

**SUPREME COURT OF SEYCHELLES**

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**Not Reportable**

[2022] SCSC ...

CM02/2021

In the matter between:

**BANK OF BARODA (SEYCHELLES)**

*(rep. by Guy Ferley)*

**Petitioner**

and

**NIRANJANA (PROPRIETARY) LIMITED**

**Represented by its Director**

**Saroja Cathaliya Venkatarmanan**

*(rep. by Bernard Georges)*

**Respondent**

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**Neutral Citation:** Bank of Baroda (Seychelles) v Niranjana (Proprietary) Limited (CM02/2021)  
[2022] SCSC ..... (01 April 2022)

**Before:** E. Carolus J

**Summary:** Sale by Levy of immovable property subject to a “saisie immobilière”  
preceded by a “commandement” – Immoveable Property (Judicial Sales) Act  
(Cap 94)

**Heard:** 21 March 2022

**Delivered:** 1<sup>st</sup> April 2022

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**ORDER**

1. All formalities under the Immoveable Property (Judicial Sales) Act (Cap 94) having been complied with for the Sale by Levy of parcel H4939 with all buildings and appurtenances thereon situated at Majoie, Mahe, Seychelles, and on the date of the sale and adjudication namely 21<sup>st</sup> March 2021 there being no higher bid than the *mise à prix* as set out in the Memorandum of Charges dated 27<sup>th</sup> September 2021 in the sum of Seychelles Rupees Eleven Million Only (SCR11,000,000.00), the property was adjudicated to the execution creditor namely BANK OF BARODA (SEYCHELLES).
  
2. The adjudicatee BANK OF BARODA (SEYCHELLES) shall comply with the conditions of the Memorandum of Charges as stated at Article 5 thereof and section 44 of the Act as to payment of the amount payable by way of stamp duty and registration and transcription fees

in respect of the Title deed to the Property by depositing the same in the hands of the Registrar of the Supreme Court within twenty days after the adjudication namely 10<sup>th</sup> April 2022.

3. The adjudicatee BANK OF BARODA (SEYCHELLES) shall within twenty days after the adjudication namely 10<sup>th</sup> April 2022, provide proof of the aforesaid payments by producing receipts therefor to this Court whereupon the Court shall proceed to order the registration of the property in the name of the adjudicatee.

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### **JUDGMENT OF ADJUDICATION**

#### **LAND COMPRISED IN TITLE H4939 SITUATED AT MAJOIE, MAHE, SEYCHELLES WITH ALL BUILDINGS AND APPURTENANCES THEREON**

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**CAROLUS J**

- [1] **COMMANDMENT** dated 25<sup>th</sup> February 2021 was filed in the Registry of the Supreme Court on 26<sup>th</sup> February 2021 requiring the respondent Niranjana (Proprietary) Limited to pay the sum of SCR8,779,254.71 at the address of Attorney-at-Law Guy Ferley or the Process Server serving the Commandement forthwith, and notifying the respondent that in default of such payment within 10 days of the date of service of the Commandement, the Petitioner Bank of Baroda (Seychelles) would cause Parcel H4939 situated at Majoie, Mahe Seychelles and registered under the Land Registration Act Cap 107 in the name of the respondent to be seized and sold by virtue and in execution of a charge dated 29<sup>th</sup> December 2017 whereby the respondent charged Parcel H4939 to secure payment to the petitioner of the sum of SCR8,500,000.00 together with interest at the rate of 12.50 % per annum and expenses, and the respondent agreed to pay to the petitioner all expenses, legal costs and charges in the event of default in repayment and recovery of the debt. The Commandement was served by A. Albert process server on Ellen Registrars (Pty) Limited, the Company Secretary of Niranjana (Proprietary) Limited at Room 202 Premiere Building, Victoria, Mahe, Seychelles on 5<sup>th</sup> March 2021 and the original visaed by the Registrar of the Supreme Court within 48 hours after service.

