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

NOTICE OF MOTION NO.23 OF 2021
IN
NOTICE NO.N/4 OF 2020

Jugalkishor Didwania … Judgment Debtor
Vs.
V.K.Industrial Corporation Limited … Judgment Creditor

Mr.E.A.Sasi, Advocate for the Petitioning Creditor.
Mr.D.K.Jain i/by Ms.Divya Jain, Advocates for the Applicant in the Notice of Motion.
Ms.M.R.Parkar, Insolvency Registrar present.

CORAM : ABHAY AHUJA, J.
DATE : 12 SEPTEMBER, 2023.

P.C. :

1. This notice of motion has been taken out on 6th March, 2020 and was served upon the Respondent-Judgment Debtor on 11th December, 2020. The Judgment Debtor had taken out this notice of motion for setting side the insolvency notice submitting that the said insolvency notice has not been served upon him within the one month period as required under Rule 52-D of the Presidency Towns Insolvency Rules, which is quoted as under :

> *" Rule 52 D : Duration of Notice :*
> *Subject to the power of the Court to extend the time, an insolvency notice to be served in India shall be served within one month from the issue thereof. A Notice not so served shall be set down on Board by the Insolvency Registrar for dismissal"*

2. Mr.D.K.Jain, learned counsel for the Judgment Debtor would submit that the notice under the Insolvency Act is fraught with serious consequences and is intended to bring about a drastic change in the status of a person against whom the notice is issued. That the insolvency notice is a step towards declaring the Judgment Debtor as an insolvent with all attendant liabilities.

3. Learned counsel also submits that the Judgment Creditor has not resorted to execution of decree but has taken out the insolvency notice and that insolvency notice is not a mode of enforcing a debt. He would submit that enforcement is done only by taking steps for execution under the Code of Civil Procedure, 1908 for releasing monies. That in the instant case the Judgment Creditor has admittedly not taken any of those steps. Learned counsel has relied upon the decision of the Hon'ble Supreme Court in the case of **Paramjeet Singh Patheja Vs. ICDS Ltd.**[1]

4. Mr.Jain would further submit that the reliance of the Respondent on the *suo moto* order of the Hon'ble Supreme Court is wholly untenable and misconceived as the said order does not apply to insolvency proceedings. Learned counsel would submit that the insolvency notice has to be served within a period of one month from the issuance thereof and the same having

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1 (2006)13 Supreme Court Cases 322

not been served within that time is liable to be dismissed. That the Judgment Creditor always has the liberty to take out a fresh insolvency notice as dismissal of the insolvency notice does not amount to *res judicata* or bar on taking out fresh insolvency notice.

5. Learned counsel would therefore, implore this court to allow the notice of motion by setting aside the impugned insolvency notice.

6. On the other hand, Mr.E.A.Sasi, learned counsel for the Judgment Creditor relies upon the reply filed on their behalf and submits that Hon'ble Supreme Court in suo-motu writ petition issued several directions from time to time pursuant to the outbreak of the Covid-19 pandemic. Learned Counsel would submit that the Hon'ble Supreme Court had taken *suo motu* cognizance of the difficulties faced by the litigants in filing the petitions, applications and all other quasi judicial proceedings within the period of limitation prescribed under the general law of limitation or under any special laws, both Central and/or State. That, by the final order passed on 10^{th} January, 2022 the Hon'ble Supreme Court has issued directions *inter alia* that the period from 15^{th} March, 2020 till 28^{th} February, 2022 shall stand excluded for the purpose of limitation, as may be prescribed under any general or special laws in respect of judicial or quasi judicial proceedings, which include insolvency proceedings also.

7. Learned Counsel for the Respondent would further submit that the judgment and decree passed by City Civil Court has not been challenged in any Court and the same has attained finality, and therefore, any contentions of the Applicants on merits are liable to be rejected.

8. Learned Counsel submits that, therefore, Notice of Motion taken out by the Judgment Debtor be rejected with costs and the insolvency notice taken by the Judgment Creditor be made absolute.

9. Learned Counsel would also submit that in fact the Judgment debtor himself had taken out Notice of Motion in January 2021, but a copy of the same was served upon the Judgment Creditor only on 19th August, 2022 and on this ground also the Notice of Motion is liable to be dismissed.

10. I have heard the learned Counsel for the Applicant as well as the Respondent and have considered the rival contentions.

11. It is not in dispute that the Respondent in the Notice of Motion is a Judgment Creditor, to whom the Applicant, who is the Judgment Debtor, owes monies pursuant to a decree passed in that behalf. The Judgment Creditor had taken out an insolvency notice on 6th March, 2020 for adjudicating the Judgment Debtor as an insolvent, which notice was served

upon the Judgment Debtor on 11th December, 2020. No doubt, under Rule 52 of the Insolvency Rules, an insolvency notice is to be served in India within a period of one month from the issuance thereof and that, a notice not so served, shall be set down on board by the Insolvency Registrar for dismissal. It is also not in dispute that after the notice was taken on 6th March, 2020, there was a nation wide lockdown on account of Covid-19 pandemic declared from the 24th March, 2020. Due to the outbreak of this pandemic in March-2020, the Hon'ble Supreme Court issued suo-motu orders under Article 142 of the Constitution of India, extending the periods of limitation with respect to all the proceedings judicial or quasi judicial under any general or special laws and finally by an order dated 10th January, 2022, the Hon'ble Supreme Court has issued directions that the period from 15th March, 2020 till 28th February, 2022 shall stands excluded for the purpose of limitation. The order of Hon'ble Supreme Court dated 10th January, 2022 is usefully quoted as under :-

