

SUPREME COURT OF SEYCHELLES

Reportable
[2023] SCSC 195
MA113 of 2022
Arising in CC49/2015

In the matter between:

Roberto Rocchi

(rep by Mr Joel Camille)

Petitioner

And

Massimo Longobardi

(rep by Mr Rene Durup together with Ms Chang Thiou)

1st Respondent

Felicita Pirozzolo

(rep by Mr Rene Durup together with Ms Chang Thiou)

2nd Respondent

Neutral Citation: Roberto Rocchi v Massimo Longobardi and Felicita Pirozzolo
(MA113/2022) [2023] SCSC 195 (20 March 2023)

Before: Esparon J

Summary: Application for summons to show cause why the Respondents should not be committed to civil imprisonment in default of satisfaction of the judgment or order.

Heard: 31st January 15th February and 20th February 2023.

Delivered: 20 March 2023

ORDER

Application pursuant to section 251 of the Seychelles Code of Civil Procedure seeking an Order from this Court to issue a summons to show cause as to why the Respondents should not be committed to civil imprisonment in default of satisfaction of judgment debt.- Application is

granted subject to payment by monthly instalment by the judgment debtor and payment of the full Judgment debt by 20th Mach 2024 in default of which the judgment debtors shall be committed to civil imprisonment for a period of time to be determined by this Court.

RULING

ESPARON J

Introduction:

1. This is an application for a summons for the Respondents to show cause why they should not be committed to civil imprisonment in default of satisfaction of the judgment or order.'
2. Previously the Supreme Court had awarded a judgment in favour of the Petitioner in the sum Euro's 85,964 (less Rs 3500 and euro 800) with interest at the legal rate from the date of the filing of the Plaint. It was further the order of the Court that the Respondent are jointly, and or severally to pay the Petitioner the sum of Rs100,000 with interest at legal rate from the date of the judgment until the payment of the entire RS 100,00. Furthermore, the cost has been taxed at Rs 17,056.00.
3. The Petitioner has averred in his Application that the Respondent have not satisfied the said Judgment in any amount whatsoever. Hence the Petitioner is praying to this Court that a judgment in the above suit be executed against the Respondent by issuing a summons to show cause why they should not be committed to Civil imprisonment for their failure to pay the said judgment debt which amounts to Euro's 100,850 and RS 126,055.00.

The Law

4. This Court hereby reproduces the following sections of the law;

Section 251 of the Seychelles Code of Civil Procedure reads as follows;

' 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 or the judgment or order.'

Section 252 of the Seychelles Code of Civil Procedure reads as follows;

‘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.’

Section 253 of the Seychelles Code of Civil Procedure reads as follows;

‘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.’

Section 254 of the Seychelles Code of Civil Procedure reads as follows;

‘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.’

The Evidence

- 5. The Respondent Mr Massimo Longobardi gave evidence on Oath to the fact that he works at Style Italiano as a sales and marketing manager and he earns a gross salary of 29,500 and his net salary is 24,000 Rupees.
- 6. He further gave evidence to the fact that he spends 9000 for rent, 2000 for internet and 2000 for utilities and for both he and his wife, they spend SCR 3000 for medical expenses and that he is maintaining his wife because she is on his GOP.
- 7. He testified to the fact that he has so far made 5 payments of SCR 1,500 in monthly instalments and that he intends to continue paying the judgment creditor every month.
- 8. During cross-examination by Counsel for the judgment creditor, he admitted that since after the judgment was delivered on the 10th February 2022 up to September 2022, he had not made any payment.

9. He has also admitted when being cross-examined by Counsel for the judgment creditor that he can pay a higher amount.
10. Mr. Longobardi produced 2 bank statements at the request of the Court of which the said bank statements certainly shows his salary coming in and his purported monthly expenses as to the sums of money debited from his bank account
11. The 2nd Respondent, Mrs Felicita Pirozzolo gave evidence on Oath in Court to the fact that she is 59 years old and does not earn a salary since she does not work and she is dependent on her husband, Massimo Longobardi.
12. When being cross-examined by counsel for the judgment creditor, she admitted that from 2011 she had an activity namely SeyCake which was a business producing sweets, bonbons and biscuits and that she earned some money in that business but not much.
13. She further admitted when being cross-examined by Counsel for the judgment creditor that her husband can probably pay a higher amount to the judgment creditor.
14. On the other hand, the judgment creditor gave evidence on Oath in Court to the fact that since the date of the judgment he has not been paid anything but admitted under cross-examination that he has not checked whether there is any payment made in Court and that the judgment debtors are able to pay more than what has been proposed.
15. Although both Counsels undertook to file submissions, none of them has filed any written submissions and hence this Court shall proceed to determine the matter without submissions of Counsels.

Determination

16. This Court has observed the demeanour of both Respondents, being judgment debtors in the matter when they gave evidence in Court and find their demeanour to be wanting.
17. Furthermore Mr Massimo Longobardi contradicted himself in Court by stating that he can only pay that amount namely Rs1,500 and under- Cross-examination he admitted that he could possibly pay more and the second Respondent, Felcita Pirozzollo also admitted to this fact during cross-examination.
18. Mr Longobardi gave evidence of his expenses without producing receipts of which I find that the Respondents are able to forgo their internet, television and telephone expenses. Since they have not produced any receipt as to medical expenses they allege that they spend monthly, this Court finds that it is not proven that their monthly medical expense is in the amount of SCR 3,000.
19. I also find it hard to believe that the Respondents are paying 9,000 rupees as rent for housing in view that they are on a GOP. Furthermore, when one examines the two bank

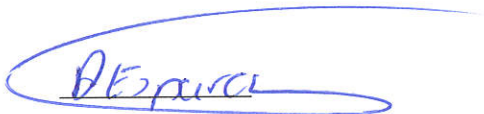
statements produced by the 1st respondent in Court upon the request of the Court, this Court finds that the bank statements produced appears to have been tailor made to suit the non-execution of the judgment debt after the judgment was delivered on the 10th February 2022 in order to give the impression that the Respondents are unable to pay the judgment debt or are able to pay just a small amount in monthly instalments.

20. For the above reasons, I find that both Respondents were not credible witnesses before the Court and that they have refused or neglected to satisfy the judgment debt or any part of the judgment debt thereof, when they have or since the date of the judgment has had the means of satisfying the Judgment debt.

21. As a result of the above, this Court shall make the following Orders;

- i) The Respondents shall jointly pay a minimum amount in the sum of SCR 5,000 in the form of monthly instalments to the judgment creditor in satisfaction of the judgment debt of which they shall complete the payment of the full amount of the judgment debt to the judgment creditor by the 20th of March 2024.
- ii) In the event of any default of the above orders in paragraph (i) of the Orders of this Court, the Respondents shall be committed to civil imprisonment for a period of time to be determined by this Court.

Signed, dated and delivered at Ile du Port, Mahe on the 20th March 2023.



Esparon J