- [2] Seizure was effected on 11<sup>th</sup> May 2021 by Antoine Albert process server accompanied by Ronny Maria process server, and **MEMORANDUM OF SEIZURE** to which was annexed written **SPECIAL AUTHORITY** of the execution creditor dated 19<sup>th</sup> March 2021 authorising the usher to effect the seizure was notified to Nahil Accouche Secretary of NN Associates at Room 202 Premiere Building, Victoria, Mahe, Seychelles on the same date.
- [3] **MEMORANDUM OF CHARGES** dated 21<sup>st</sup> July 2021 was deposited at the Registry of the Supreme Court on the same date. On 26<sup>th</sup> July 2021, myself Ellen Carolus Judge of the Supreme Court at the foot of the **MEMORANDUM OF CHARGES** fixed the date for the reading thereof being the 30<sup>th</sup> July 2021 at 9a.m. Notice specifying the day, hour and place appointed for the reading was served on the Nahil Accouche at Room 202 Premiere Building, Victoria, Mahe, Seychelles on behalf of Niranjana (Proprietary) Limited on 27<sup>th</sup> July 2021 calling upon it to examine the **MEMORANDUM OF CHARGES** and to make thereon such observations as it may think fit and further to be present at the reading of the **MEMORANDUM OF CHARGES**. Reading of the **MEMORANDUM OF CHARGES** did not take place on 30<sup>th</sup> July 2021.
- [4] **MEMORANDUM OF CHARGES** dated 27<sup>th</sup> September 2021 was deposited afresh at the Registry of the Supreme Court on 5<sup>th</sup> October 2021. On 8<sup>th</sup> July 2021, myself Ellen Carolus Judge of the Supreme Court at the foot of the **MEMORANDUM OF CHARGES** fixed the date for the reading thereof being the 25<sup>th</sup> October 2021 at 9:30 a.m. Notice specifying the day, hour and place appointed for the reading was served on the secretary of Ellen Registrars (Pty) Limited at Room 202 Premiere Building, Victoria, Mahe, Seychelles on 11<sup>th</sup> October 2021, calling upon it to examine the **MEMORANDUM OF CHARGES** and to make thereon such observations as it may think fit and further to be present at the reading of the **MEMORANDUM OF CHARGES**.
- [5] **READING OF MEMORANDUM OF CHARGES** pursuant to section 29 of the Immovable Property (Judicial Sales) Act Chapter 94 (“the Act”) took place at a public sitting of the Supreme Court held on Monday 25<sup>th</sup> October 2021 at 9:30 a.m. before me Ellen Carolus, Judge of the Supreme Court duly assisted by Court Orderly Josie Richard, before whom

personally appeared Guy Ferley, attorney-at-law, having carriage of the sale and Bernard Georges attorney-at-law representing the defendant, as follows: **“IN THE SUPREME COURT OF SEYCHELLES IMMOVABLE PROPERTY (JUDICIAL SALES) ACT CAP 94 MEMORANDUM OF CHARGES**, Clauses and conditions under and pursuant to which shall take place **THE SALE BY LEVY** of the following immovable property, hereinafter more fully described. **The sale is prosecuted at the request of the Bank of Baroda (Seychelles) an Undertaking of the Government of India represented by its Director Ashok Kumar of Albert Street, Mahe, Seychelles electing domicile at the Chambers of the Undersigned, Attorney at Law Plaintiff Versus Niranjana (Proprietary) Limited Represented by its director Saroja Cathaliya Venkatarmanan having its registered office at 5<sup>th</sup> June Avenue, Mahe, Seychelles and c/o Ellen Registrars (Pty) Limited Room 202, Premier Building, Victoria, Mahe, Seychelles Defendant CM02/2021** IN VIRTUE AND IN EXECUTION OF:- 1. A charge under the Land Registration Act dated 29<sup>th</sup> December 2017 whereby the Defendant represented by its directors Mr Khrisnamurthy Pillay, Mrs Saroja Cathaliya Venkatarmanan, Miss Rani Sulochana Pillay and Ms Saroja Pillay charged title H4939 to secure payment to the Plaintiff, the Bank of Baroda (Seychelles) in the sum of Seychelles Rupees Eight Million Five Hundred Thousand (SCR8,500,000) together with interest and expenses. 2. The said sum of Seychelles Rupees Eight Million Five Hundred Thousand (SCR8,500,000) carried interests at the rate of 12.50 % per annum. 3. The Defendant agreed to pay to the Plaintiff, the Bank of Baroda (Seychelles) all expenses, legal costs and charges in the event of default in repayment and for recovery of debt. 4. A “Commandement” prior to levy, dated 25<sup>th</sup> February 2021 duly served on the Defendant on 5<sup>th</sup> March 2021, under the hands of the undersigned Attorney-at-Law, Guy Ferley, Attorney for the Plaintiff, claiming payment for the Defendant in the sum of SR8,779,254.71 as detailed below: (a) The sum of SCR8,460,821.87 being the principal sum and accrued interests until 1<sup>st</sup> July 2020 and continuing, calculated on a daily basis at 12.50 % per annum. (b) The sum of SCR338,432.84 being expenses, registration fees, legal fees incurred in the recovery of the outstanding debt. (c) SCR1150 being filing fees of the Commandement and the special authority. (d) SCR15,000 being estimated costs of the sale by levy (such costs subject to taxation). 5. A power to seize the immovable property signed by the Plaintiff’s

