

American Express Bank Ltd v Abdul Manaff bin Ahmad and Another and Other Appeals
[2003] SGHC 256

Case Number : MC Suit 24159/2002, RAS 11/2003, MC Suit 4707/1999, RAS 600001/2003, MC Suit 37125/2002, RAS 12/2003

Decision Date : 22 October 2003

Tribunal/Court : High Court

Coram : Lai Kew Chai J

Counsel Name(s) : K Shanker Kumar (Yeo-Leong & Peh LLC) for the appellant/judgment creditors, American Express Bank Ltd; Fan Kin Ning and Melvin Tan (WLAW LLC) for the appellant/judgment creditors, Standard Chartered Bank Ltd; Kanan Ramesh (Tan Kok Quan & Partnership) for the appellant/judgment creditors, United Overseas Bank Ltd

Parties : American Express Bank Ltd — Abdul Manaff bin Ahmad; M.O.L. Logistics (Singapore) Pte Ltd

Civil Procedure – Judgments and orders – Enforcement – Garnishee orders – Whether wages or salary of judgment debtor exempted from garnishment – Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) s 13(c)

Words and Phrases – "Writ of seizure and sale" – Whether in substance same as garnishment – Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) s 13

Three judgment creditors, which are banks operating in Singapore, have filed these three appeals. They raise the common question, whether 'salaries and wages' may be garnished by judgment creditors. The Deputy Registrar of the Subordinate Courts, Mr Earnest Lau, refused their applications to garnish the salary of the judgment debtors to satisfy the judgments they had obtained.

2 They appealed to the District Judge, Mr Jeffrey Sim. At the conclusion of the hearing of the appeals, the District Judge agreed with the Deputy Registrar and dismissed the appeals.

3 They held that on the proper construction of s 13(c) of the Supreme Court of Judicature Act, Chapter 322 ("SCJA"), it exempts the wages and salaries of a judgment debtor from garnishment. They adopted a purposive interpretation to s 13(c), having concluded that Parliament had always regarded a writ of seizure and sale as a generic term encompassing all modes of seizing the property of a judgment debtor, including the garnishment of his wages or salary. In their view, this was the law before the SCJA was passed in 1969 and is still the law. They have delivered comprehensive judgments in writing and, with respect, they repay careful study for the scope of coverage of the pre-section 13(c) SCJA legal history relating to the process of execution on judgments, in general, and in relation to the writ of seizure and sale and garnishment, in particular, and also for their masterful analysis.

4 Not satisfied with the concurrent rulings, the three banks lodged their appeals to the High Court. Counsel for the three banks made their submissions. The judgment debtors were not represented. For the reasons which follow, I agree with concurrent rulings below.

The proper construction of s 13(c) SCJA

5 I can conveniently start with the Civil Procedure Code 1907 ("CPC 1907"), which came into operation on 1 April 1908: see section 1 thereof. Chapter XXIX of the CPC 1907 dealt with "WRITS OF EXECUTION" generally, under which the first part dealt with the "Writ of Seizure and Sale". This

section described the kinds of property (including debts) which could be seized under a writ of seizure and sale and the exemptions.

6 Section 617 may be properly traced and described as the genesis of section 13 SCJA. Section 617 provided as follows:-

" 617.-(1) The following property is liable to be seized under a writ of seizure and sale, viz.:- lands, houses, goods, money, Government and bank notes, cheques, bills of exchange, promissory notes, Government and Municipal Securities, bonds, or other securities for money, shares in the capital or joint stock or debentures of any public Company or Corporation, debts, and except as hereinafter mentioned, all other saleable property, moveable or immoveable, belonging to the judgment debtor, or over which, or the profits of which, he has a disposing power, which he may exercise for his own benefit, and whether the same is held in the name of the judgment debtor, or by other person in trust for him, or on his behalf.

(2) The following property is not liable to seizure under such writ, viz.:-

...

(b) the wages or salary of the judgment debtor;

...".

