Re Jeyaretnam Joshua Benjamin, ex parte Indra Krishnan (No 2)
[2004] SGHC 106

Case Number : Bankruptcy P No 2491/2000, RA 600004/2004

Decision Date : 24 May 2004

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Appellant in person; Chan Wang Ho and Moey Weng Foo (Attorney-General's Chambers) for official assignee; Ashok Kumar (Allen and Gledhill) for first and 11th creditors; Davinder Singh SC (Drew and Napier LLC) for second to tenth creditors; Mary Pereira (Peter Low Tang and Belinda Ang) attending at the court's discretion

Parties : —

Insolvency Law – Bankruptcy – Discharge – Whether bankruptcy order ought to be discharged – Section 124 Bankruptcy Act (Cap 20, 2000 Rev Ed)

24 May 2004

Choo Han Teck J:

1 This is an appeal against the assistant registrar's dismissal of the appellant's application to discharge the bankruptcy order made against him on 19 January 2001. That order was made under Bankruptcy Petition No 2491 of 2000. That petition was filed after the appellant was unable to satisfy a judgment debt amounting to $265,000. That case concerned a libel action by 11 plaintiffs against the appellant and two others, including the Workers' Party. The creditors agreed to accept payment of the judgment debt and costs under an instalment payment schedule. The appellant was unable to meet the schedule. After an extension of time to 16 January 2001 yielded no further payments, the creditors restored the bankruptcy proceedings and the appellant was adjudicated a bankrupt on 19 November 2001. The appellant appealed against the bankruptcy orders and his appeals to the High Court judge in chambers and the Court of Appeal failed in August 2001. The appellant applied under s 124 of the Bankruptcy Act (Cap 20, 2000 Rev Ed) to discharge the bankruptcy order before the assistant registrar on 26 April 2004. His application was dismissed.

2 The appellant's grounds of appeal before me were based on two points. First, he submitted that he is offering to pay up to 20% of the debt, but is willing to accept a higher percentage of up to 25% if the court so orders. Secondly, he alleged that the creditors were not serious in recovering the debt and that the real reason for objecting to his application was a political one, namely, that they did not want him to recover his seat in Parliament. It was in this regard that the appellant cited a number of cases, including *Re Laserworks Computer Services Inc* (1998) 78 ACWS (3d) 19, a decision of the Nova Scotia Court of Appeal. In that case, the applicant's (Laserworks') competitor (Datarite) acquired the claims of 18 of the applicant's creditors. The court found that the intention of Datarite was to defeat Laserworks' proposals under the Canadian Bankruptcy and Insolvency Act (RSC 1985, c B-3), with the motive of eliminating its competitor. The court thus disallowed the use of the votes acquired by Datarite.

3 Mr Davinder Singh SC, appearing and objecting on behalf of nine of the creditors, submitted that among the important factors to be considered is the question of the conduct of the appellant bankrupt. In this case, he argued that the appellant had caused the creditors to incur unnecessary expenses in filing frivolous defences and appeals. The cases that the appellant cited in support of his appeal had been cited and referred to in previous proceedings relating to the bankruptcy, including

the appeal before the Court of Appeal. Furthermore, relying on the report of the Official Assignee ("OA"), counsel submitted that the appellant had suppressed vital and material information on his assets from the OA. This concerned the appellant's interests and entitlement in a property in Johor Bahru belonging to his deceased sister. The appellant was made the personal representative of her estate but he has taken the position that the property is not part of the estate's assets because it belongs to him solely and personally. That claim is being disputed by other claimants and beneficiaries to his sister's estate. Mr Ashok Kumar, representing the Prime Minister and five other creditors including Mr S Jayakumar, submitted that the realisation process should not be handed over to the bankrupt. Mr Chan Wang Ho for the OA submitted that the appellant had not been co-operative with the OA and, in this regard, cited as an example the appellant's retention of moneys he had received from his sister's estate in spite of requests by the OA for the money to be handed over. The appellant replied that his solicitor was acting properly when he asked the OA to obtain an order of court, otherwise he could not hand over the money. The amount in question was not a large one (RM9,275.33). This was also one of the reasons that led Mr Davinder Singh to submit that the appellant was causing the creditors unnecessary expense.

