the shares as well as the trading account belonged exclusively to the Applicant. So also, it is submitted that the immovable property, through the sale of which Rs. 45 lakhs was recovered by way of sale proceeds, exclusively belonged to the Applicant. The Applicant relies on voluminous documents in support of this case. Contract notes issued by the broker are produced before the Court; so also is produced the gift/release deed in respect of the immovable property referred to above executed by the Insolvent in favour of the Applicant as far back as in the year 1998 together with the sale deed executed by the Applicant for this property in favour of a third party purchaser. These documents clearly indicate that though Insolvent No.3 and his son Milan Gandhi were also joint holders with the Applicant in the savings bank account referred to in prayer clause (a), the amounts deposited into this account and consequently, the three fixed deposits made out of these accounts and referred to in prayer clause (a), belonged to the Applicant. Neither the Petitioning Creditor nor the Official Assignee is in a position to dispute this.

4. Learned Counsel for the Petitioning Creditor submits that

the Applicant's private examination reveals certain contradictions. Learned Counsel also submits that the subject immovable property was fraudulently transferred by the Insolvent in favour of the Applicant and the transfer, prohibited by Section 55 of the Presidency Towns Insolvency Act, 1909, was void against the Official Assignee. It is difficult to see how the alleged transfer could be said to be void as against the Official Assignee. It is neither made within two years prior to the adjudgment of the Insolvent nor does it have any connection with the Act of insolvency purportedly committed by the Insolvent. Learned Counsel for the Petitioning Creditor submits that the Insolvent was a guarantor in respect of a debt owed by Bagwe Udyog Ltd., the principal debtor of the Petitioning Creditor. It is submitted that this transfer was effected after the principal debtor had defaulted in repayment. Default of payment on the part of the principal debtor is not an act of insolvency so far as the guarantor is concerned. There is, accordingly, no merit in the objection.

5. Accordingly, the Applicant is entitled to relief claimed in the Notice of Motion. Notice of Motion is made absolute in terms of prayer clause (a) and (b). After desealing of the four accounts referred to in prayer clause (a), the Applicant shall be entitled to operate the same.

6. The companion application taken out by the Petitioning Creditor (Notice of Motion No. 20/2014) is stood over to 4th February, 2020.

(S.C.GUPTE, J.)