# Re Joshua Benjamin Jeyaretnam ex parte Indra Krishnan and others
# [2007] SGHC 14

**Case Number** : B 2491/2000, RA 600007/2006

**Decision Date** : 26 January 2007

**Tribunal/Court** : High Court

**Coram** : Tan Lee Meng J

**Counsel Name(s)** : Joshua Benjamin Jeyaretnam (debtor) unrepresented and absent; Ashok Kumar and Foo Hsiang Ming (Allen & Gledhill) for the 1st and 11th creditors; Hri Kumar and Vanita Jegathesan (Drew & Napier LLC) for the 2nd to 10th creditors; Chan Wang Ho and Moey Weng Foo for the Official Assignee

**Parties** : —

*Insolvency Law – Bankruptcy – Discharge – Whether application for absolute discharge from bankruptcy should be allowed where prior applications dismissed by court and circumstances not having changed materially since – Whether having rejected application for absolute discharge, court should grant conditional discharge*

26 January 2007

**Tan Lee Meng J:**

1 The appellant, Mr Joshua Benjamin Jeyaretnam, appealed against the decision of Assistant Registrar Low Siew Ling ("AR Low"), who dismissed his third application to have his bankruptcy discharged. I dismissed the appeal and now give the reasons for my decision.

**Background**

2 The appellant was adjudged a bankrupt on 19 January 2001. Fifteen creditors made claims amounting to around $618,000.00 against him. The bulk of the debts arose from damages awarded against him in three libel suits instituted by his creditors.

3 After his bankruptcy, the appellant made an application for annulment of his bankruptcy and three applications for his discharge from bankruptcy.

4 In January 2004, the appellant intimated to the Official Assignee ("OA") that he wanted to apply to court for a discharge from bankruptcy. For this purpose, he offered to pay his creditors 20% of the proved debts. The OA made it clear to the appellant that his application could not be supported as his assets had not been fully realised. At that time, the appellant was involved in a number of ongoing suits in Singapore and a suit in Malaysia, in which he claimed to be the beneficial owner of a property in Johor Bahru that was in his late sister's name. Notwithstanding this, the appellant filed an application to be discharged from bankruptcy.

5 After failing to persuade the Assistant Registrar to agree to discharge him from bankruptcy, the appellant raised his composition offer to his creditors to 25% when the matter came before the High Court. He complained to Choo Han Teck J, who heard the appeal against the Assistant Registrar's decision, that his creditors were not serious about recovering the debts owed by him to them because their real reason for impeding his discharge from bankruptcy was political in nature.

6 Choo J dismissed the appeal against the Assistant Registrar's decision (see [2004] 3 SLR 133)

on the following grounds:

(a) the administration of the appellant's estate had not yet been completed;

(b) in view of the appellant's claim to his late sister's property in Johor, it would not be fair to the creditors if the bankruptcy order was discharged; and

(c) in the circumstances and bearing in mind that only three years had elapsed since the making of the bankruptcy order, an order of discharge would be premature.

7 The appellant's appeal against Choo J's decision was dismissed by the Court of Appeal: see *Jeyaretnam Joshua Benjamin v Indra Krishnan* [2005] 1 SLR 395.

8 In May 2005, the appellant filed his second application to be discharged from bankruptcy. This application was dismissed by the Assistant Registrar, whose decision was affirmed by Andrew Ang J.

9 In January 2006, the appellant applied for an annulment of the Bankruptcy Order that had been made against him. In response, his creditors filed an application for a stay of the annulment proceedings until the appellant had paid all outstanding costs due to them. The Assistant Registrar ordered the appellant to pay the pre-annulment outstanding costs as well as the costs of the application to stay the annulment proceedings by 24 March 2006, failing which the annulment application would be dismissed. The appellant failed to make the payment on time but he was given more time to pay the costs by Judith Prakash J, who ordered that the costs in question be paid by 3 July 2006, failing which the annulment application would be dismissed with costs. As no payment was made by the end of the extended deadline, the annulment proceedings were dismissed.

10 On 28 August 2006, by way of Summons No 600358 of 2006, the appellant filed his third application for a discharge from bankruptcy, which is the subject matter of the present appeal. In relation to his third application, the appellant offered to pay his creditors the sum of $124,937.62 which, he claims, amounts to 45% of his total debts to the creditors. As the appellant had not paid outstanding costs due to his creditors, they and the OA applied for a stay of proceedings. The appellant opposed the stay but paid the costs after a stay was ordered.

**The Assistant Registrar's decision**

11 The appellant's third application for a discharge from bankruptcy was heard on 20 October 2006. He represented himself at the hearing before AR Low, who dismissed it with costs.

