

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

NOTICE OF MOTION NO. 10 OF 2024

IN

INSOLVENCY PETITION NO. 16 OF 2018

Ajit Waman Satam ... Applicant

In the matter between :

Sai Service Agency (Bombay) Pvt. Ltd. ... Petitioner Creditor

Versus

Ajit Waman Satam and others ... Insolvents

Mr. Santosh Jagtap alongwith Mr Deepak Jaiswal, Advocate for the
Petitioning Creditor.

Mr. Atul Redkar, Advocate for the Insolvent No.1 and Applicant in
NMIS-10-2024.

Ms. C.J. Bhatt, Official Assignee alongwith Mr. Subodh Patil, Deputy
Official Assignee, Mr. D.B. Iswalkar, 1st Assistant Official Assignee and
Ms. M.R. Parkar, Insolvency Registrar, present.

CORAM : ABHAY AHUJA, J.
DATE : 15 OCTOBER 2024

P.C. :

1. On 15th October, 2024 this Court had condoned the delay and
dismissed the Notice of Motion for reasons to follow.

2. Here are the reasons.

3. This Notice of Motion has been filed by the Insolvent who has been adjudicated as such on 5th November, 2019 on the following three grounds.

a. That the order dated 5th November, 2019, whereby this Court (Coram : S.J. Kathawalla, J. as His Lordship then was) has adjudicated the Insolvency Petition No.16 of 2018, *inter alia* declaring the Applicant as Insolvent, had been passed *exparte* and without notice to the Insolvent.

b. That the Execution Application filed by the Judgment Creditor for executing the judgment and decree passed in Summary Suit No.581 of 2014 was dismissed on 20th June, 2018.

c. That in the proceedings filed under Section 138 of the Negotiable Instruments Act, 1881, the Metropolitan Magistrate Court, Andheri, Mumbai has acquitted the Applicant.

4. Mr.Atul Redkar, learned Counsel appearing for the Applicant has also submitted that against the judgment and decree dated 5th November, 2019 in respect whereof the insolvency proceedings had

been taken out, there is an Application under Order IX Rule 13 of the Code of Civil Procedure, 1908 (“CPC”) for setting aside the decree which is pending before the City Civil Court although there is no stay on the execution of the said judgment and decree.

5. Mr. Redkar, learned Counsel would submit that therefore in view of the aforesaid this Court set aside the adjudication of insolvency against the Applicant and set aside the order dated 5th November, 2019.

6. Mr. Santosh Jagtap, learned Counsel appearing on behalf of the Petitioning Creditor has submitted that from a plain reading of the order dated 5th November 2019, it can be seen that the said order of adjudication has been passed after the Insolvency Petition was duly served upon the Judgment Debtors and affidavits proving service dated 8th May, 2018 and 19th June, 2018 had been filed and since despite that the Judgment Debtors remained absent nor they had filed any affidavit in reply, the Court had allowed the Petition *inter alia* declaring the Applicant as Insolvent.

7. With respect to the dismissal of the Execution Application, it has been submitted that dismissal was due to non-compliance of office objections. Mr. Jagtap, learned Counsel for the Judgment Creditor

would submit that in any event, the dismissal of the Execution Application cannot have any bearing on the insolvency proceedings as the same are decided under the Presidency Towns Insolvency Act, 1909 which clearly provides that if a creditor, who has obtained a decree or order against a Debtor for payment of money and has served him a notice as provided in section 9(2) of the Presidency Towns Insolvency Act, 1909 and the Debtor does not comply with the notice within the prescribed time, an act of insolvency would have been committed and therefore in the facts of this case as well as despite the service of notice under the Insolvency Act, no payment had been made, the Insolvency Petition had been filed and this Court, had, as submitted passed the order dated 5th November, 2019 adjudicating the Insolvency Petition *inter alia* against the Applicant. That therefore, the ground that the Execution Application has been dismissed for non-removal of office objections cannot be invoked to set aside the adjudication order. Mr. Jagtap, learned Counsel would further submit that even the ground that the Applicant has been acquitted in proceedings under Section 138 of the Negotiable Instruments Act, 1881 cannot be a valid ground to set aside the adjudication for the same reasons. Mr. Jagtap, learned Counsel would submit that in any event an appeal has been filed against the acquittal.

