AmBank (M) Berhad v Raymond Yong Kim Yoong
[2007] SGHC 172

Case Number : B2703/2006, RA 38/2007

Decision Date : 21 November 2007

Tribunal/Court : High Court

Coram : Tan Lee Meng J

Counsel Name(s) : Roderick E Martin and Trinel Chakraborty (Martin & Partners) for the appellant; Sivakumar Murugaiyan and Parveen Kaur Nagpal (Madhavan Partnership) for the respondent

Parties : AmBank (M) Berhad — Raymond Yong Kim Yoong

Civil Procedure – Foreign judgments – Enforcement – Bankruptcy application under s 61(1)(d) Bankruptcy Act (Cap 20, 2000 Rev Ed) – Whether leave of court required under O 46 r 2(1) Rules of Court (Cap 322, R 5, 2006 Rev Ed)

Insolvency Law – Bankruptcy – Bankruptcy application under s 61(1)(d) Bankruptcy Act (Cap 20, 2000 Rev Ed) – Whether debt payable by virtue of judgment or award enforceable by execution in Singapore

21 November 2007 Judgment reserved.

Tan Lee Meng J:

1 The appellant, Mr Raymond Yong Kim Yoong ("YKY"), appealed against the decision of the Assistant Registrar, Ms Denise Wong ("AR Wong"), who allowed the application of the respondent, AmBank (M) Berhad ("AmBank"), a Malaysian bank, for a bankruptcy order against him almost 18 years after judgment had been entered against him in Malaysia (the "Malaysian judgment") in 1988 and almost 12 years after the Malaysian judgment had been registered in Singapore in 1994.

Background

2 On 3 November 1988, Malaysia Borneo Finance Corporation (M) Berhad ("MBFC") obtained judgment against YKY in Malaysia for failing to honour his obligations under a personal guarantee, which had been furnished to MBFC in relation to loans granted by it to two Malaysian companies. After the Malaysian judgment was obtained against YKY, MBFC changed its name to MBF Finance Berhad. Subsequently, the bank's name was changed once again to AmBank (M) Berhad.

3 The Malaysian judgment was registered in Singapore almost six years later on 12 October 1994 under the provisions of the Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed). Section 3(3)(a) of this Act provides that where a judgment is registered under the section, it "shall, as from the date of registration, be of the same force and effect, and proceedings may be taken thereon, as if it had been a judgment originally obtained or entered upon the date of registration in the registering court".

4 For almost 12 years after the registration of the Malaysian judgment in Singapore, AmBank took no steps to enforce the registered judgment. It was not until 18 September 2006 that AmBank finally served a statutory demand on YKY. As the amount claimed was not paid by YKY, AmBank instituted bankruptcy proceedings against him on 10 October 2006.

5 YKY responded to AmBank's application by filing his Notice of Objection and supporting affidavit on 13 November 2006.

6 After hearing counsel for the parties on 4 January 2007 and 2 February 2007, AR Wong dismissed YKY's objections and allowed AmBank's application.

7 YKY appealed against AR Wong's decision.

8 At the hearing of the appeal, YKY relied on the following two grounds for objecting to the bankruptcy application:

(i) The judgment against YKY is not a debt enforceable by execution in Singapore under s 61(1)(d) of the Bankruptcy Act (Cap 20, 2000 Rev Ed) ("the Act" or "the present Act") because the judgment creditor had not obtained the leave of the Court under O 46 r 2(1) (a) of the Rules of Court (Cap 322, R5, 2006 Rev Ed); and

(ii) The judgment creditor had failed to comply with O 46 r 2 (1)(b) of the Rules of Court by obtaining the leave of the Court to enforce the judgment because it had been obtained in MBFC's name and not AmBank's name.

Whether leave of the Court is required under O 46 r 2(1)

9 In regard to YKY's assertion that Ambank is required to obtain leave of the Court under O 46 r 2(1) of the Rules of Court, reference should first be made to s 61 of the Act, which regulates the circumstances under which a bankruptcy application may be presented. Section 61 draws a distinction between debts incurred in Singapore and debts incurred elsewhere. In respect of debts incurred outside Singapore, s 61 provides as follows:

61 – (1) No bankruptcy application shall be presented to the court in respect of any debt or debts *unless at the time the application is made* –

….