7 So far as the word "writ" in sub-s (2) of s 617 of the Civil Procedure Code 1907 is concerned, three pointers may be noted at this stage. First, it obviously referred to the writ of seizure and sale mentioned in the preceding sub-section. Secondly, the plain and natural English meaning of a "writ" is, in simple, modern terms an order or direction of a court of law. Thirdly, this plain and natural meaning of the word "writ" is consistent with the usage of the word in s 569 of the Civil Procedure Code 1907. That section set out the different "modes" by which judgments and orders might be enforced. A judgment for the recovery of money might be enforced by a writ of seizure and sale: see s 569(1)(i) (a). If it was for delivery of possession of land (later amended to immovable property) the mode was by a writ of possession: see sub-para (ii). For the recovery of money, it would be by a writ of attachment.

8 Section 617(2)(b) of the CPC 1907 was new and prevented wages and salaries from being garnished.

9 The regulation of all civil justice matters in Singapore, then a colony, immediately prior to the coming into operation of the CPC 1907 should now be recalled. They were regulated by the Civil Procedure Ordinance, 1878 (Ordinance 5 of 1878) together with the Courts Ordinance 1878 (Ordinance 3 of 1878) and the Civil Law Ordinance (Ordinance 4 of 1878). The Civil Procedure Ordinance 1878, which came into operation on 1 January 1879, provided for execution of a money judgment by garnishment, that is, by the attachment of personal property (including choses in action) in the hands of a third party.

10 Section 407 of the Civil Procedure Ordinance 1878 provided as follows:

"407. Where the judgment-debtor is beneficially interested in any moneys, securities or money, goods, chattels or other property or rights of claims whatsoever, in the custody or under the control of or against any other person within the Colony, or where such other person (hereinafter called the Garnishee) is indebted to the defendant, the Sheriff, in executing a writ of seizure and sale, shall seize the same, by giving notice in writing, in the prescribed form, to the garnishee, which notice shall bind the property of the judgment-debtor in the hands of such garnishee, as hereinafter mentioned, in satisfaction of the decree."

11 In the context of the Civil Procedure Ordinance 1878, I need only consider the decision of Wood, A.C.J. in *MPLA Peyna Carpen Chitty v Max. J. D'Souza* [1892] 1 SSLR 64. It was succinctly stated in the short judgment as follows: "(o)n the supposition that the wages of the clerk are his sole means of living, I think that the salary of such a clerk is not attachable taking into consideration the provisions of the Ordinance (i.e. the Civil Procedure Ordinance 1878 as to the examination of Judgment Debtors and the power given to order payment of the debt by instalment, provisions which in my judgment point to the policy of the law in not permitting a man to be stripped of all means of livelihood and entirely pauperised." It was implicitly accepted by the Chief Justice that attachment of a debt was the same as 'seizure' of a debt.

12 I now trace the legislative manifestation of ss 617 to 639 of the Civil Procedure Code 1907 which, by 1934, had become a substantial amalgam of substantive law and procedure.

13 Section 617 of the CPC 1907 was consolidated as s 13 of the Courts Ordinance 1934, in which substantive law relating to the courts was enacted. It provided as follows:-

"13.- (1) A judgment of the High Court for the payment of money to any person or into Court, may be enforced by a writ, to be called a writ of seizure and sale, under which all the property, moveable or immoveable, of whatever description, of a judgment debtor may be seized except -

.....

.....

(c) the wages or salary of the judgment debtor; ..."

14 Sections 618 to 639 of the CPC 1907, which covered matters of procedure, were consolidated in subsidiary legislation to the Courts Ordinance 1934 as Order 41 of the Civil Procedure Rules of Supreme Court 1934. The rules under Order 41 provided the mode and procedure for attaching the property of the judgment debtor in the hands of a third party. They, however, did not confer new rights to attach property not liable to seizure under the parent legislation.

15 The relevant parent legislation underwent several consolidations. The Courts Ordinance of 1934 was replaced by the Courts Ordinance 1955. Later, those provisions in the Courts Ordinance 1955 relating to superior courts were consolidated into the Courts of Judicature Act 1964. The Courts of Judicature Act, 1964 was later consolidated by the Supreme Court of Judicature Act 1969. In the meantime, the provisions in the Courts Ordinance 1955 relating to inferior courts continued to remain in force until the Subordinate Courts Act 1970.

