

CIC Video International v Forward International Singapore Pte Ltd and Another
[2000] SGHC 15

Case Number : Suit 1111/1998, RA 382/1999
Decision Date : 27 January 2000
Tribunal/Court : High Court
Coram : S Rajendran J
Counsel Name(s) : Cavinder Bull (Drew & Napier) for the Garnishee/Appellant; Felicia Chua (Wong & Leow) for the Judgment Creditor/Respondent
Parties : CIC Video International — Forward International Singapore Pte Ltd; Wo Kee Hong (Singapore) Pte Ltd

RC No. 2139689) ...Judgment Creditor

and

**Forward International Singapore Pte Ltd
(RC No.197400536D) ...Judgment Debtor**

Wo Kee Hong (Singapore) Pte Ltd (RC No.196300089W) ...Garnishee

Citation: Suit No 1111 of 1998

Jurisdiction: Singapore

Date: 2000:01:27

Court: High Court

Coram: S Rajendran

Counsel:

Cavinder Bull (Drew & Napier) for the Garnishee/Appellant

Miss Felicia Chua (Wong & Leow) for the Judgment
Creditor/Respondent

JUDGMENT:

GROUND OF JUDGMENT

1. This was an appeal from the decision of an Assistant Registrar who, at the instance of the judgment creditor, made a garnishee order absolute against the garnishee in the sum of \$1,816,191. The garnishee appealed against the decision of the Assistant Registrar. I heard and dismissed the appeal. The garnishee now appeals against my decision.

2. The judgment debtor in this case was a subsidiary of the garnishee – the garnishee holding 999,997 of the one million issued shares of the judgment debtor – and the two companies shared premises and had a common management. The accounts of the garnishee as filed with the Registry of Companies showed that as at 31 December 1997 there was a sum of \$1,930,242 "due to a subsidiary company". In an affidavit filed on behalf of the garnishee, Chia Kwang Liang, the Finance & Administration Manager of the garnishee confirmed that:

"As at 7 July 1999 (the date of the service of the Garnishee Order to Show Cause on the Garnishee), it is recorded in the Garnishee's accounts that a balance sum of S\$1,816,191 is owing to the Judgment

Debtor."

It was on the basis of these admissions by the garnishee that the judgment creditor sought and obtained the garnishee order.

3. The garnishee did not dispute that the amount garnished was owed to the judgment debtor. The sole ground on which the garnishee resisted the application before the Assistant Registrar and before me was that although there was a debt, that debt was not "due and owing" at the time of the garnishee order and accordingly could not be garnished. The basis of this submission was that although the amount garnished was reflected in the books of the garnishee as owing to the judgment debtor, the understanding between the garnishee and the judgment debtor was that the garnishee would only pay the sums if and when the garnishee was able to do so. To quote from the written submission of counsel for the garnishee:

"It was (and is) entirely at the discretion of the Garnishee when and how much to pay. This discretion of the Garnishee is also given by virtue of the holding-subsidary relationship and common management between the Garnishee, the Judgment Debtor and other fellow subsidiaries within the group. This relationship is so inter-twined and close within the group that funds are transferred to/from holding to/from subsidiaries as and when funds are available so as to meet the holding and subsidiaries companies operational requirements. No repayment is made when funds are not available."

Counsel submitted that since the garnishee, as at the date of the garnishee order, did not have available funds, the garnishee was under no obligation to repay the judgment debtor and hence under no obligation to pay the judgment creditor.

4. The audited accounts of the garnishee did not, however, reflect that this was a loan repayable at the discretion of the garnishee. The description of the loan as given in the audited accounts was that it was "interest free, unsecured and had no fixed repayment term". When a loan is made without fixed repayment terms it is generally repayable at once without any previous demand (*Chitty*, 27th Ed. At 36-210). It seemed to me that this was such a loan. The protestations by the garnishee that there was an agreement as to when the loan was repayable ran counter to the description of the loan in the garnishee's audited accounts and was, in my view, no more than an attempt on the part of the garnishee and the judgment debtor to frustrate the judgment creditor's attempt to enforce the judgment. Accordingly, I dismissed the appeal with costs.

S. RAJENDRAN

Judge

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