(d) where the debt or each of the debts is incurred outside Singapore, such debt is payable by the debtor to the applicant creditor *by virtue of a judgment* or award *which is enforceable by execution in Singapore*.

[emphasis added]

10 In *Medical Equipment Credit Pte Ltd v Sim Kiok Lan Alice* [1999] 1 SLR 70, L P Thean JA, who delivered the judgment of the Court of Appeal, stressed at p 78 that the "underlying foundation" of a petition in bankruptcy is the inability of the debtor to pay a debt which satisfies the requirements of s 61 of the Act. It follows that AmBank must, as is required by s 61(1)(d) of the Act, satisfy the Court that the debt in respect of which the bankruptcy application was presented was one that was payable to it by YKY "by virtue of a judgment or award *which is enforceable by execution in Singapore*".

11 By the time AmBank sought to have YKY declared a bankrupt in September 2006, the registered judgment was no longer enforceable by execution in Singapore without leave of the Court because almost 12 years had passed by since the Malaysian judgment was registered. This is due to O 46 r 2(1)(a) of the Rules of Court, which provides as follows:

2 – (1) A writ of execution to enforce a judgment or order may not issue without the leave of the Court in the following cases:

(a) where 6 years or more have lapsed since the date of the judgment or order

12 It was common ground that leave to enforce the registered judgment had not been obtained. YKY contended that as more than 6 years had lapsed since the registration of the Malaysian judgment in Singapore, it was necessary for AmBank to obtain the leave of the Court under O 46 r 2(1) of the Rules of Court before proceeding to apply to have him made a bankrupt. If such leave is required, AmBank will face insurmountable problems as s 6(3) of the Limitation Act (Cap 163, 1996 Rev Ed) provides that an action upon any judgment shall not be brought after the expiration of 12 years from the date on which the judgment became enforceable. In *Ramnani v Personal Representatives of the Estate of Vaswani, deceased (No 2)* [1994] 2 SLR 750 at 758, Karthigesu JA doubted that leave will be granted to enforce a judgment where the right of action upon the judgment has become time-barred.

13 Much depends on the meaning of the words "such debt is payable … by virtue of a judgment or award *which is enforceable by execution* in Singapore" in s 61(1)(d) of the Act (emphasis added).

14 That an application to make a judgment debtor bankrupt does not involve the execution of a judgment is clear (see, for instance, Chitty LJ's judgment in *Re A Bankruptcy Notice* [1898] 1 QB 383, 386). Nonetheless, under the old Bankruptcy Act (Cap 10) ("the old Act"), where the words "*execution thereon not having been stayed*" were used in s 3(1)(i) in contrast to the words "which is enforceable by execution" in s 61(1)(d) of the present Act, the courts had always insisted that although the question of an execution of a judgment does not arise when a bankruptcy petition is presented, a judgment creditor who seeks to make the judgment debtor bankrupt on the basis of an unsatisfied judgment debt must have in his hands a final judgment that can be enforced *forthwith* or *immediately*. As such, where the leave of the Court is required for whatever reason before a judgment may be enforced, such leave must be obtained before a person can be made bankrupt on the basis of that judgment.

15 In *In Re Ide* (1886) LR 17 QBD 755, Lord Esher MR, while explaining the effect of the words "*execution thereon not having been stayed*" in the corresponding English statutory provision, said as follows at 759:

> [The section] says: "If a creditor has obtained a final judgement against him" (that is against the person whom he proposes to make bankrupt) "for any amount, and, execution thereon not having been stayed", has served on him a bankruptcy notice. It is true that in the present case execution on the judgment has not been stayed, but the words seem to me necessarily to imply that the judgment must be one upon which execution could go *immediately*, unless it was stayed. But here execution cannot go immediately whether it is stayed or not; it cannot go without the leave of Court. I think, therefore, that this was not a final judgment such as is described in [the section] on which a bankruptcy notice could issue.
>
> [emphasis added]

16 A similar approach was adopted in *In Re Woodall* (1884) LR 13 QBD 479.

17 The English position on the effect of the words "execution thereon not having been stayed" was followed in Singapore when the old Act was in force: see, for instance, *Re Solid H Gold Engineering Works* [1988] SLR 757.

18 It is thus necessary to consider whether or not the change in terminology from "execution thereon not having been stayed" in the old Act to "which is enforceable by execution in Singapore" in the present Act has altered the position that leave to present a bankruptcy notice is required where more than six years have lapsed since the date of the judgment in question.