16 Section 13 of the Courts Ordinance 1934 remained the same in substance and in terms until today as s 13 SCJA. Section 13 SCJA provides as follows:-

"13. A judgment of the High Court for the payment of money to any person or into court may be enforced by a writ, to be called a writ of seizure and sale, under which all the property, movable or immovable, of whatever description, of a judgment debtor may be seized, except -

(a) the wearing apparel and bedding of the judgment debtor or his family, and his tools and implements of his trade, when the value of such apparel, bedding, tools and implements does not exceed \$1,000;

(b) tools of artisans, and, where the judgment debtor is an agriculturist, his implements of husbandry and such animals and seed-grain or produce as may in the opinion of the court be necessary to enable him to earn his livelihood as such;

(c) the wages or salary of the judgment debtor;

(d) any pension, gratuity or allowance granted by the Government; and

(e) the share of the judgment debtor in a partnership, as to which the judgment creditor is entitled to proceed to obtain a charge under any provision of any written law relating to partnership."

17 I agree with both the District Judge and the Deputy Registrar of the Subordinate Courts that the SCJA was principally a consolidating statute, with certain amendments not relevant for present purposes. "The powers of jurisdiction of the Supreme Court are the same as heretofore, before (Singapore) joined Malaysia and after (Singapore) left Malaysia": see Col. 75 in Vol. 28, The Parliamentary Debates Republic of Singapore. (Words within brackets are added).

18 It followed, and I agree with the view, that so far as s 13 SCJA is concerned, Parliament intended it to be construed in the same manner and to the same extent as its antecedent legislation prior to the enactment of SCJA.

19 I now turn to the Rules of the Supreme Court 1970 ("RSC 1970"), which replaced the Civil Procedure Rules of Supreme Court 1934. The RSC 1970 resembled the English Rules of Supreme Court 1965 and they effected a significant change to garnishment proceedings in Singapore.

20 The RSC 1970 adopted the English garnishee procedures and confined the kind of seizable property in Singapore to debts. As far as procedure was concerned, judgment creditors no longer had to rely on the Sheriff's timetable and schedule for serving garnishee notices. Judgment creditors were given the initiative. In the High Court, a notice by the court attaching the debt of the judgment debtor is obtained by a judgment creditor in accordance with Order 49, rr.1-4. A garnishee may dispute that he is indebted or a third party may wish to assert a competing claim in relation to the debt. Under the new procedure a garnishee order nisi might be challenged at a show cause hearing, after which the order nisi may or may not be made absolute. Any payment by the garnishee to the judgment debtor under an order absolute discharges him to the extent of his payment. A garnishee who disposes of the money which he knows has been attached by the court may be held in contempt.

21 I entirely agree with the views of both tribunals below that the RSC 1970 did not expressly or by necessary implication confer on judgment creditors new rights to attach salaries and wages.

22 With effect from 1 April 1996 the RSC 1970 and the Rules of the Subordinate Courts 1986 were consolidated into a single set of the present Rules of Court 1996 ("ROC 1996"). In particular, Order 49 of the RSC 1970 and Order 33 of the Subordinate Court Rules 1970, which governed garnishment proceedings, were amalgamated into and became Order 49 of the ROC 1996.

Grounds of Appeal

23 The primary contention canvassed on behalf of judgment creditors is that s 13 of SCJA only applies to a "writ of seizure and sale". It is argued that the ordinary meaning of "writ of seizure and sale" means the process of the court instructing the Sheriff to seize chattels, land, and securities belong to the judgment debtor as provided under O 46 and O 47 of the ROC 1996. References are made in this line of argument to O 45 r 1(1) RSC 1970 and O 30 Subordinate Court Rules 1970 which also mentioned a "writ of seizure and sale" in contra-distinction with garnishee proceeds. Like the Deputy Registrar, I would refer this interpretation as the "narrow meaning".

