Re Ishak Bin Ismail (Ex Parte United Overseas Bank Limited)
[2003] SGHC 131

Case Number : B 917/2003

Decision Date : 23 June 2003

Tribunal/Court : High Court

Coram : Phang Hsiao Chung AR

Counsel Name(s) : Seetha Ramasamy (Tan Kok Quan Partnership) for the petitioner; The debtor was not represented and was not present at the hearing

Parties : —

1 On 14 March 2003, the Petitioner (United Overseas Bank Limited) presented a bankruptcy petition against the Debtor (Ishak Bin Ismail) on the grounds set out in section 61(1) of the Bankruptcy Act (Cap 20, 2000 Rev Ed) read with section 62(a) of the same Act. Essentially, it was alleged that:

(1) the Debtor was indebted to the Petitioner for an aggregate sum of $20,156.43 (as at 14 March 2003);

(2) the debt was for a liquidated sum that was payable to the Petitioner immediately;

(3) the Debtor was unable to pay the debt; and

(4) the Debtor's inability to pay the debt was to be presumed by virtue of the fact that:

(a) the Petitioner had served on the Debtor, in the prescribed manner, a statutory demand;

(b) at least 21 days had elapsed since the statutory demand was served; and

(c) the Debtor had neither complied with the statutory demand nor applied to the court to set it aside.

2 When the petition came up for hearing on 25 April 2003, I dismissed the petition on the ground that the service of the statutory demand was irregular. The petition was dismissed without prejudice to the filing of a fresh petition relying on a different statutory demand. The Petitioner has appealed against my decision.

3 The issue in this case was whether the Petitioner had satisfied the requirements of section 62(a)(i) of the Bankruptcy Act by serving a statutory demand on the Debtor "in the prescribed manner". The requirements as to the service of a statutory demand are set out in rule 96 of the Bankruptcy Rules (Cap 20, R 1, 2002 Rev Ed). So far as it is relevant to this case, rule 96 states:

Requirements as to service

96.—(1) The creditor shall take all reasonable steps to bring the statutory demand to the debtor's attention.

(2) The creditor shall make reasonable attempts to effect personal service of the statutory demand.

(3) Where the creditor is not able to effect personal service, the demand may be served by such other means as would be most effective in bringing the demand to the notice of the debtor.

(4) Substituted service under paragraph (3) may be effected in the following manner:

(a) by posting the statutory demand at the door or some other conspicuous part of the last known place of residence or business of the debtor or both;

(b) by forwarding the statutory demand to the debtor by prepaid registered post to the last known place of residence, business or employment of the debtor;

(c) where the creditor is unable to effect substituted service in accordance with sub-paragraph (a) or (b) by reason that he has no knowledge of the last known place of residence, business or employment of the debtor, by advertisement of the statutory demand in one or more local newspapers, in which case the time limited for compliance with the demand shall run from the date of the publication of the advertisement; or

(d) such other mode which the court would have ordered in an application for substituted service of a petition in the circumstances.

(5) ...

(6) A creditor shall not resort to substituted service of a statutory demand on a debtor unless —

(a) the creditor has taken all such steps which would suffice to justify the court making an order for substituted service of a bankruptcy petition; and

(b) the mode of substituted service would have been such that the court would have ordered in the circumstances.

4 The evidence on the service of the statutory demand took the form of an affidavit filed on 14 March 2003 by one Marcus Lin Han Chiang ("Marcus Lin"), a court clerk employed by the firm of Messrs Tan Kok Quan Partnership, the solicitors for the Petitioner. The material portions of his affidavit were as follows:

2. Having duly authorised to serve the Statutory Demand issued herein dated 18 December 2002 against the abovenamed Debtor, I did on Sunday, 5 January 2003 at 7.30 pm go personally to Blk 241 Jurong East Street 24 #05-687 Singapore 600241 ("the Premises") for the purpose of serving the Statutory Demand herein on the Debtor. I found that the Premises were locked. I knocked on the main door several times but there was no response from within.

3. I did again on Wendesday, 8 January 2003 at 9.10 pm attend at the Premises for the purpose of serving the Statutory Demand on the Debtor. On arrival I was informed by a male Indian that there was no such person staying at the Premises.

4. I have made all reasonable efforts and use all due means in my power to serve the said Statutory Demand but have not been able to do so for the reasons aforesaid. A Property Tax Search conducted on 29 August 2002 shows that the abovenamed Debtor is not the owner of the Premises. A copy of the said Property Tax Search is annexed hereto and marked as exhibit "**A**".