> " 1. In March, 2020, this Court took Suo Motu cognizance of the difficulties that might be faced by the litigants in filing petitions/ applications/ suits/ appeals/ all other quasi proceedings within the period of limitation prescribed under the general law of limitation or under any special laws (both Central and/or State) due to the outbreak of the COVID19 pandemic.
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> 2. On 23.03.2020, this Court directed extension of the period of limitation in all proceedings before Courts/Tribunals including this Court w.e.f. 15.03.2020 till further orders. On 08.03.2021, the order dated 23.03.2020 was brought to an end, permitting the relaxation of period of limitation between 15.03.2020 and

14.03.2021. While doing so, it was made clear that the period of limitation would start from 15.03.2021.

3. Thereafter, due to a second surge in COVID19 cases, the Supreme Court Advocates on Record Association (SCAORA) intervened in the Suo Motu proceedings by filing Miscellaneous Application No. 665 of 2021 seeking restoration of the order dated 23.03.2020 relaxing limitation. The aforesaid Miscellaneous Application No.665 of 2021 was disposed of by this Court vide Order dated 23.09.2021, wherein this Court extended the period of limitation in all proceedings before the Courts/Tribunals including this Court w.e.f 15.03.2020 till 02.10.2021.

4. The present Miscellaneous Application has been filed by the Supreme Court AdvocatesonRecord Association in the context of the spread of the new variant of the COVID19 and the drastic surge in the number of COVID cases across the country.3 Considering the prevailing conditions, the applicants are seeking the following:

i. allow the present application by restoring the order dated 23.03.2020 passed by this Hon'ble Court in Suo Motu Writ Petition (C) NO. 3 of 2020 ; and
ii. allow the present application by restoring the order dated 27.04.2021 passed by this Hon'ble Court in M.A. no. 665 of 2021 in Suo Motu Writ Petition (C) NO. 3 of 2020; and
iii. pass such other order or orders as this Hon'ble Court may deem fit and proper.

5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, <u>it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or</u>

special laws in respect of all judicial or quasi judicial proceedings.

II Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.
………………"

12. It is quite clear from the above that the excluded period was with respect to the limitation under any general or special law for any judicial or quasi judicial proceedings, which would include the insolvency proceedings under the Presidency Towns Insolvency Act as well. Clause 5(III) of the suo motu order clearly provides that if the limitation has expired between 15th March, 2020 till 28th February, 2022, notwithstanding the actual balance

period of limitation remaining, all persons shall have limitation period of 90 days from 1st March, 2022. In this view of the matter, a notice that was issued on 6th March, 2020 which had to be served within a period of one month had only seven more days to serve, considering that the period specified by the Hon'ble Supreme Court commenced from 15th March, 2020 and the balance period of limitation which would have ended on 5th April, 2020 was not available to the Judgment Creditor due to the pandemic lockdown but which fell within the excluded period. Admittedly, the notice has been received by the Judgment Debtor on 11th December, 2020, which is also within the excluded period. Therefore, to my mind, as per paragraph 5(III) of the suo motu order, there has been no delay in serving the insolvency notice upon the Judgment Debtor.

13. That insolvency notice may not be a mode of enforcing a debt but that cannot be a ground for setting aside the insolvency notice on the ground of limitation. The Judgment Debtor can always agitate this point during the adjudication proceedings. Also, the principles laid down by the Hon'ble Supreme Court in the Case of **Paramjeet Singh Patheja Vs. ICDS Ltd. (supra),** that an insolvency notice is fraught with serious consequences as it is intended to bring about about a drastic change in the status of a person who is to be declared as an insolvent, and that as the adjudication as an insolvent results in the grave consequences of civil death, the provisions of the

Presidency Towns Insolvency Act, 1909 have to be construed strictly, are principles which no doubt courts have to consider in adjudication proceedings.

14. However, at present this Court is concerned with a notice of motion filed by a Judgment Debtor to set aside an insolvency notice dated 6th March, 2020 on the ground that the said notice was served upon him on 11th December, 2020 beyond the period of limitation of one month prescribed under the Rule 52 D of the Insolvency Rules. That ground, as observed earlier, is not tenable in as much as, the period between 15th March, 2020 and 22nd February, 2022, which has clearly been excluded by the suo-motu order of the Hon'ble Supreme Court quoted above. Even though as per the suo motu order of the Hon'ble Supreme Court, the Judgment Creditor would have had 90 days from 1st March, 2022 if the same was not served. But notice has admittedly been received on 11th December, 2020. Clearly, therefore, the Insolvency Notice has been served in time.

15. In this view of the matter, I do not find any merit in the Notice of Motion. The Notice of Motion is hereby dismissed. Parties to bear their own costs.

(ABHAY AHUJA, J.)