24 In support of the narrow meaning of s 13 SCJA, it is submitted on behalf of the appellants that the writ of seizure and sale under s 407 of the Courts Ordinance 1878 constituted an instruction to the Sheriff to, inter alia, seize the debt and the instruction was implemented by the Sheriff serving a notice on the garnishee. It is further submitted that this process 'differs markedly' from the process under O 49 of the ROC 1996 which removed the involvement of the Sheriff. Accordingly, it is argued, that garnishment under O 49 of the ROC 1996 is 'a different creature from the term "writ of seizure and sale" in s 13 SCJA.

25 The appellants further contended that the writ of seizure and sale was not the genius of a garnishee order. It is emphasised that the only mode of execution in force under the Civil Procedure Code 1907 and the Court Ordinance 1934 was a writ of seizure and sale. There was no concept of a garnishee order as provided for under O 49 of the ROC 1996.

26 I propose to refer to intrinsic and extrinsic aids to render a purposive interpretation of a statutory provision without there having any pre-existing ambiguity. This approach is required by s 9A of the Interpretation Act, Cap. 1. I also rely on the decision of the Court of Appeal in *Planmarine AG v Maritime and Port Authority of Singapore* [1999] 2 SLR 1.

27 The phrase "writ of seizure and sale" in s 13 SCJA is not defined in any statute or at common law. The phrase refers to the order or direction of a court to seize and sell. On this purposive reading of the meaning of the phrase, it is in substance, albeit not in name, the same as garnishment which is a direction of the court to the garnishee to pay the judgment creditor. Both modes of execution involve the attachment of the property of the judgment debtor and the transfer of the interest of the judgment debtor in that property, whether by the proceeds of sale or by payment as in the case of a garnishment, to the judgment creditor.

28 I agree with the Deputy Registrar that the broader meaning seems more harmonious with the context of the language used in s 13 and s 80(2)(1) SCJA. Section 13 allows "all the property, movable or immovable, of whatever description, of a judgment debtor" to be seized. If the expression 'writ of seizure and sale' has a narrow meaning, then the court's power to seize the property of the judgment debtor under s 13 SCJA would be limited to chattels, land and securities, seeing that debts and equitable interest are seizable by garnishment and equitable receivership orders. Further, several properties are exempted under s 13(a) to (e). On the basis of the narrow meaning, which is advocated by the appellants, the drafting of the list of exempted properties would have terminated at s 13(b).

29 Additionally, s 80(2)(1) SCJA also refers to a “writ of seizure and sale”. The Rules Committee is authorised to make Rules to regulate the seizure and sale of the property of the judgment debtor. As pointed out by the Deputy Registrar, if the narrow meaning is adopted, “then the power of the Rules Committee to make Rules under s 80(2)(1) of SCJA will likewise be limited to the seizure of chattels, land and securities by the Sheriff. But in the light of the broader meaning, however, one can easily understand why the words ‘modes in which a writ of seizure and sale may be executed’ appear.”

30 I refer to a point of considerable importance. It is view, as identified by the Deputy Registrar, that the narrow meaning only draws its justification from the changes to the 1970 procedural rules. If the legal position regarding the exemption of wages and salaries from seizure under s 13(c) SCJA remains similar to the law prior to its enactment, “then the narrow meaning would result in the parent legislation being derogated by amendments made to subsidiary legislation.” That is a consequence to be avoided if at all possible but I do not think, for a moment, that was ever intended by the Rules Committee.

31 I should finally refer to the submission that it would be redundant for s 13(c) SCJA to prohibit the general attachment of salaries and wages since there exist other legislation providing specific protection of salaries and wages from attachment. The appellants’ counsel refer to s 24 of the Central Provident Fund Act, s 60(1) of the Merchant Shipping Act, s 14 of the Pensions Act. This argument does not carry any weight. These provisions are irrelevant to the attachment of wages or salary. Further, some of the provisions referred to were in existence at the time when s 13(c) first appeared as s 617(2)(b) of the Civil Procedure Code 1907. Such provisions, including s 11 of the Pensions Act, did not discourage the then legislature from promulgating s 617(2)(b) of the Civil Procedure Code 1907.

32 I am accordingly of the view that s 13 SCJA exempts wages or salary from garnishment. The appeals are therefore dismissed.

Appeals dismissed