5. Pursuant to Rule 96 of the Bankruptcy Rules (Cap. 20, R 1) and the decision of Rajendran J. in Wong Kwei Cheong v ABN-Amro Bank NV [2002] 3 SLR 594, I was requested by the solicitor having conduct of the matter to effect service of the Statutory Demand on the abovenamed Debtor by posting a copy of the Statutory Demand on the front door/gate of the Premises, being the last known place of address of the abovenamed Debtor.

6. I did on Monday, 10 February 2003 at 8.25 pm serve the abovenamed Debtor, ISHAK BIN ISMAIL with a true copy of the Statutory Demand herein by way of posting the said Statutory Demand on the front door/gate of the Premises. A copy of the abovenamed Debtor's application letters and a photocopy of the abovenamed Debtor's NRIC showing the last known address of the debtor to be Blk 241 Jurong East Street 24 #05-687, Singapore 600241 are collectively annexed hereto and also marked as exhibit "**A**".

5 The Petitioner, having made two unsuccessful attempts to effect personal service of the statutory demand on the Debtor at the Debtor's last known address in accordance with paragraph 10 of *The Supreme Court Practice Directions (1997 Ed)*, was entitled to effect service of the statutory demand by substituted service. However, the Petitioner chose to effect substituted service of the statutory demand by posting it on the front door or gate of Block 241 Jurong East Street 24 #05-687, Singapore 600241 (the "Premises") on 10 February 2003, even though:

(1) Marcus Lin had been informed by a male Indian occupant just two days earlier on 8 February 2003 that the Debtor was not staying at the Premises; and

(2) there was no evidence to suggest that the Debtor continued to reside at, or could be contacted at, the Premises as at 8 February 2003.

6 The property tax search exhibited in Marcus Lin's affidavit was dated 29 August 2002 and showed the sole owner of the premises to be one Rahimah Bte Abdul Kadir. The exhibited photocopies of the Debtor's renovation loan and OUB Creditlink application forms showing his residential address to be the address of the Premises were processed in February 2001 and May 2001 respectively. Although Marcus Lin's affidavit exhibited a photocopy of the Debtor's identity card showing the Debtor's address to be the address of the Premises, there was no evidence provided as to when this photocopy of the Debtor's identity card was made. The address slip on the identity card was dated 31 December 1996. Collectively, the photocopy of the Debtor's identity card and the photocopies of the Debtor's application forms merely showed that the Debtor had resided at the Premises from December 1996 to May 2001. The Debtor could have moved from the Premises after May 2001. There was no evidence to suggest that the Debtor continued to reside at, or could be contacted at, the Premises as at 8 February 2003. There was certainly no evidence to contradict the statements made by the male Indian to Marcus Lin on 8 February 2003 that the Debtor was not staying at the Premises.

7 Rule 96(3) of the Bankruptcy Rules allows a creditor who is unable to effect personal service of the statutory demand to serve the statutory demand by "such other means as would be most effective in bringing the demand to the notice of the debtor". Rule 96(4) of the Bankruptcy Rules then goes on to describe the different alternative modes of substituted service available under rule 96(3). Rule 96(6) of the Bankruptcy Rules goes on to prohibit a creditor from resorting to a particular mode of substituted service referred to in rule 96(4) unless "the mode of substituted service would have been such that the court would have ordered in the circumstances". Read together, these rules require a creditor who wishes to serve a statutory demand on a debtor by substituted service to use only such a mode of service as "would be ... effective in bringing the demand to the notice of the debtor" and "would have been such that the court would have ordered in the circumstances".

8 While the last address of the Debtor that was known to the Petitioner may have been the address of the Premises, after Marcus Lin had been informed on 8 February 2003 by a male Indian occupant of the Premises that the Debtor was not staying at the Premises, in the absence of contrary evidence suggesting that the Debtor continued to reside at the Premises as at 8 February 2003, it could not be said that substituted service by posting the statutory demand on the front door/gate of the Premises would be effective in bringing the statutory demand to the notice of the Debtor. Further, a court having knowledge of the statements made on 8 February 2003 by the male Indian occupant of the Premises to Marcus Lin would not have ordered substituted service of the statutory demand by posting the statutory demand on the front door/gate of the Premises. As the Debtor had provided the Petitioner with other contact particulars in his application forms, the Petitioner should have attempted to contact the Debtor through each of the alternative contact particulars. The Petitioner might be entitled to effect substituted service of the statutory demand on the Debtor by advertisement only if the Petitioner was unable to contact the Debtor through any of the alternative contact particulars provided by the Debtor, and the Petitioner had no knowledge of any other address of the Debtor. In the circumstances, the purported service of the statutory demand on the Debtor was irregular and not effected "in the prescribed manner" under section 62(a)(i) of the Bankruptcy Act read with rules 96(3), (4) and (6) of the Bankruptcy Rules.

