

IN THE FULL COURT OF THE SUPREME COURT OF JUDICATURE
OF GUYANA

ON APPEAL FROM THE DECISION OF JUSTICE NAVINDRA SINGH
MADE ON 19TH DAY OF APRIL 2022

CIVIL JURISDICTION

2022-HC-DEM-IV-FCA- 34, 35, 36, 37, 38, 39

Between

1. SBF INTYERNATIONAL, INC., a
company incorporated under the Laws of
Guyana with its registered office at Lot
77 Hadfield Street, Werk-en-Rust,
Georgetown, Demerara

Appellant
(Judgment Debtor)

2. DORWAIN BESS

-and-

ANAND SANASIE

Respondent
(Judgment Creditor)

Before The Honourable Madam Justice Sandra Kertious
and the Honourable Madam Justice Jo-Ann Barlow

Mr. N. A. Boston S.C. and Mr. S. Dhurjon for D. Bess

Mr. P. Satram and Mr. R. Motilall for Anand Sanasie

Ruling

1. Derwin Bess an officer of the judgment debtor company was committed to prison for six weeks by Singh J after the hearing of a judgment summons filed by Anand Sanasie, the judgment creditor, pursuant to the provisions of the Debtor's Act Chapter

6:04. Mr Bess being dissatisfied with the findings and committal order of Singh J, filed an appeal to the Full Court of the Supreme Court of Judicature of Guyana. Mr Bess also sought a stay of Singh J's Order and a consequential order for his release from prison.

2. The Court on its own motion before the date fixed for hearing, invited counsel on both sides to address the issue of the jurisdiction of the Full Court to hear and determine an appeal from a decision of a High Court Judge in judgement summons proceedings. The Court was mindful of the fact that it is the duty of every Court to satisfy itself that it is possessed of jurisdiction to adjudicate on the matter under consideration¹.
3. Counsel for Mr Bess submitted that judgement summonses are commenced by way of a Summons with Affidavit in Support and are by nature "summary proceedings". He further submitted that the fact that there may be cross-examination of witnesses in the hearing did not change the nature of the proceedings from being summary. According to counsel, the judgment summons proceedings are short, simple and without formality.
4. Counsel's submissions were premised on Chandroutie Persaud, Nafudeen Nizamudin and Javed Jason Nizamudin [2020] CCJ 4 (AJ) (GY). He placed particular emphasis on paragraph 17 of the judgment that reads thus:

"What is apparent, is that the phrase "summary proceeding" is intended to describe a type of civil legal proceeding that is identifiable by two main

¹ Dhajoo v Thom (1939) LRBG 262

features. First, that it is 'short, speedy, without delay or without formality.' 18 And second, that in terms of typology, it does not follow the regular common law process, historically characterised by the use of a writ, statement of claim, defence, reply, rejoinders, interrogatories, discovery and including a myriad of other interlocutory applications, as well as a full trial typically based on oral testimony (evidence in chief, cross-examination, re-examination), and followed by a reasoned (and most often) written judgment delivered orally."

5. Mr. Satram, counsel for Mr Sanasie submitted that the judgment summons proceedings are akin to a trial where there is cross examination in open court and this takes those proceedings outside of the realm of summary proceedings.

The Law

6. The Court first examined the provisions relating to judgment summonses to determine whether there was any applicable provision for appeals from decisions arrived at in a judgement summons.
7. Section 4 of the Debtors Act Chapter 6:04 gives jurisdiction to a Judge of the High Court to hear and determine matters connected with the committal of "any person who makes default in payment of any debt or instalment of any debt due from him in pursuance of any order or judgment of a court for the payment of any sum". The section also provides that the Judge would regulate how proof of means of the person making default would be provided. Any witness called in support of that proof must according to the section be examined upon oath. Section 4 of the Act makes no provision as to the appeal process.

8. The other provisions that treat with the judgment summons are found in Part VI of the Insolvency Rules made under the Insolvency Act Chapter 12:21. The rules applicable to the matter at hand are Rules 343-358. Those Rules are silent in relation to the appeal from a decision of a Court in a Judgment Summons.

9. Counsel for Mr Bess pointed the Court to Rules 95 to 99 of the Insolvency Rules that treat with Appeals and submitted that Appeals for matters connected with the judgment summons should be made to the Full Court because of those Rules. The question to be answered is, do those Rules apply to a judgement summons or to matters under the Insolvency Act?

