



ORDER BELOW EXH.21 IN S.C.C NO 256 OF 2022

Senha Khot v/s Maruti Patil
CNRNOMHSNo700060522022

This application is filed by accused for stopping present proceeding until insolvency proceeding No. 283/2022 filed by accused is decided.

02. According to accused, he has filed insolvency proceeding No. 283/2022 before the Hon'ble Civil Judge, Senior Division, Sangli. Insolvency proceeding is pending hence, it would not be proper to proceed with present proceeding. Thus, he prayed that present proceeding shall be stopped until insolvency proceeding No. 283/2022 filed by accused is decided.

03. The original complaint filed his reply and thereby opposed to this application. He contended that present proceeding is criminal in nature. The insolvency proceeding has no relevance with the present proceeding. Further, accused is possessing movable and immovable properties at village Shinal, Tal. Athani, Dist. Belgaum. This application is filed only to protract the trial. In view of above reasons, he prayed for rejection of the application.

04. Perused the application and reply. Heard arguments of both parties. The Ld. Advocate for accused argued that insolvency proceeding filed by accused is pending for adjudication. Hence, it would not be proper to proceed with present proceeding. On the other hand, the Ld. Advocate for complainant argued that this application is filed only to

delay the proceeding. Insolvency proceeding is totally different from present proceeding. Hence, this application is not maintainable.

05. Indisputably, accused has filed insolvency proceeding No. 283/2022 before the Hon'ble Civil Judge, Senior Division, Sangli. The present proceeding is penal in nature. The present proceeding cannot be termed as loan recovery proceeding. Insolvency proceeding cannot be used to prevent the prosecution of criminal offences such as dishonoured cheques. Hence, present proceeding cannot be stopped on the ground of initiation of insolvency proceeding. The signatory of cheque cannot escape from his penal liability under the negotiable instrument Act, 1881. The Ld. Advocate for accused relied upon judgment of the Hon'ble High court of judicature at Bombay (Nagpur Bench), in the case of **Shri Mukund Ajay Kumar Choudhary & Ors. Vs. K. B. Board Mills LLP 2023, ALL MR (CRI) 1494**. In this judgment, the Hon'ble High Court has held that, since moratorium under Insolvency and Bankruptcy code is imposed against company accused No.1 and accused No.2, during pendency of insolvency proceeding, complaint under section 138 of N.I.Act shall remain abeyance against company accused No. 1 and accused No. 2. In the present case, accused is not the company incorporated under the Companies Act, 2013 or under any previous company law. Further, he is not limited liability partnership or other body incorporated, partnership firms. Aforesaid judgment is on different facts. Hence, this judgment is not helpful to the applicant.

06. In view of above reasons, I come to conclusion that present proceeding cannot be stopped on the ground of initiation of insolvency

proceeding. Resultantly, application deserves to be rejected. In the result, I pass the following order-

ORDER

1. Application is rejected.
2. No order as to costs.

Date: 04/10/2024

Kavathe-Mahankal.

(Arun R. Vyawahare)
Judicial Magistrate (F.C),
Kavathe-Mahankal.

Certificate

I affirm that the contents of this P.D.F. file order is same, word to word, as per the original order.

Name of the Stenographer - H.PHaridas

Court - CJJD and JMFC, Kavathemahankal.

Date - 4.10.2024

Order signed by the

Presiding Officer on - 4.10.2024

Order uploaded on 5.10.2024