19 YKY's counsel, Mr Roderick Martin ("Mr Martin"), argued that the protection given to the debtor by the words "and execution thereon not having been stayed" in s 3(1)(i) of the old Act was carried over to s 61(1)(d) of the present Act. He submitted that the draftsman of the present Act had articulated in simple language what the cases had decided in relation to the phrase "and execution thereon not having been stayed" in the old Act. As such, under s 61(1)(d) of the present Act, a judgment creditor who seeks to make the judgment debtor bankrupt for a debt incurred outside Singapore must have in his hands a judgment that can be executed *forthwith* or *immediately*. Mr Martin also pointed out that the principle under the old Act that a debt should be "immediately payable" is to be found in s 62 of the present Act, which concerns the presumption of inability to pay debts within the meaning of s 61(1)(c) of the Act. As AmBank did not obtain the requisite leave of the Court, it did not have a judgment "which is enforceable by execution in Singapore" and was in no position to present a bankruptcy application.

20 In contrast, AmBank's counsel, Mr Sivakumar Murugaiyan, who asserted that the principles underlying the present Act render the decisions on the wording of the old Act irrelevant, argued that all that is required by s 61(1)(d) of the present Act is that the foreign debt be *capable* of being enforced by execution in Singapore. As such, notwithstanding the fact that almost 12 years had passed since the Malaysian judgment was registered in Singapore, his client is not required to obtain leave of the Court before his bankruptcy application can be presented.

21 Mr Martin retorted that if AmBank's view is correct, this would render the words "which is enforceable by execution in Singapore" in s 61(1)(d) of the present Act otiose or unnecessary and breach the well-accepted rule that every word in a statute should, without more, be given a meaning and that is why a "construction which would leave without effect any part of the language of a statute will normally be rejected": see *Maxwell* on *The Interpretation of Statutes*, 12th ed (Sweet & Maxwell, 1969), at p 3.

22 The legislative history of the present Act shows that it was intended to give some protection to those with property in Singapore against a claim for debts incurred outside Singapore. The new Bankruptcy Bill that was presented to Parliament did not contain a provision such as s 61(1)(d) of the present Act. At the Select Committee hearings on the new Bill, Mr Terence Tan, a lecturer in the Law Faculty of the National University of Singapore, stated that it was not desirable that any foreign creditor can come to Singapore and have a person owning property here declared a bankrupt in respect of a debt incurred abroad. In response, the Minister for Law, Professor S Jayakumar asked Mr Tan as follows:

> Would it go some way to meet your concern if, in clause 60 or in clause 61, we have an amendment to exclude a foreign debt which is incurred other than one based on a judgment recognized by Singapore courts? … Or there can be restrictive enforcement of foreign debt that is recognized by the Singapore courts. (See *Report of the Select Committee on the Bankruptcy Bill,* Minutes of Evidence, 25 January 1995 at [25].)

23 As a result of the deliberations of the Select Committee on debts incurred abroad, s 61(1)(d) of the present Act was introduced.

24 In view of the arguments advanced by Mr Martin and the legislative history of the present Act,

there is no basis for the words "which is enforceable by execution in Singapore", which follow the word "judgment" in s 61(1)(d) of the present Act to be ignored as surplusage. As for Mr Murugaiyan's argument that AmBank had no intention to execute the judgment, it ought to be noted that in *In Re Woodall* ([16] *supra)* Cotton LJ had specifically stated at p 483 that "the proper course" for the executrix was to obtain leave for the execution "even if she does not desire actually to issue it".

25 In my view, for debts incurred outside Singapore, the petitioning creditor must have in his hands a judgment that is enforceable by execution and if leave is required before it can be executed, it must be obtained before a bankruptcy application founded on a failure to pay the judgment debt in question can be presented.

O 46 r 2(1)(b)

26 As I have found that AmBank was not entitled to apply for YKY to be made a bankrupt as it did not obtain the leave of the Court under O 46 r 2(1)(a) of the Rules of Court, it is not necessary for me to consider the effect of O 46 r 2(1)(b) and the change of the original creditor's name on AmBank's right to apply for YKY to be made a bankrupt.

Conclusion

27 YKY's appeal against the decision of the Assistant Registrar is allowed with costs.