

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: MA32 of 2017

(arising in CC42 of 2015)

[2018] SCSC 171

SEYCHELLES CREDIT UNION

Petitioner

Versus

SUBRAMANIAN PILLAY

Respondent

Heard:

Counsel: Mr. Rouillon for petitioner

Mrs. Aglae for respondent

Delivered: 21 February 2018

ORDER

F. ROBINSON J

[1] This is a Petition by the judgment creditor, the Seychelles Credit Union against Subramanian Pillay a judgment debtor in which the former prays this Court to call upon the Judgment Debtor to show cause why he should not be committed to civil imprisonment for failing to comply with the judgment of the Court.

[2] The Petitioner has submitted that he makes the application under section 251 of the Seychelles Code of Civil Procedure.

[3] Sections 251 -254 of The Seychelles Code of Civil Procedure specify the procedural rules for the enforcement of judgment by such summons.

"251 A judgment creditor may at any time, whether any other form of execution has been issued or not, apply to the court by petition, supported by an affidavit of the facts, for the arrest and imprisonment of his judgment debtor and the judge shall thereupon order a summons to be issued by the Registrar, calling upon the judgment debtor to appear in court and show cause why he should not be committed to civil imprisonment in default or satisfaction of the judgment or order.

252 The judgment debtor on the day on which he has been summoned to appear, shall be examined on oath as to his means and witnesses may be heard on his behalf and on behalf of the judgment creditor.

253 If the judgment debtor does not appear at the time fixed by the summons or refuses to make such disclosures as may be required of him by the court or if the court is satisfied that the judgment debtor-

(a) has transferred, concealed or removed any part of his property after the date of commencement of the suit in which the judgment sought to be enforced was given or that after that date he has committed any act of bad faith in relation to his property with the object or effect of delaying the judgment creditor in enforcing his judgment or order; or

(b) has given an undue or unreasonable preference to any of his other creditors; or

(c) has refused or neglected to satisfy the judgment or order or any part thereof, when he has or since the date of the judgment has had the means of satisfying it,


the court may order such debtor to be imprisoned civilly unless or until the judgment is satisfied.

254 The imprisonment which may be ordered under the last preceding section may be for the periods specified by section 10 of the Imprisonment for Debt Act. Section 10 to 15 of that Act shall apply to and be read with sections 251, 252 and 253 of this Code."

- [4] The present matter involves a judgment debt of SR1254727.36/- with interest accruing at the rate of 12 percent per annum and costs. The debt has arisen out of an unpaid loan by the judgment debtor from the judgment creditor.
- [5] The judgement debtor stated to the court that he will not be able to satisfy the debt by reason of the fact that he has no means. He explained that on 10 April, 2015, the court adjudicated the land comprised in title number V5363, which was in his name, to Bastion Limited in the sum of SR19250000.00/- (CM20/2014). The sale of the land took place at the instance of the Petitioner. The Petitioner petitioned the court for Seychelles rupees 3, 938, 002.00/-. It should have petitioned the court for Seychelles rupees 4949240.73/-.
- [6] It is to be noted in the Judgment for Distribution of Price dated 16 June, 2015, MA150/2015, arising in CM20/2014, the court directed that the sum of SR1854800.50/- shall be paid to the Execution Debtor Subramanian Pillay through Counsel Mr. France Bonte. In an affidavit in reply dated 29 October, 2015, arising in CC42/2015 the judgment debtor stated that "2. ...*all the shares of P.S Enterprises (Pty) Ltd has already been transferred on 29th day of April 2015 which documents were registered on 29 April 2015. (see attached)* 3. *The property V8618 has already been disposed of. (See attached).*". According to the Transfer of Land the judgement debtor transferred the land comprised in title number V8618 to one Jerry Morin in consideration of the sum of SR2,500,000.00/- on 20 July, 2015. A printout of a statement of account in the name of the judgment debtor for the period of 1-6-2017 to 19-7-2017 shows a balance of SR370.00/-. It is not clear to the court what happened to the sums of SR1854800.50/- and SR2500000.00/-.

- [7] In light of the evidence before the court, the court is not convinced that the judgment debtor has shown cause to the satisfaction of the court. Much as I have sympathy for the judgment debtor in this case I have no alternative but to imprison him in accordance with the relevant provisions of the Imprisonment for Debt Act.
- [8] On the basis of section 10 of the Imprisonment for Debt Act the court imprisoned the judgment debtor for a term of 4 months effective from the date of this Order.
- [9] The court orders accordingly and makes no order as to costs.

Signed, dated and delivered at Ile du Port on 21 February, 2018.


FIONA ROBINSON
JUDGE OF THE SUPREME COURT