12 AR Low explained her decision to dismiss the appellant's application in the following terms:

> Under the Bankruptcy Act, the grant of a discharge is within the discretion of the court, and there are a number of relevant factors for the court to consider, including the bankrupt's age, the fact that he has been adjudicated a bankrupt since 19 January 2001 and his offer to pay 45% of all his debts. However, as I have earlier found, the B's computation of 45% is inaccurate and his offer in fact represents a substantially lower percentage than 45%.
>
> The creditors have indicated that they are willing to accept 45% of the amounts owing to them, and have even in some cases discounted the interest element of the judgment debt. Notwithstanding their offers, Mr Jeyaretnam has insisted that he will only pay $124,937.62 and no more. He does not go so far as to say that he cannot pay the sums the creditors have requested for, which amount to 45% of the remaining debts due and owing to them. Simply that he refuses

to pay them.

In these circumstances, the JB property becomes very relevant as it could potentially contribute $380,000 to the bankrupt's estate. The OA has commenced proceedings to have the Malaysian estate vested in the OA, but Mr Jeyaretnam has filed an affidavit to *oppose* that application. [Mr Jeyaretnam] has also persisted in his refusal to arrange for his share of monies from his late sister's estate to be handed over to the OA, despite the fact that his Malaysian solicitors have collected the sum since 2001. I reiterate the Court of Appeal's words to [Mr Jeyaretnam] here: [Mr Jeyaretnam] must help himself in order that others, including the court, can help him.

[Mr Jeyaretnam's] age and the length of time in bankruptcy are certainly very relevant considerations for this court, they have to be balanced against the conduct of the [bankrupt] here. The creditors have made a reasonable offer, but he has refused to accept it. Contrary to Mr Jeyaretnam's arguments, there is no material change of circumstances since the last time [he] applied for a discharge last year. [Mr Jeyaretnam's] offer of $124,937.62 amounts to far less than the 45% he has claimed.

**The Appeal**

13 The appellant, who was unrepresented, was in the Supreme Court building at the appointed time for the hearing of his appeal but he refused to attend the hearing to argue his own case. Instead, he sent one Mr Ng Teck Siong, who is not an advocate and solicitor of the Supreme Court, to inform the court that he would not be attending the hearing of the appeal and to hand over his written submissions. Mr Ng, who pointed out that this is a "political" case and not merely an application for the appellant's discharge from bankruptcy, was informed that the debtor should either be represented by counsel or be present at the hearing to argue his own appeal and that the court was only concerned with legal arguments in relation to the application before it. In this context, reference may be made to the decision of the Court of Appeal in 2004 in relation to his first application for a discharge from bankruptcy. Chao Hick Tin JA, who delivered the judgment of the Court, addressed the appellant's contention that his creditors had a political agenda and reiterated at [12] that in considering whether a bankruptcy order should be discharged, the court should be guided by the letter and spirit of the law and make its decision as if the appellant had been anybody else, and vice versa, as if the creditors had been some other creditors.

14 As for the appellant's reliance on *In re Majory, A Debtor* [1955] Ch 600, this case had already been considered by the Court of Appeal in 2004. Chao Hick Tin JA said as follows at [13]:

The cases cited by the appellant …, namely *In re Majory, A Debtor…, Re Laserworks Computer Services Inc* (1998) 78 ACWS (3d) 19, *In re Davies* (1876) 3 Ch D 461 and *In re Adams* (1879) 12 Ch D 480, are all cases where the issue was whether the grant of a bankruptcy petition would be an abuse of process, which is not the question here. The principle established in these cases is not in dispute and to the extent that an abuse of process would be a ground to refuse the making of a bankruptcy order, it must follow that if a creditor's objection to a discharge is based on a ground which constitutes an abuse of process, the court should have no regard whatsoever to that objection. From the passage of the judge below which we have just quoted, it is clear that he totally disregarded the irrelevant extraneous factors. He had regard only to the objective facts in coming to his determination.

15 Likewise, in the present appeal, it was made clear from the start that extraneous factors are irrelevant and will not be taken into account.

16 An application for a discharge from bankruptcy is governed by s 124(1) of the Bankruptcy Act (Cap 20, 2000 Rev Ed), which provides that the "Official Assignee, the bankrupt or any other person having an interest in the matter may, at any time after the making of a bankruptcy order, apply to the court for an order of discharge". In relation to such an application, s 124(3) provides that subject to subsection 4, the court may –

(a) refuse to discharge the bankrupt from bankruptcy;

(b) make an order discharging him absolutely; or

(c) make an order discharging him subject to such conditions as it thinks fit to impose, including conditions with respect to —

(i) any income which may be subsequently due to him; or

(ii) any property devolving upon him, or acquired by him,

after his discharge,

as may be specified in the order.

