

United Overseas Bank Ltd v Ishak bin Ismail
[2003] SGHC 170

Case Number : BKCY 917/2003, RA 134/2003
Decision Date : 07 August 2003
Tribunal/Court : High Court
Coram : S Rajendran J
Counsel Name(s) : Seetha Ramasamy (Tan Kok Quan Partners) for the appellants; Ishak bin Ismail (respondent) in person - not present
Parties : United Overseas Bank Ltd — Ishak bin Ismail

Insolvency Law – Bankruptcy – Statutory demand – Whether service of statutory demand irregular – Whether mode of substituted service most effective means of bringing demand to notice of debtor – Bankruptcy Rules (Cap 20, R 1, 2002 Rev Ed) r 96

1 This is an appeal from the decision of the Assistant Registrar dismissing the appellants' bankruptcy petition against the debtor Ishak bin Ismail in the amount of \$20,156.43. The petition was dismissed on the basis that the service of the statutory demand, which the petitioning creditor relied on to found the presumption that the debtor was unable to pay the debt, had been irregular. The only live issue in the appeal is whether this was indeed the case.

2 The law regulating service of the statutory demand is found in r 96 of the Bankruptcy Rules (Cap 20, R1, 2002 Rev Ed). It provides:

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 subparagraph (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.

3 The affidavit of service of the statutory demand filed by a clerk of the firm acting for the petitioning creditors, one Marcus Lin Han Chiang ("Lin"), stated that he had on two occasions, ie 5 January 2003 at 7.30pm and 8 January 2003 at 9.10pm, attended at the premises of Block 241, Jurong East Street 24, #05-687, Singapore 600241, for the purposes of serving the demand personally on the debtor. On the first occasion there had been no response from within the premises after knocking on the door several times. On the second occasion, he had been informed by a male Indian that there was no one of the debtor's name staying at the premises. In addition, a Property Tax Search dated 29 August 2002 showed that the owner of the premises was one Rahimah bte Abdul Kadir, and not the debtor.

4 Having taken, in his view, "all reasonable efforts" and used "all due means" in his power to serve the statutory demand, Lin then on 10 February 2003 posted a copy of the demand on the front door of the premises, being the last known address of the debtor.

5 As the Assistant Registrar has rightly pointed out in his Grounds of Decision the loan documents upon which the debt in question was founded show the debtor's address to be the premises at which the statutory demand was posted. However, the loan documents were processed in February and May 2001 and no evidence was adduced (such as correspondence from the debtor) from which it could be inferred that the debtor was still residing at those premises at about the time the demand was sought to be served. The evidence adduced in fact pointed the other way: the property tax search showed that the debtor was not the owner of the premises as early as August 2002, and further, the clerk who had attempted personal service in January 2003 was told by an occupant that there was no one of the debtor's name residing there. That being the case, the Assistant Registrar took the view that posting the statutory demand on the front door had not passed the test of being the "most effective means of bringing the demand to the notice of the debtor" that is stipulated in r 96(3). He was also satisfied, bearing in mind the provisions of r 96(6)(b), that the mode of substituted service adopted in this case was not a mode that, in the circumstances of this case, the court would have ordered. I should say that looking at all the facts I cannot but agree with the Assistant Registrar.

6 Putting a person in bankruptcy is not something which should be taken lightly. A person who has wrongfully been put into that legal status can, of course, apply to rescind or annul the order of bankruptcy after it has been made. But this involves considerable time and expense, and the person should not be put to this inconvenience unless reasonable efforts have been made to make him aware of the demand so that he would have reasonable opportunity to contest the debt. It seems clear to me that in the present circumstances the service of the documents by posting on the front door of the Jurong premises was most unlikely to bring the demand to the debtor's attention. In these circumstances, the most sensible course of action would have been to advertise the demand in a local newspaper in a language which the debtor is known to understand. If the office address of the debtor was known to the creditor, efforts should have been made to serve the statutory demand on the debtor at his office before resorting to other modes of service.

7 In the present case, counsel for the petitioning creditor relied on the case of *Wong Kwei*

Cheong v ABN-Amro Bank NV [2002] 3 SLR 594, a decision by me also relating to substituted service of a statutory demand. In the court below, the Assistant Registrar distinguished *Wong Kwei Cheong* on the ground that the pre-requisites for effecting substituted service of the statutory demand by advertisement, as had occurred in that case, had not been met. This is sufficient ground to resolve the different outcomes between that case and this one, but I would add that there was the additional factor in the *Wong Kwei Cheong* case that the creditors there were in contact with the debtor's solicitors and yet did nothing to try to serve the demand through the debtor's solicitors. Instead, they proceeded to advertise the statutory demand: an act criticised by the debtor as high-handed and designed to embarrass him.

8 The directions in r 96 relating to substituted service of documents are at the end of the day mere guidelines which attempt to balance the interests of the party seeking service against the interest of the party to be served. This is evident from the use of the word "may" in r 96(3): the demand "may" be served by such other means as would be most effective in bringing the demand to the notice of the debtor. Each case must therefore be digested on its own facts with a healthy dose of practical sense. And solicitors acting for the creditor should ensure that the affidavit of service that is filed is comprehensive and contains sufficient facts to show that the mode of service adopted would,

(a) in the circumstances be the most effective in bringing the statutory demand to the attention of the debtor; and

(b) is a mode of service that the court would have ordered had an application to court for substituted service been made.

These requirements flow from r 96(6) of the Bankruptcy Rules.

9 In *Wong Kwei Cheong's* case, it was quite clear that there might well have been a more effective and therefore more appropriate way to effect service, which train of inquiry the creditors had chosen to ignore. I therefore took the view that the creditors in that case were not entitled to rely on service by advertisement. In the present case, however, it seems quite clear that service by advertisement is the more likely of the alternatives to be effective. I should add that in cases where there are clearly better modes of services other than those enumerated in r 96(4)(a), (b) and (c) of the Bankruptcy Rules (ie, by posting on the door, by registered post, or by advertisement), the pre-requisites in the Practice Directions of two attempts at personal service do not absolve the creditors from exploring those avenues. That principle, if any, is the ratio decidendi of *Wong Kwei Cheong's* case.

10 For the above reasons, I affirm the Assistant Registrar's decision below and dismiss the appeal.

Appeal dismissed.

Copyright © Government of Singapore.