Attorney dated 19<sup>th</sup> March 2021 authorised the Process Server to seize and place under custody of law the said immovable property parcel H4939 which was seized on 12<sup>th</sup> May 2021. 6. A Memorandum of Seizure of the said immovable property drawn up by the Process Server giving description thereof along with the appurtenance and dependencies thereto, dated 12<sup>th</sup> May 2021 certified duly collated by the Registrar on 12<sup>th</sup> May 2021. 7. A Restriction Order dated 24<sup>th</sup> May 2021 and registered on 21<sup>st</sup> June 2021 in Volume 11 Folio 268 File H4939 at the Seychelles Land Registry. 8. A valuation of the said Property by the Process Server at Seychelles Rupees Six Million Two Hundred Thousand only (SCR6,200,000) only. **DESCRIPTION OF THE IMMOVABLE PROPERTY** a portion of land approximately 1629 square metres situated at Ma Joie Mahe, Seychelles registered as Title H4939. **BUILDING** One warehouse made of concrete blocks and iron steel bars and covered with C.I. sheets approximately 80m long and 49m wide. **PLANTATION** Pawpaw tree **MISE A PRIX** The land along with dependencies thereon will be sold upon a *mise a prix* at the sum of Seychelles Rupees Eleven Million (SCR11,000,000) only. **CONDITIONS OF SALE Article 1:** This sale will take place agreeably to and in conformity with the provisions of the Immovable Property (Judicial Sales) Act (Cap. 66 of the Laws of Seychelles). **Article 2:** The property will be sold to the highest bidder for cash. The Purchaser will be bound to pay all taxes, registration and transcription dues, stamp duties, fees, contribution for imposts of any kind which might be leviable or which might burden the said immovable property from and after the date of purchase. **Article 3:** The Purchaser shall be bound to respect all the encumbrances and servitudes of any kind which might burden the said portion of land. He will have the right to dispute the same as he thinks fit and proper without any recourse or guarantee whatsoever against the execution creditor (the Plaintiff) nor any diminution of price with respect thereto. The Purchaser shall on the other hand be entitled to the benefit of any servitude apparent or otherwise which accrue to the said land. **Article 4:** The Purchaser shall be bound to pay his purchase price according to a plan of distribution to be drawn up by the Registrar of the Supreme Court of Seychelles which might be given a share the said purchase price. The purchase price shall bear interest at the rate of four per cent per annum from and after the day of the purchase. The purchaser may be called upon to pay one fourth of his purchase price at the time of adjudication and before the property is knocked down to