17 Section 124(6) of the Act further provides that the court may, at any time before an order of discharge takes effect, rescind or vary the order.

18 Whether an agreement had been reached between the parties for the appellant to be discharged upon payment of $124,937.62 to the creditors will first be considered. According to the appellant, he had offered 45% of the amount owed to them as settlement of the debts due to them and this meant that he was only required to pay them $124,937.62. However, all the other parties to the proceedings took issue with the appellant's calculation of what amounts to 45% of the debts due to his creditors.

19 While the creditors were initially prepared to compromise the claim at 45% of the amount due to them, they clearly stated how much 45% of the debt amounted to and they required the appellant to pay them the specified amount. For instance, in relation to the 2nd to 10th creditors, their solicitors, Drew & Napier, wrote to the appellant as follows on 31 July 2006:

> We are instructed that our clients agree to accept your offer of 45% of the sum owed to our clients in settlement of your debt to our clients, subject to the following conditions:
>
> (a) *you shall pay the sum of $222,517.84*, being 45% of the principal sum reflected in our clients' proofs of debt;
>
> (b) you shall make full payment of the sum referred to at paragraph (a) above to us by way of cashier order made in favour of M/s Drew & Napier LLC by **5 pm on 31 August 2006** failing which this agreement shall be deemed terminated immediately without notice;
>
> (c) In the event the agreement is terminated, our clients shall be entitled to treat all sums received (if any) as part payment of amount owed to them, and shall be entitled to claim the balance of the debt reflected in their proofs of debt; and ….
>
> It shall be a condition precedent to this agreement that you shall procure the Official Assignee's

written consent to the same, such consent to be obtained no later than **17 August 2006**, failing which this agreement shall be deemed null and void.

[emphasis added]

20 As is evident from the above letter, Drew & Napier were careful enough to state the specific amount to which its clients were entitled to. Likewise, Allen & Gledhill, who represent the 1st and 11th creditors, also spelt out in no uncertain terms that 45% of the debts due to its clients amounted to $38,804.88. In these circumstances, there was clearly no binding compromise of the debt owed by the appellant to his creditors.

21 The OA had no doubt that the appellant's claim that 45% of his debts amounted to $124,937.62 had no leg to stand on. The OA explained as follows in para 27 of his written submissions:

> Our calculations have indicated that the total amount of the 15 proofs of debts against the Bankrupt is $613,190.69 (from 14 proofs of debt) and £3,775 (from the 15th proof of debt). So 45% of that amount would be a total of $275,935.81 and £1,698.75. In addition, under the Bankruptcy Act/Rules, payments to creditors are made via the Official Assignee, and realization and distribution fees are chargeable. There [are] also other administrative charges and fees (amounting to a total of $6,088.69) that have to be paid off before any discharge.

22 The OA reminded the appellant of the creditors' offer to settle in a letter dated 31 October 2006 but until the date of the hearing of the appeal, the appellant had not responded to the letter.

23 There being no agreement between the parties regarding the amount that had to be paid to the appellant's creditors to settle the debts owed to them, whether or not there are other grounds to discharge the appellant from bankruptcy will next be considered.

24 Admittedly, the appellant is 80 years old but age is only one factor to be taken into account in determining whether he should be discharged from bankruptcy. The appellant's age has to be balanced against the interests of the creditors, the amount owed, the period of bankruptcy, the appellant's own conduct with respect to his bankruptcy and the fact that the considerations that persuaded the Court of Appeal in late 2004 that he should not be discharged from his bankruptcy at the material time apply with equal force to his present application to be discharged from bankruptcy.

25 When dismissing the appellant's appeal in the first discharge application, the Court of Appeal noted at [14] that the OA had listed the following circumstances as germane to the application in question:

> (a) whether the administration of the bankrupt's affairs by the OA is complete and whether the bankrupt's discharge will prejudice the administration of his estate;
>
> (b) whether the bankrupt is able to make a significant contribution to his estate; and
>
> (c) whether the bankrupt has co-operated with the OA in the administration of his estate and whether there are any matters arising out of his conduct which are still being investigated by the OA.

26 In the present proceedings, the OA pointed out that the process of realizing the appellant's assets has still not yet been completed. As is the case with his previous applications to be discharged from bankruptcy, the appellant did not deny that the administration of his affairs has not been

completed. However, his case appears to be that if all the circumstances are taken into account, he should be discharged from bankruptcy.

