

MANU/MH/0692/2010
Equivalent Citation: I(2010)BC530
IN THE HIGH COURT OF BOMBAY

Notice of Motion No. 9 of 2010 in Insolvency Petition No. 268 of 2006
Decided On: 15.06.2010

Appellants: In Re: Jayantilal Khandwala and Sons
AND
Appellants: Kaushik Shah Shares and Securities Pvt. Ltd.
Vs.
Respondent: Miss Ritu Sethi

Hon'ble Judges:
S.J. Vazifdar, J.

Counsels:
For Appellant/Petitioner/Plaintiff: K.P. Jain, Adv., i/b., P.V. Shah, Adv.
For Judgment Debtors: J.P. Sen and Vivek Kantawalla, Advs., i/b., Vivek Kantawalla and Co.
For Supporting Creditor: Sanjay Jain, Adv.

Subject: Civil

Catch Words

Mentioned IN

Acts/Rules/Orders:
Presidency Towns Insolvency Act, 1909 - Section 9, Presidency Towns Insolvency Act, 1909 - Section (4)

Disposition:
Appeal dismissed

Case Note:

Civil - Condonation of delay - Notice of motion for condonation of delay of 1156 days and for order setting aside insolvency notice - Held, application for condonation of delay in filing such proceedings could not take into consideration merely rights and liabilities of judgment debtor and person at whose instance insolvency notice was issued, or original and substituted petitioning creditors who was no longer interested in proceeding with matter for any reason - Court must also consider effect of such applications being allowed on all the other creditors who was entitled to rely upon and act on the basis of the act of insolvency for it was their rights which was invoked - Notice of motion dismissed

JUDGMENT

S.J. Vazifdar, J.

1. This is the Judgment debtors' Notice of Motion for condonation of delay of 1156 days and for an order setting aside Insolvency Notice No. 268 of 2006 issued by the judgment creditor on 19.10.2006.
 2. A decree dated 31.7.2006 was passed in favour of one Ms. Ritu Sethi, against the debtors. At her instance, Insolvency Notice No. N-268/2006 was issued against the debtors on 19.8.2006 and was served on them on 31.10.2006. The act of insolvency was complete on 5.12.2006. The above Insolvency Petition was filed on 12.1.2007 by one Mrs. Neebha Kapoor availing of the insolvency.
 3. It was contended that the entire decretal amount was paid after a delay of only one day. It was submitted that the judgment debtors ought not in the circumstances to be visited with the harsh consequences under the Presidency Towns Insolvency Act, 1909.
4. It takes little to realize that the application is unsustainable and the submission in support thereof totally irrelevant. The application is an attempt at delaying and frustrating the petition and prejudicing the rights of the other creditors. If granted, it would seriously prejudice the rights of the general body of creditors including the substituted creditor, as well as the rights of other creditors, who have also made an application for substitution. The effect of any order in this Notice of Motion is not on the judgment creditor who was paid one day late but on the general body of the debtors creditors.
5. Admittedly, the judgment debtors did not comply with the said notice. Nor did they take any steps under Section 9(4) of the said Act. Further the judgment debtors did not take out a Notice of Motion for setting aside the Insolvency Notice for four years.
6. The delay in filing the present Notice of Motion was sought he explained thus. The judgment debtors paid a further amount of Rs. 32,780/- on 9.2.2007. Thereafter the judgment debtors took out Chamber Summon Nos. 582 and 583 of 2007 to have the decree marked satisfied. The Chamber Summons were disposed of by an order dated 6.5.2009. It is contended that the judgment debtors were constrained to take out the said Chamber Summons due to a wrong stand taken by the decree holder. It was submitted that the judgment creditors ought not to be penalized for this reason.
7. The judgment debtors had in the meantime also settled the claim of the original petitioning creditor Mrs. Neebha Kapoor. By an order dated 5.8.2006, S.A. Bobde, J. directed the petition to be published for withdrawal.
By an order dated 2.9.2008, one Kaushik Shah Shares & Securities Pvt. Ltd. was substituted as the petitioning creditor limited to debtors No. 2. The petition against other debtors was dismissed as withdrawn. The substituted creditor has by consent been allowed to be heard in the present Notice of Motion, as recorded in a separate order passed today in Notice of Motion No. 15 of 2010 in Insolvency Petition No. 268 of 2006 taken out by it.
8. Thus the substituted creditor and other creditors have been, as they are entitled to in such proceedings, prosecuting their cases/claims in these proceedings. The matter is no longer limited to the disputes between the judgment debtors and the original petitioning creditors. Indeed the claims of the judgment creditor and the petitioning creditor have been settled. They are therefore now not interested in these proceedings. Any order on the present Notice of Motion can only affect the other creditors.

9. I will assume that the judgment debtors had paid the entire decretal amount with a delay of only one day. In that event there was nothing that prevented the judgment debtors from adopting proceedings under Section 9 of the said Act earlier to prevent the consequences under the said Act. The delay of almost four years in filing the present Notice of Motion is neither warranted nor justified. During this period of four years, the rights of the general body of creditors have intervened.
10. An application for condonation of delay in filing such proceedings cannot take into consideration merely the rights and liabilities of the judgment debtor and the person at whose instance the Insolvency Notice is issued, or the original and substituted petitioning creditors who are no longer interested in proceeding with the matter for any reason. The Court must also consider the effect of such applications being allowed on all the other creditors who are entitled to rely upon and act on the basis of the act of insolvency for it is their rights which are invoked.
11. In the present case the grant of any orders would unnecessarily protract the proceedings as far as such other parties are concerned, entirely due to the default of the judgment debtors. For instance, the intervenor viz. Kaushik Shah Shares & Securities Pvt. Ltd. has itself been prosecuting this matter after substitution for almost two years. I see no reason to exercise my discretion in condoning the delay. The same would only further delay the entire proceedings by compelling other creditors to adopt independent proceedings. There is also the possibility in some cases of the claims being barred by limitation. There is also the possibility of some of the creditors not being able to adopt insolvency proceedings, as they may not be maintainable. In any event, it would involve an unfair protraction of litigation and multiplicity of proceedings as far as the general body of creditors are concerned.
12. In the circumstances, the Notice of Motion is dismissed with costs fixed at Rs. 5000/- to be paid on or before 31.7.2010.