

**SUPREME COURT OF SEYCHELLES**

---

**Reportable**

[2023] SCSC ...  
MA 302/2021  
(Arising in XP 241/2022)

In the ex parte matter of:

**VIJAY CONSTRUCTION (PTY) LIMITED**  
*(rep. by Mr. Rajasundaram)*

**Petitioner**

---

**Neutral Citation:** *Ex parte Vijay Construction (Pty) Limited* (MA 302/2021 (Arising in XP 241/2022)) [2023] SCSC 1 (4th January 2023)

**Before:** Adeline, J

**Summary:** Application by way of notice of motion supported by affidavit to stay sales of moveables

**Heard:** 4<sup>th</sup> January 2023

**Delivered:** 4<sup>th</sup> January 2023

---

**FINAL ORDER**

**Motion is dismissed.**

---

**RULING**

---

**Adeline, J**

[1] This is an application, filed in Court by way of notice of motion supported by an affidavit by Vijay Construction (Pty) Limited, “the Judgment debtor”, in respect of SCCA 56 ( 21<sup>st</sup> October 2022, SCA MA 35/2022 ( arising in SCA MA 24/2020) ( out of SCA 28/2020 CC23/2019. By its application as pleaded, the Judgment debtor prays this Court for an order to;

(i) “stay the sale of 5<sup>th</sup> and 6<sup>th</sup> January 2022 until the determination petition in the above case pending before Justice M.Burhan”.

[2] The supporting affidavit of facts and evidence to the application is sworn by one Jaushal Patel, “the Deponent” who makes the following averments;

1. *“That is represent the company Vijay Construction (Pty) Limited in my capacity as its Director and I am fully acquainted with the affairs of the company for the purposes of pending litigation matters before the Supreme Court of Seychelles.*
2. *That our company Vijay Construction (Pty) Limited has filed an application for “Liquidation” under the provisions of Insolvency Act, before the Supreme Court of Seychelles and the same on the file of XP 241/22 is pending before Justice of M. Burhan.*
3. *That pending determination of the liquidation application in XP 241/22, one of the judgment creditors of our company namely Eastern European Engineering Limited filed execution application, to enforce the judgment against our company to enforce the Judgment against us.*
4. *That our company has got its other creditors as detailed in our Liquidation Petition and the Registrar of the Supreme Court, despite having cognizance of the pendency of the Liquidation Petitioner allowed the Eastern European Engineering Limited, a Judgment Debtor to proceed with its execution application and to the extent of seizure of the movable assets ( machineries, plants and equipment used for the operations of the company) of our company so as to paralyze the operations and day to day activities and the sale of those seized assets as well on which matter the sale is advertised to be held on 5<sup>th</sup> January 2023.*
5. *That I verily believe and I am advised that pending the determination of the Liquidation Petition filed by our company, the Registrar ought to have kept the execution application filed by one of the Judgment Debtors Eastern Eropean Engineering Limited pending but allowed the execution application to proceed further as detailed in paragraph 4 above.*

6. *That I verily believe and I am advised that the Registrar of Supreme Court of Seychelles has acted against the good faith and it is biased decision against our company.*
7. *That I verily believe and I am advised that the sale of movables fixed for 5<sup>th</sup> January 2023 is to be stayed pending the final determination on our Liquidation Petition in XP 241/22 before Justice M. Burhan and we pray therefore that the sale of moveable assets of our company, to be held on 5<sup>th</sup> January 2023, is to be stayed until the final determination on our liquidation Petition as the sale of equipment, tools and machineries if allowed to be sold would permanently paralyze the operations and activities of our company as a consequence of which serious prejudice would be caused in that we will not be able to pay our Seychellois and expatriate workers.*
8. *That I verily believe and I am advised that our creditors are also seriously prejudiced while only one Judgment creditor namely, Eastern European Engineering Ltd is allowed to enjoy the seized assets pending the final determination of XP 241/22 Liquidation Petition.”*

[3] My reading of the averments in the supporting affidavit to the application which I rely upon solely to make this Ruling, is that, the deponent gives to main reasons for wanting a stay of the sale of movables belonging to the Judgment debtor fixed for the 5<sup>th</sup> January 2013, that is;

- (i) the Judgment debtor has other creditors, and that they would be seriously prejudiced if the sale goes ahead on the 5<sup>th</sup> January 2023, and
- (ii) if the sale of the moveable is not stayed, the operations and activities of the Judgment debtor would be permanently paralysed, the consequence of which serious prejudice would be caused to them, in that, they will not be able to pay their Seychellois and expatriate workers.

- [4] Before I pronounce myself on the two reasons given by the Judgment debtor as to why a stay of the sale should be granted, I have to say that, I am perplexed by the timing of this application, and more so, for it having been made *ex parte*. The sale of the Judgment debtor's moveables which has been fixed for the 5<sup>th</sup> January 2023 is part of the process of execution of a Judgment which was expected, and indeed, reasonable foreseeable, following the Ruling of the Court of Appeal on the 21<sup>st</sup> October 2022.
- [5] Within the very short time I have had to write this ruling, I have come to know from the Court's record, that execution of the Judgment in CS 23 of 2019 in which the sale of the moveables has been fixed for the 5<sup>th</sup> January 2023 was initiated on the 25<sup>th</sup> October 2022, that on the 27<sup>th</sup> October, 2022 the liquidation proceedings was instituted, and that the warrant of levy was issued on the 28<sup>th</sup> October 2022. That indicate, quite clearly, that the Judgment debtor had sufficient time to make the application for the order being sought for, giving the Court ample time to notify the Judgment Creditor for their response. In fact, learned Counsel, in his submission made *viva voce*, has said that the reason the application has been made *ex parte* is because the company realises that, there would have been no time to notify the Judgment Creditor. It is my considered opinion, that although the application is made *ex parte*, this is an application, that in the interest of justice I should serve notice of the application on the Judgment Creditor, which unfortunately, time is not on the Court's side to do so.
- [6] I now come back to the reasons given by the Judgment debtor for wanting the sale of the moveables to be stayed until the liquidation proceedings are over. I remind myself that, the liquidation proceedings was filed on the 28<sup>th</sup> October 2022, over two months ago. It may be the case that the Judgment debtor has other creditors, but that cannot be good reason to stop a Judgment Creditor from enforcing its Judgment to obtain the fruits of it. In any case, if the Judgment debtor is so concern about other Judgment Creditors, it ought to have done what was necessary in the circumstances to meet its obligations towards the other judgment creditors. For other matters, it is up to the other Judgment creditors to decide how to go about to obtain the debt that maybe due to them.

[7] As regards to the proposition that the Judgment debtor will be prejudiced by the sale, to delay the sale to a later date will not alter that. In fact, the moveables to be sold have already been seized, and therefore, this situation if at all exist, must have existed since the moveables were seized and is to continue even if the sale is postponed.

[8] In the circumstances, and for the reasons given in this ruling, the motion is hereby dismissed.

Signed, dated and delivered at Ile du Port on 4<sup>th</sup> January 2023.

---

Adeline, J