

SOUTH AFRICA / JUDGMENT

Seevnarayan v Ramjathan (38751/2019) [2021] ZAGPJHC 611 (22 October 2021)

[2021] ZAGPJHC 611**COURT**

South Gauteng High Court, Johannesburg

BEFORE

Franck

CASE / FILE NUMBER

38751/2019

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Policy**REPUBLIC****OF SOUTH AFRICA****IN THE HIGH COURT OF****SOUTH AFRICA****(GAUTENG DIVISION,****JOHANNESBURG)****CASE NO : 38751/2019****REPORTABLE****NO****OF****INTEREST TO OTHER JUDGES NO****REVISED****In**

the matter between:

PRASANTH
SEEVNARAYAN
Applicant
and
KUVESH
RAMJATHAN
Respondent

JUDGMENT

FRANCK AJ:

[1] The estate of the Respondent was placed under provisional sequestration on the 16th of April 2021 by order of the Honourable Mr Justice Meyer.

[2] The Applicant seeks an order that the estate of the Respondent be finally sequestrated pursuant to the abovementioned provisional sequestration.

[3] In terms of Section 12 of the Insolvency Act 24 of 1936 (“the Insolvency Act”):

“(1) If at the hearing pursuant to the aforesaid rule nisi the court is satisfied that-

(a) the petitioning creditor has established against the debtor a claim such as is mentioned in subsection

(1) of section nine; and

(b) the debtor has committed an act of insolvency or is insolvent; and

(c) there is reason to believe that it will be to the advantage of creditors of the debtor if his estate is sequestrated,

it may sequester the estate of the debtor.

(2) If at such hearing the court is not so satisfied, it shall dismiss the petition for the sequestration of the estate of the debtor and set aside the order of provisional sequestration or require further proof of the matters set forth in the petition and postpone the hearing for any reasonable period but not sine die.”

[4] All the formal and statutory requirements have been met and service took place in accordance with the provisional sequestration order.

[5] The only issue in dispute, to be decided by this court is whether or not the court is satisfied that there is reason to believe that it will be to the advantage of creditors of the debtor, if his estate is sequestrated.

[6] The Applicant issued summons out of the Gauteng Local Division of the High Court under case number 13710/2012 on 17 April 2012 to recover an amount of R4 million in respect of a loan which he advanced to the Respondent in terms of a written loan agreement.

[7] On 18 August 2015, judgment was granted in the Applicant’s favour and the Respondent was ordered to make payment to the Applicant in the amount of R4 000 000,00 together with interest at the rate of 11% per annum as well as costs of the action.

- [8] The Respondent sought leave to appeal the judgment to the Supreme Court of Appeal, which application was dismissed on 21 January 2021. The Respondent made application in terms of Section 17(2)(f) of the Superior Courts Act No. 10 of 2013, which application was dismissed with costs by the Supreme Court of Appeal. The Respondent thereafter approached the Constitutional Court for leave to appeal, which application was also dismissed with costs on 29 July 2019.
- [9] The Applicant caused a warrant of execution to be issued against the Respondent. On 21 August 2019, the sheriff of the High Court rendered a return of service with an inventory reflecting goods attached. The attached goods became the subject of interpleader proceedings, with a Mukesh Bhavan and the Respondent's spouse claiming that they were the lawful owners of the movable assets that formed the subject matter of the judicial attachment by the sheriff.
- [10] On 12 August 2012, the Applicant issued a warrant of execution to attach the Respondent's bank accounts. As a result of this attachment, the Applicant received payment of R149 809,57 from FNB on 30 September 2019.
- [11] Several other warrants of execution were issued by the Applicant against the Respondent against different banking institutions, with no result.
- [12] The remainder of the judgment together with interest remains due and payable to the Applicant by the Respondent.
- [13] When another attempt was made by the Applicant to serve the warrant of execution upon the Respondent in an attempt to attach movable property, the Applicant was provided with a nulla bona return by the sheriff of the High Court on 3 September 2019. The nulla bona return amounts to an act of insolvency in terms of Section 8(b) of the Insolvency Act.
- [44] I am satisfied that an investigation into the financial affairs of the Respondent may result in a pecuniary benefit for the Respondent's general body of creditors. An investigation can be done upon sequestration of the Respondent's assets, the Respondent's investments, the Respondent's alleged expenses, the funds that the Respondent received in respect of the bond that was registered over the immovable property, the Respondent's spouse's assets and the Respondent's sources of income and other bank accounts that have not been disclosed to this court. There is in my view, a prospect that is not too remote, that concealed assets will be found and recovered upon an investigation into the Respondent's financial affairs.
- [45] The creditors may resolve to sell the immovable property by way of a public auction or a private treaty as opposed to a forced sale.

In *Swart v Starbuck and Others*[13] the court found that:

"The creditors of an insolvent estate are in law the masters of realisation of the assets of the estate."

[46] In terms of Section 80 bis of the Insolvency Act, a trustee shall, at any time before the second meeting of creditors if satisfied that any movable or immovable property of the estate ought to forthwith be sold, recommend to the Master in writing accordingly, stating his/her reasons for such recommendation. The Master may thereupon authorise the sale of such property on such conditions and in such manner as he/she may direct. In terms of Section 82(1) the trustee of an insolvent estate shall, as soon as he/she is authorised to do so at the second meeting of the creditors of that

estate, sell all the property in that estate in such manner and upon such conditions as the creditors may direct. However, if the creditors have not, prior to the final closing of the second meeting of creditors, given any directions, the trustee shall sell the property by public auction or public tender.

[47] If the immovable property is sold, and the sale leaves no free residue, the secured creditor, being SA Home Loans would at least be paid and the Respondent would then be in a position to utilise his bond instalment of R19 436,14 per month towards payment of his creditors.

[48] The Applicant argued that the Respondent's costs of opposition should not be included in the taxed costs of sequestration. This argument was made, with reference to the approach that the Respondent has taken throughout the course of litigation and that the Respondent has not taken the court into his confidence and has not disclosed his full financial details, including assets, and income to the above Honourable Court. The Respondent in argument stated that there has been no conduct that is unlawful or mala fide that would result in the Respondent not recovering his costs. In my view, the Respondent's costs, should not be a claim in the sequestration. Accordingly, I make the following order:

[48.1] The estate of the Respondent is placed under final sequestration.

[48.2] The Respondent's costs of opposition are not to be included in the taxed costs of sequestration.

FRANCK, A J

Date of hearing : 23 July 2021

Date of judgment : 22 October 2021

Legal representation :

For Applicant : Advocate A Vorster

Instructed by : Padayachee Attorneys Inc

For Respondent : Advocate O Mokgotho

Instructed by:

Sangham Inc Pietermaritzburg

- [1] 1959 (1) SA 90 (O) at 94
 - [2] 1948 (2) SA 555 (W) at 599
 - [3] Meskin & Co v Friedman 1948
(2) SA 555 (W)
 - [4] 2015 (3) SA 1 (CC) at [43] to [46]
 - [5] Stratford and Others v Investec Bank Limited and Others 2015
(3) SA 1 (CC)
 - [6] CaseLines 001-47
 - [7] CaseLines 009-19
 - [8] CaseLines 010-22 to 010-23
 - [9] 1931 AD 501 at 507-8
 - [10] 1999 (3) SA 109 (W)
 - [11] 1999 (3) SA 109 (W)
 - [12] at 112 D – 112 E
 - [13] 2016 (5) SA 372 (SCA) at para 21
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