8. I have heard the learned Advocates. Although admittedly there is a delay in taking out this Notice of Motion, no serious objection has been raised on behalf of the Petitioning Creditor with respect to the delay. Therefore, this Court has proceeded to hear Notice of Motion on merits.

9. I am of the view that order dated 5th November, 2019 has been passed after considering that the Petition had been duly served upon the Judgment Debtors and after affidavits proving service thereof dated 8th May, 2018 and 19th June, 2018 had been taken on record. That the Judgment Debtors were absent on 5th November, 2019 and had not even filed reply thereto despite service nor were represented despite service. That earlier the Petitioning Creditor, had obtained a decree dated 29th September, 2016 for Rs.9,66,21,869.06/- and also for further interest @ 6% p.a. on the sum of Rs.5,00,00,000/- from the date 25th May, 2017 till payment and/or realization. Thereafter, the Petitioning Creditor issued to the debtors an Insolvency Notice being No.28 of 2017 dated 8th June, 2017 for recovery of Rs.9,85,78,033.44/-. The said Insolvency Notice was served upon the Debtor No.1 on 28th June, 2017 and on Debtor No.2 on 9th September, 2017 by publishing the said notice in two local newspapers. Since the Debtors failed and neglected

to pay any amount as called for or to take out any proceedings for setting aside the Insolvency Notice within the stipulated time, it was recorded that the Judgment Debtors had committed an act of insolvency on 3rd August, 2017 and 15th October, 2017 respectively. Therefore, the Insolvency Petition was taken out for failure on the part of the Judgment Debtors in complying with the Insolvency Notice in question. After considering the same as noted above, the Court on 5th November, 2019, *inter alia*, declared the Applicant as Insolvent.

10. Under Section 9(2) of the Presidency Towns Insolvency Act, 1909 as noted above, if a Judgment Debtor does not comply with the notice, he commits an act of insolvency in respect whereof an Insolvency Petition can be filed. The Insolvency Petition was duly served upon the Judgment Debtors. Even admittedly, in the Application for setting aside under Order IX Rule 13 of the CPC the decree is not stayed.

11. Further, I am in agreement with the learned Advocate for the Petitioning Creditor with respect to the grounds of rejection of the Execution Application and acquittal of the Applicant in the Section 138 proceedings taken by the learned Advocate for the Applicant. In my view, it is irrelevant that the Execution Application has been rejected or

that the Applicant has been acquitted in proceedings under Section 138 of the Negotiable Instruments Act, 1881, as these proceedings operate under different statutes and are instituted on the basis of provisions contained therein. An Insolvency Petition is instituted on the basis of Section 9 of the Presidency Towns Insolvency Act, 1909, when an act of insolvency is committed as had been done in the proceedings before this Court. Under Section 21 of the Presidency Towns Insolvency Act, 1909, there are provisions for annulment of adjudication. Where it is proved to the satisfaction of the Court that the debts of the insolvent are paid in full, the Court on an application by any interested person may annul the adjudication.

12. No case has been made out to set aside the order dated 5th November, 2019 nor any case for annulment. There is no merit in this application. If the Applicant was aggrieved by the order of adjudication dated 5th November, 2019 on merits, he should have appealed against the said order, which has also not been done.

13. Since this Application has been heard on merits, and there has been no serious opposition to the delay, the delay of 1433 days in filing the Notice of Motion is hereby condoned.

14. The Notice of Motion is dismissed. No costs.

(ABHAY AHUJA, J.)

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signed by
KIRAN
SANJAY
GHUGE
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