4 The appellant charged that the creditors' only reason for objecting to his application was a political one, namely to prevent his return to Parliament. In reply, Mr Davinder Singh disagreed and contended that it was the dishonesty of the appellant that required his application to be dismissed. The appellant submitted that had this application been made by anyone else it would not have been objected to by the creditors or the OA. That is a hypothetical point which I take the appellant to have made for purposes of emphasis only. But, in determining the merits of this appeal, the court will have to make its decision as if the appellant had been anybody else, and *vice versa*, as if the creditors had been some other creditors. The incontrovertible fact remains that the administration of the appellant's assets has not been completed. It is apparent that the appellant, if not entitled, is at least staking a claim to his sister's property in Johor Bahru. From what the appellant has disclosed, the appellant's claims in Johor Bahru are being disputed and there is a serious threat of litigation. In the circumstances, it will not be fair to the creditors here if the bankruptcy order is discharged. The OA is the ideal and proper person to administer the appellant's assets, especially in such circumstances. Even he faced difficulty eliciting responses in respect of the Johor Bahru assets. Thus, the *Laserworks* case is not relevant in the present circumstances. The parties have all referred me to a passage from the judgment of Warren L H Khoo J in *Re Siah Ooi Choe, ex parte Hongkong and Shanghai Banking Corp* [1998] 1 SLR 903 at [9]:

> A proper approach to an application to discharge from bankruptcy involves a consideration of the project and purpose of these new provisions of the Bankruptcy Act (Cap 20, 1996 Ed) ("the Act"). The Act was designed to meet two major conflicting concerns. One stemmed from the recognition that many an individual businessman becomes insolvent not through any fault, moral or otherwise, but through just being caught at the wrong turning of the economic cycle. It would be in the interest of society that people who had become bankrupt in such circumstances, and generally, should be given a second chance in life, so that the social cost of waste of entrepreneurial resources could be reduced. The other concern was that, without proper safeguards, people who had used dishonest or fraudulent methods in conducting their business affairs to the detriment of their creditors might get an undeserved advantage from their own wrongdoings. The fear of people taking advantage of their own frauds is probably as old as the institution of bankruptcy itself, and it was natural that such fears were highlighted when an easier regime for discharge from bankruptcy was being proposed. The new legislation sought to strike a balance between these two major concerns. The Bill was introduced in Parliament in August 1994. It was referred to a select committee. Representations from individuals and from the financial community were heard. It was then enacted, with some amendments.

The parties have attached themselves to the different ends of Khoo J's observation as to what the court was required to take into account – the "second chance" and the "prevention of fraud" considerations. The above-cited passage emphasised two important extremes that the court should keep in view as marking the boundaries within which it might have to exercise its discretion. However, there are other equally important matters that the court ought to take into account. Whether the assets of the bankrupt have been fully ascertained or administered is one such matter.

5 Finally, although the appellant alluded to his age and implied that the court should be lenient on that account in determining whether three years is a sufficiently long time for a person to remain a bankrupt, I am of the view that three years, in the present circumstances, is too soon for the bankruptcy order to be discharged. It might have been different if the assets had been fully ascertained and administered, and the OA had been supportive of the application. In a previous case, *Re Loo Teng Soy* [1997] SGHC 249, I rejected an application to discharge a bankruptcy order even though the order had been in force for 11 years and the application was made by the OA. In that case, the amount involved was extremely large, amounting to $14m, and the bankrupt had previously absconded. I, therefore, counselled the virtue of patience.

6 For the reasons above, there was no ground to support the appellant's application.

Appeal dismissed.