

Re Goh Chin Soon
[2001] SGHC 264

Case Number : OS 600384/2001
Decision Date : 12 September 2001
Tribunal/Court : High Court
Coram : Lai Kew Chai J
Counsel Name(s) : VK Rajah SC and Lee Eng Beng (Rajah & Tann) for the appellant/petitioner;
Irving Choh Thian Chee and Twang Kern Zern (Chong Yeow & Partners) for the
respondent/debtor
Parties : —

Insolvency Law – Bankruptcy – Petition – Stay – Stay pending outcome of registrar's appeal and expiry of time to appeal – Appeal – Whether order for stay should be set aside – Whether court could make bankruptcy order on appeal – s 65(4) Bankruptcy Act (Cap 20, 2000 Ed)

: By this bankruptcy petition filed on 6 February 2001 the petitioner sought a bankruptcy order against the debtor on the ground that its statutory demand for the payment of \$17,218,233.86, was not complied with nor set aside for more than 21 days since the service of the demand. When the petition came up for hearing on 20 April 2001 the debtor asked for a stay. The senior assistant registrar ordered, amongst other things, that the bankruptcy petition be stayed pending the disposal of RA 6002/2001 and that the petition be not restored until time to appeal against the outcome of the said registrar's appeal had expired. The petitioner appealed to the High Court and it asked, among other things, that the debtor's application be dismissed, that the petitioner be at liberty to continue with the bankruptcy proceedings against the debtor and that the debtor be adjudged bankrupt. I allowed the appeal and made the orders in terms of the notice of appeal of the petitioner. On 14 June 2001 the debtor filed the notice of appeal to the Court of Appeal. I now give my reasons for making the orders I did.

The background and material facts leading to the bankruptcy petition has been summarised in my grounds of decision in OSB 600029/2001 and these are incorporated into these grounds of judgment by this reference. This appeal was heard shortly after the hearing of the appeal in that originating summons. At the hearing of the appeal before me, counsel for the debtor told me that in applying for the stay, he was relying on s 65(4)(b) of the Bankruptcy Act (Cap 20, 2000 Ed) ('the Act'). Section 65(4) reads in its entirety as follows:

When a bankruptcy petition has been presented against a debtor on the ground that the debtor -

(a) has failed to pay a judgment debt, and there is pending an appeal from or an application to set aside, the judgment or order by virtue of which the judgment debt is payable; or

(b) has failed to comply with a statutory demand, and there is pending an application to set aside the statutory demand,

the court may, if it thinks fit, stay or dismiss the petition.

A stay is only to be granted according to the discretion of the court which should be exercised according to established judicial principles. A mere appeal is not enough. In this case, it was quite clear that the debtor was hopelessly insolvent. Of the three cross-claims referred to by the debtor, one of them was the subject-matter of some deliberate, uncomplimentary comments by Lee Sieu Kin JC in OSB 114/2000 (and incidentally, the appeal against his decision was recently dismissed by the Court of Appeal). The other two cross-claims were, as I noted in OSB 600029/2001, bereft of particulars. In my view, all the cross-claims were not bona fide and they were asserted to generate the excuse for prolonging the bankruptcy proceedings, which would be unjust to the petitioner.

At the hearing of the appeal, I was invited by counsel for the appellant to make the bankruptcy order. In response, counsel for the debtor submitted that reading the clause `the court may, if it thinks fit, stay or dismiss the petition` in s 65(4) of the Act literally, I could only stay or dismiss the petition and that I could not make the bankruptcy order. I could not follow that line of reasoning. The clause did not direct me to stay or dismiss. It merely referred to the situation where either the judgment entered or the statutory demand upon which a bankruptcy petition is based may be invalidated and stipulated that a court `may` (ie in the exercise of its discretion) stay or dismiss the petition, depending, it seemed to me, on the prospects or likelihood of such invalidation. If an attack on a judgment or a statutory demand is doomed to fail or was made without good faith, the discretion under s 65(4) does not come into play, and the bankruptcy order must follow. On the other hand, if there are sustainable grounds to set aside the judgment or the statutory demand, it would not be right to refuse a stay, resulting in a drastic change in the legal status and capacity of the `debtor`. Where clearly sustainable grounds are shown to invalidate a judgment debt or a statutory demand, the petition should ordinarily be dismissed. Its continuance can operate unjustly against a `debtor`, inasmuch as his legal capacity is suspended or called into question in his ordinary life, thereby disrupting his normal dealings.

Outcome:

Appeal allowed.

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