

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: MA 08/2016

(arising in XP 105/2014)

[2016] SCSC 9

CHINNAKANNAN SIVASANKARAN

Applicant

versus

**BMIC LTD
POWERTRADE CAPITAL LTD
BROADCOURT INVESTMENT
CHINNA DURIA S. PILLAY LTD
BERNARD POOL**

Respondents

Heard: 18 January 2018

Counsel: Mr. Hoareau for applicant

Mr. B. Georges for 1st respondent
Mr. Rouillon for the 2nd & 3rd respondents
Mr. Chinna Duria S. Pillay in Person
Mr. Bernard Pool in Person

Delivered: 18 January 2016

RULING ON MOTION

Karunakaran J

- [1] On 26th August 2014, in EX PARTE: CHINNAKANNAN SIVASANKARAN - Civil Side 105 of 2014 -this Court made a declaration of bankruptcy against CHINNAKANNAN SIVASANKARAN. Following the declaration Mr. Bernard Pool was appointed as Official Receiver of the estate of the bankrupt. By an application dated 18th August 2015 (approval application), the Official Receiver applied to this Court under Section 82 (4) of the Insolvency Act 2013 for the approval of the Post-Bankruptcy Composition proposed by the bankrupt, which was accepted by majority of the creditors. However, the major creditor of the bankrupt, BMIC objected to the approval sought by the Receiver and the bankrupt, jointly in this matter. Both parties were given opportunity of being heard on the issue of approval and objection. Both sides adduced evidence and made their final submissions on the issues to be determined by the Court and accordingly closed their respective cases. Thereafter, the Court had adjourned the case for Ruling to be delivered today, the 18th January 2016.
- [2] A couple of days ago, the creditor BMIC has filed the instant application dated 14th January 2016 (postponement application) seeking the Court for an order to postpone its Ruling presumably indefinitely. It seems to me, that BMIC is in effect, seeking herein a stay of proceedings in this matter, in the guise of seeking a postponement of the ruling. The application is made in essence, on the following ground: -
- [3] Since the hearing of the objection before this Court in the approval application, BMIC has filed a case before the High Court of Judicature at Madras, India against the bankrupt alleging that he has made fraudulent disposal of his properties in India and seeking the attachment of them.
- [4] Group General Counsel of BMIC Ms. B. Baynie has filed an affidavit in support of the post ponement application and also has attached thereto a letter dated 12th January 2016, from one Iyer & Thomas, Attorneys -at-law addressed to one Murali Neelakanthan of Mauritius.
- [5] Mr. B. Georges, Learned Counsel for BMIC, in view of the said developments requests the Court to postpone the Ruling for two weeks or for a longer date. On the other side, Mr. Basil Hoareau vehemently resists the application for postponement contending in

essence that the instant application is frivolous, vexatious, abuse of process and intended to delay the matter.

[6] I diligently considered the submission of counsel on both sides made, for and against the instant application.

[7] First of all, I note, all parties and their Counsel have already concluded their respective cases and final submissions in this matter. They all have already completed their roles and duties in the proceedings. Now, the ball is in the Court's court to deliver its Ruling today in due performance of its Judicial duties as it always does in all other litigations. It is the procedural requirement that the court should deliver its decision after closing of the case by the parties. To my mind, none of the parties has locus standi to make an application of this nature in order to prevent the court from delivering its ruling, unless stronger reasons exist for the Court to do otherwise. Hence, I find that BMIC has no locus standi to make an application of this nature, at this stage of the proceedings, that too, at the eleventh hour to abort delivery of the ruling. This application is therefore liable to be dismissed in limine and I do so accordingly.

[8] In any event, I am reluctant to attach any authenticity or credibility to the letter attached to the affidavit filed in support of the instant application since that letter does not have any indication to show the location, address, country or even telephone number or email address on the letterhead of Iyer and Thomas, the Attorneys-at-law. Besides, the credibility of this letter is dubious since there appears to be a discrepancy in the spelling of the name "Iyer" used on top, which is spelt "IYEI" and the one used at the bottom of the letter reads "IYER".

[9] It appears that the alleged petitions before Madras High Court have not yet been admitted, but have allegedly been lodged just a couple of days ago. There is no documentary proof to show that the cases are pending in India. In any event, the allegation of fraudulent disposal of properties by the bankrupt are not only speculative but there is no guarantee that the High Court of Madras is going to confirm the allegations and give judgment in favour of BMIC within a reasonable time frame. Moreover, cases pending before foreign courts cannot effectively stay or control or

govern the legal proceedings before the Courts in Seychelles. It is also pertinent to observe that a declared bankrupt, in my view cannot sue and be sued in his or her name as a person without going through the Official Receiver, in any litigation before the Courts unless and until his status of insolvency has changed.

[10] Also I note, if any creditor including BMIC, is aggrieved by any fraudulent disposal of property by the bankrupt, the legal remedy lies not in asking this court to postpone the ruling on the approval application, but in instituting an action under Section 83 of the Insolvency Act, 2013 to recover the balance of the debt from the fraudulent bankrupt.

[11] The time of making the instant application, nature of the reason given by BMIC in support of the application and the unauthenticity of the document attached to the application, all these factors in the given circumstances of the case, lead this court to conclude that the instant application is frivolous, vexatious and amount to abuse of process. Were I to accept the request of Mr. Georges for postponement, for the reasons he has shown, this Court would in effect abdicate its power of delivering its decision within a reasonable time and that would deny justice to litigants. Needless to say, the certainty of giving finality to the litigations pending before the Courts in timely manner, is the cornerstone that forms the basis for the better administration of justice. Any attempt by anyone to whittle it down cannot be entertained by this Court. Hence, I find that the application of BMIC seeking postponement of the Ruling is not maintainable either in law or on facts. The application is therefore, dismissed accordingly. I make no orders as to costs.

Signed, dated and delivered at Ile du Port on 18 January 2016

D Karunakaran
Judge of the Supreme Court