him. The portion deposited shall not bear interest. The obligation of deposit shall not be binding on the Plaintiff were it to become Purchaser. **Article 5:** Over and above the purchase price the Purchaser shall be bound to pay all costs and expenses of sale upon bills duly taxed, the full rate of stamp duties as well as costs of transcription of Judgment of Adjudication. **Article: 6** The Purchaser shall be bound to execute all and every condition of the Cahier des Charges upon pain of seeing the property sold against him by *Folle Enchere*. In case of resale of the property by way of *Folle Enchere*, the portion of the purchase price which might have been deposited as well as the costs of the sale shall be forfeited. **Article 7:** Should there be two or more purchasers, they shall all be bound jointly and severally to execute the present conditions of the sale. For further particulars apply to the undersigned Attorney-at-Law. Dated at Victoria, Mahe, this 27<sup>th</sup> Day of September 2021. **GUY A FERLEY ATTORNEY-AT-LAW**”

- [6] The date for the sale and adjudication of the Property was fixed for 30<sup>th</sup> November 2021 at 2:00p.m. immediately after the reading of the **MEMORANDUM OF CHARGES**. On 30<sup>th</sup> November 2021 the sale and adjudication of the Property was postponed to 21<sup>st</sup> March 2021 pursuant to section 36 of the Act.
- [7] **SALE BY LEVY OF THE PROPERTY** - At a public auction held on Monday the 21<sup>st</sup> March 2021 at 9:00a.m., the date fixed for sale and adjudication of the Property, personally appeared before me Ellen Carolus Judge of the Supreme Court assisted by Court Orderly Josie Richard, Guy Ferley attorney-at-law, having carriage of the sale and Bernard Georges attorney-at-law representing the defendant. Mr. Ferley declared to me that all formalities laid down by sections 31 and 224 the Act for the publication of the date of sale of the Property had been duly complied with, such formalities having been effected upon fixing of the date of sale and that the **BILL OF COSTS OF SALE** due at the time of the sale duly taxed by the Registrar had been filed in the Registry of the Supreme Court twenty four hours before the sale in accordance with section 32 of the Act.
- [8] I announced the amount of the taxed costs of sale as per the **BILL OF COSTS OF SALE** taxed on 17<sup>th</sup> March 2022 and filed in the Registry of the Supreme Court, in the amount of Seychelles Rupees Twelve Thousand Five Hundred and Twenty Two only

(SCR12,522.00) **AND BEYOND THE AMOUNT SO TAXED, NO FURTHER SUM SHALL BE CLAIMABLE OR ALLOWED IN RESPECT OF SUCH COSTS.** Upon seeing proof of fulfilment of the formalities laid down by the Act for publication of the sale of the property and confirming that no application had been made by the execution debtor or any inscribed creditor for the **MEMORANDUM OF CHARGES** to be rectified and amended in any respect, I announced and confirmed that the sale and final adjudication of the Property would be held on this day and at this place and hour at the instance of the petitioner, whereupon bidding was opened for the sale of the property at a reserved price of SCR 11,500,000.00, and there being no bid at the reserved price bidding was set at the **MISE A PRIX** in the sum of Seychelles Rupees Eleven Million Only (SCR11,000,000.00). There being no higher bid than the **MISE A PRIX** I adjudicated the Property to the petitioner.

- [9] The petitioner/adjudicatee is hereby ordered to pay the amount payable by way of stamp duty and registration and transcription fees in respect of the Title deed to the Property (consisting of the **MEMORANDUM OF CHARGES** and the Judgment of Adjudication) in accordance with Article 5 of the **MEMORANDUM OF CHARGES** and section 44 of the Act by depositing the same in the hands of the Registrar of the Supreme Court within twenty days after the adjudication namely 10<sup>th</sup> April 2022.
- [10] The petitioner/adjudicatee shall further, within twenty days after the adjudication namely 10<sup>th</sup> April 2022, provide proof of the aforesaid payments by producing receipts therefor to this Court whereupon the Court shall proceed to order the registration of the property in the name of the adjudicatee.

Signed, dated and delivered at Ile du Port on 1<sup>st</sup> April 2022.

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E. Carolus J