27 While it does not follow that a bankrupt can never be discharged if the administration of his estate has not been completed, in the present case, it cannot be overlooked that the appellant claims to be the owner of a Malaysian property, namely No 50-A Jalan Abdul Samad, 80100 Johor Bahru ("the JB property"), which has been valued at RM750,000.00, a large sum that can be utilised for the payment of his debts. When dismissing the appellant's appeal in the first discharge application, the Court of Appeal noted at [34] that if the equivalent value of the property could be brought into the bankruptcy estate, this would go a long way towards overcoming a "major obstacle" to his discharge. This major obstacle has not been removed. In his affidavit, the appellant complained about the OA's inaction in relation to the JB property. This was denied by the OA, who pointed out that a summons had been filed in the High Court in Johor Bahru in August 2006 to have the appellant's Malaysian assets (including the JB property and some cash) vested in the OA. The appellant's Malaysian lawyers had filed an affidavit in reply in October 2006, opposing the OA's application. As such, the matter has been adjourned. The OA emphasized that his Malaysian solicitors had advised that the Bankruptcy Order must remain in place if any attempt to recover this asset in Johor Bahru for the benefit of the appellant's creditors is to succeed.

28 The OA also pointed out that the appellant has still not handed over the amount to which he is entitled from his late sister's estate. When referring to the money from the appellant's late sister's estate in his judgment in 2004, Chao Hick Tin JA had observed as follows at [22]:

> The OA also referred to a specific incident to show how the appellant not only refused to assist the OA in getting in the assets, but deliberately took a position to make it difficult for the OA to get assets due to the appellant. Upon learning that the appellant was entitled to RM9,275.33 from [his late sister's] estate, and that the money was available for distribution, the appellant's Malaysian solicitors refused to forward the same to the OA and instead required the OA to get an order from the Malaysian courts pursuant to s 104 of the Malaysian Bankruptcy Act. The appellant could have just handed the money over to the OA, or instructed his Malaysian solicitors to do so, without requiring the additional formality, which would mean incurring further legal costs. After all, the sum in question was small.

29 Counsel for the 2nd to 10th creditors, Mr Hri Kumar, also noted that the appellant should not be discharged from his bankruptcy because of his conduct. He has not disclosed the source of his funds to pay his debts and the history of these discharge proceedings is that each time the appellant failed in his application, he increased his offer. In his previous discharge application, he even offered to pay all his debts. The appellant has not explained why he did not proceed to pay his debts in full and why he has now changed his offer to 45%. Mr Kumar, who accepted that there was an error of $5,000 in his figures and informed the court that the OA will be notified of this, submitted that until the appellant has given a full and frank account of his source of funds, it would be unfair for the creditors to receive only a fraction of the amount owed to them. Even so, when his clients had been willing to accept 45% of the debts due to them, the appellant stalled the proposed compromise by not paying on time and by offering what he himself incorrectly perceived to be 45% of his debts.

30 Mr Kumar also pointed out that the appellant did not incur his debts or a substantial part of it as a result of an unfortunate business failure. Instead, the appellant had incurred most of his debts by publishing defamatory statements which were subsequently aggravated. Far from being a repentant bankrupt, he continues to make scandalous allegations against the creditors whom he defamed.

31 Counsel for the 1st and 11th creditors, Mr Ashok Kumar, who agreed that the appellant's conduct with respect to his bankruptcy has not been satisfactory, added in para 36 of his written submissions that as the appellant's conduct has made the extent of his estate and his ability to satisfy his outstanding debts unclear, his clients were entitled to object to his discharge from bankruptcy.

32 As there was no doubt that the state of affairs regarding the administration of the appellant's estate and the appellant's own conduct with respect to his bankruptcy have not materially changed since the decision of the Court of Appeal in the first discharge application in 2004, the question of an absolute discharge of the appellant from his bankruptcy did not arise.

**Conditional discharge**

33 As for the appellant's application for a conditional discharge, reference may be made to the decision of the Court of Appeal with respect to his first discharge application. In that case, Chao Hick Tin JA said at [33]:

> A conditional discharge would have to be premised on the appellant's good faith in fulfilling the condition imposed. In view of the appellant's conduct thus far, it is perhaps not difficult to understand why the creditors and the OA do not think that the circumstances warrant even a conditional discharge. He must help himself in order that others, including the court, can help him. Having regard to the state of affairs, a discharge at this time, whether absolute or conditional, would be unwarranted and premature.

34 As the circumstances have not changed materially since the decision of the Court of Appeal, the question of a conditional discharge still does not arise.

**Conclusion**

35 For reasons stated, the appellant's appeal was dismissed with costs.