9 The case of *Wong Kwei Cheong v ABN-AMRO Bank NV* [2002] 3 SLR 594 was clearly distinguishable from the case before me. In that case, the court had set aside the service of a statutory demand by advertisement because the creditor had failed to comply with the pre-requisites for effecting substituted service of a statutory demand by advertisement. That case was not concerned with whether substituted service by posting at the debtor's last known place of residence would be regular if the service clerk employed by the creditor's solicitors had been informed by an occupant of those premises that the debtor was not staying there. In that case, the service clerk employed by the creditor's solicitors had made three attempts to serve the statutory demand on the debtor at his last place of residence known to the creditor. On all three occasions, the premises were locked. The fact that the premises were locked did not negate the possibility that substituted service by posting the statutory demand at the premises might be "effective in bringing the demand to the notice of the debtor". The creditor in that case had also failed to take reasonable steps to bring the statutory demand to the attention of the debtor because the creditor failed to inform the debtor's solicitors of the statutory demand, even though they had been in close contact with the debtor's solicitors.

10 The requirements for proving service of a statutory demand are set out in rule 108 of the Bankruptcy Rules (Cap 20, R 1, 2002 Rev Ed), which provides as follows:

> **Proof of service of statutory demand**
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> 108.—(1) Where a creditor's petition is based on non-compliance with a statutory demand, an affidavit proving service of the statutory demand shall be filed in support of the petition.
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> (2) The affidavit shall state the mode, date and time of the service and shall exhibit a copy of the statutory demand and any acknowledgment of service.
>
> (3) Where the statutory demand has been served other than by personal service, the affidavit shall —
>
> (a) give particulars of the steps taken to effect personal service and the reasons for which they have been ineffective;
>
> (b) state the means whereby (attempts at personal service having been unsuccessful) it

was sought to bring the demand to the debtor's attention and explain why such means would have best ensured that the demand would be brought to the debtor's attention;

(c) exhibit evidence of such alternative mode or modes of service; and

(d) specify a date by which to the best of the knowledge, information and belief of the person making the affidavit, the demand would have come to the debtor's attention.

(4) The steps of which particulars are given for the purposes of paragraph (3) (a) must be such as would have sufficed to justify an order for substituted service of a bankruptcy petition being made by the court.

(5) If the affidavit specifies a date for the purposes of compliance with paragraph (3) (d), then unless the court otherwise orders, that date shall be deemed for the purposes of these Rules to have been the date on which the statutory demand was served on the debtor.

(6) The court shall dismiss the petition if it is not satisfied that the creditor has discharged the obligations imposed on him by rule 96.

11 Marcus Lin's affidavit of service of the statutory demand did not explain why the mode of substituted service that he had employed "would have best ensured that the demand would be brought to the debtor's attention", as required by rule 108(3)(b) of the Bankruptcy Rules. Marcus Lin also failed to "specify a date by which ... the demand would have come to the debtor's attention", as required by rule 108(3)(d) of the Bankruptcy Rules. It was obvious from the facts of this case that Marcus Lin was not in a position to depose to either of these matters, because there was some evidence that the Debtor no longer resided at the Premises when Marcus Lin posted the statutory demand on the front door/gate of the Premises on 10 February 2003.

12 Rule 108(6) of the Bankruptcy Rules requires the court to dismiss a bankruptcy petition based on a statutory demand if the court is not satisfied that the creditor has discharged the obligations imposed on the creditor by rule 96 of the Bankruptcy Rules. As the Petitioner had failed to discharge the obligations imposed on it by rule 96 of the Bankruptcy Rules, and as the Petitioner had failed to satisfy the requirements of section 62(a)(i) of the Bankruptcy Act by serving a statutory demand on the Debtor in the manner prescribed by rule 96 of the Bankruptcy Rules, I was required by rule 108(6) to dismiss the bankruptcy petition.

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