Supermix Concrete Pte Ltd v Econ Corp Ltd (Public Utilities Board, garnishees) [2003] SGHC 272

Case Number : Suit 1510/2002, RA 144/2003

Decision Date : 31 October 2003

Tribunal/Court : High Court

Coram : Lai Kew Chai J

Counsel Name(s) : Cheah Kok Lim (Ang and Partners) for appellants/judgment debtors; Winston Kwek and Sharon Goh (Rajah and Tann) for respondents/judgment creditors

Parties : Supermix Concrete Pte Ltd — Econ Corp Ltd (Public Utilities Board, garnishees)

Credit and Security – Remedies – Garnishee orders – Garnishee order set aside – Judgment debtor insolvent – Risk of judgment creditor not receiving garnished moneys – Whether garnished moneys should be paid into court

Credit and Security – Remedies – Garnishee orders – Material non-disclosure of facts in application for order – Whether order should be set aside

1 Econ Corporation Limited ('the judgment debtors') appealed to me against the order made by the Assistant Registrar dismissing their application to set aside the garnishee order absolute dated 6 May 2003. I allowed the appeal with costs fixed at $1,500. Although I allowed the appeal, I allowed the Garnishee Order Absolute to stand on condition that the judgment creditor, since they were keeping the garnished moneys, provide the judgment debtor with a bank guarantee containing the operative clause, the text of which was tendered to me by counsel for the judgment creditor, and on such other terms to be agreed by both parties and the bank concerned. I granted liberty to apply if there was no agreement on the other terms. Both the judgement creditor and the judgment debtors have appealed against my decision.

2 The background was briefly as follows. On 3 April 2003 the judgement creditors obtained part judgment against the judgment debtors in the sum of $1,468,845.24, interest thereon at 6% per annum from the date of the writ (19 December 2002) to date of Judgment (3 April 2003). On 17 April 2003, the judgment creditors obtained a Garnishee Order to Show Cause. The adjourned hearing for the Garnishee to show cause was fixed for 9 May 2003. The solicitors for the judgment creditors were expressly directed by the Assistant registrar to inform the judgment debtors of the hearing date. To all intents and purposes, it was understood by the judgment debtors, quite properly and at any rate, that the hearing would be on 9 May 2003.

3 On 6 May 2003, the judgment creditors appeared before the Assistant Registrar on duty and unilaterally moved forward the hearing date of the Garnishee Order to Show Cause from 9 May 2003 to 6 May 2003. They also sought and obtained a Garnishee Order Absolute in the sum of $1,505,000.00. At the hearing, the judgment creditors' solicitors failed to disclose to the Assistant Registrar the following facts:-

(a) the judgment debtors had made an application by way of Originating Summons 653 of 200/D to convene a creditors' meeting to propose a Scheme of Arrangement ('the Scheme') under Section 210 of the Companies Act, Cap. 50 ('the Act');

(b) there was also in the said application an application to stay all pending proceedings; and

(c) in the said application, the judgment debtors had filed an affidavit where they had stated that they were insolvent.

4 On 23 May 2003, the judgment debtors' application to set aside the Garnishee Order Absolute on the ground, inter alia, of material non-disclosure was dismissed by an Assistant Registrar. On 8 July 2003, the appeal against the dismissal of this order was heard by me. I was satisfied that there was material non-disclosure on the part of the judgment creditors and set aside the Garnishee Order Absolute with costs to be paid by the judgment creditors fixed at $1,500. I also ordered that the judgment creditors pay into court the sum that was garnished amounting to $1,505,000.00.

5 The judgment creditors' solicitors wrote in for further arguments on 10 July 2003. They also required that in lieu of payment into Court, they provide a banker's guarantee with "the wording to be agreed or determined by (the High Court)". My attention was drawn to section 260 read with section 255(2) and section 334(2)(b) of the Companies Act, Cap. 50. They govern the attachment of assets of a company placed in liquidation such that attachments that are incomplete at the time of presentation of a winding up petition are void. It was noted, and I agreed, that attachment in terms of the section 334(2)(b) of the Companies Act, Cap. 50 is deemed to be complete only when the attached or garnished funds are received.

Section 260 reads:

> 'Any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of the winding up by the Court shall be void.'

Section 255(2) reads:

> '(2) In any other case the winding up shall be deemed to have commenced at the time of the presentation of the petition for the winding up.'

Section 334(2)(b) reads:

> '(2) For the purposes of this section –
>
> …
>
> (b) an attachment of a debt is completed by receipt of the debts; and …'

6 The judgment creditors were concerned, in my view rightly, to avoid the situation where upon lifting of the stay of proceedings, there might be some time (in the light of the first orders I made in the appeal, which I shall come to presently) before payment out of the funds from court was effected such that if, in the intervening period, winding-up proceedings were commenced against the judgment debtors, the judgment creditors might be prevented from receiving the said funds.

7 I now turn to the first set of orders I made on 8 July, 2003. On that occasion, I allowed the appeal with costs fixed at $1,500. I set aside the Garnishee Order Absolute. I further ordered that if the stay of proceedings against the judgment debtor under section 210 of the Act is lifted, ipso facto the Garnishee Order Nisi would become absolute and money in court shall be paid to the solicitors of the judgment creditor. I further ordered that any money paid under the Garnishee be paid into court to abide by further directions.

8 I made those first set of orders, having taken into account the material disclosures but I also thought that setting aside the order absolute without conditions was too disproportionate as a consequence and I sought to protect and preserve the 'fruits of vigilance' on the part of the judgment creditors.

9 When the issue of the completion of attachment of the garnished debt was further raised, as to what might happen during the lag in time when payment out by the court after payment in, I amended my earlier orders and made the orders I did.

Appeal allowed