10. In *Houston v Applewhite*² Kirke J (ag) treating with section 4 of the then Ordinance 21 of 1884 (Now section 4 of Debtors Act Chapter 6:04) said, “*It was argued that the rules regulating these summonses, which are published as rules 219-223³ at the end of the Insolvency Ordinance, would bring them under that ordinance, but these rules are headed “Applications under the Debtors Ordinance, 1884” and are evidently included in these rules for convenience sake. Similarly, the forms Nos. 126-7 which are to be used with such variations and additions as the circumstances may require are placed where they are for the same reason.*”

11. This Court finds the reasoning of Kirke J(ag) appropriate because according to section 1 of the Insolvency Rules, those Rules, “*may be cited as the Insolvency Rules and shall come into operation on the 1st of October 1901, and shall as far as practicable, apply to all matters arising, and to all proceedings taken in any matters under the*

² (1894) LRBG 139

³ Now sections 343-358 of the Act

Act... ". "the Act" must mean the Insolvency Act. These rules were incorporated into the Act by virtue of section 109(1) of the Insolvency Act. No other Rules were made to regulate the practice and procedure of the Insolvency Act.

12. Proceedings under the Debtors Act are not proceedings under the Insolvency Act.

Rules 343 to 358 fall beneath the clearly worded Title "Applications under the Debtors Act." Whatever the reason for placing those Rules at the end of the Insolvency Rules, a Court cannot without more make them subject to the other Rules that are for governing Insolvency.

13. This Court therefore found that the provisions applicable to the Judgment Summons are silent in relation to the appeal process. The Court therefore looked to the Provisions of the High Court Act and the Court of Appeal Act to determine which Court has jurisdiction to hear and determine the appeal in this matter.

14. Section 71 of the High Court Act, Cap 3:02, provides that:

"An appeal shall lie to the Full Court from any judgment given or order made by a single judge of the Court in exercise of its civil jurisdiction in respect of which there is no appeal to the Court of Appeal"

Section 6(2) of the Court of Appeal Act provides:

'Subject as otherwise provided in this section, an appeal shall lie to the Court of appeal in any cause or matter from any order of the Full Court or of a judge of the High Court (whether made before or after the date on which this Act comes into force) where such order is-

(a) final and is not

- (i) an order of a judge of the High Court made in chambers or in a summary proceeding;
 - (ii) an order made with the consent of the parties;
 - (iii) an order as to costs;
 - (iv) an order referred to in paragraph (d);
- (b) a decree nisi in a matrimonial cause or an order in an admiralty action determining liability;
- (c) declared by rules of court to be of the nature of a final order;
- (d) an order upon appeal from any other court, tribunal, body or person.

15. In the face of these provisions, the Guyana Court of Appeal in a majority judgment in the case of *Ulla and another v Shivraj (t/a Shivraj's Agri and Heavy-Duty Machinery*⁴ had ruled that appeals from Judgment Summonses are to the Court of Appeal and not the Full Court. This decision should have been enough for a determination of the jurisdiction issue. Since this Court being of inferior jurisdiction is bound by judicial precedent.

16. However, counsel for Mr. Bess urged the Court to find that the decision of the Caribbean Court of Justice in *Chandroutie Persaud, Nafudeen Nizamudin and Javed Jason Nizamudin* renders the decision of the Court in *Ulla and another v Shivraj (t/a Shivraj's Agri and Heavy-Duty Machinery)* inapplicable to these proceedings. With this this Court disagreed.

⁴ (2014) 84 WIR 368

17. In treating with the issue of jurisdiction in Chandroutie's case the decision of the CCJ at para [7] reflects as follows:

“This is thus quintessentially an appeal that turns on statutory interpretation. In cases such as these, ‘the complex and multi-dimensional character of statutory interpretation’ is on display, and its somewhat malleable nature can lead to different opinions about the five key elements of meaning, intent, context, coherence and consequences. A proper approach, we suggest, balances three fundamental teleological poles, discovering and applying the meaning of the text, the legislative intent (purpose), as well as ensuring that the consequences and policies of interpretation and application are fair, reasonable and just (appropriateness). It is in the pursuit of this balance and of these objectives, that textual meaning, legislative intent, context, coherence, established (legal) norms, traditions and values, as well as the considerations of precedent, pragmatism and policy, all come into play.”

18. In pursuit of that “balance” the CCJ noted that evidence that was provided of customary practice on the issue while not definitive was useful in the analysis of the issue. In Ulla's case Roy JA as he then was examined the practice in relation to a judgement summons. He pointed out that it was always assigned to the Bail Court and heard in Open Court.

19. It is to be noted too that according to the Rules 346 and 347 of the Insolvency Rules that govern Applications under the Debtor's Act, the hearing of a Judgment Summons may be adjourned from time to time and witnesses may be summoned to prove the

20. This Court finds no basis for finding that the decision of the Court of Appeal in Ulla's case was in anyway affected by the decision of the CCJ in Chandroutie's case.

21. Before leaving this matter, the Court addressed submissions from counsel for Mr. Bess on the issue of jurisdiction for appeals under the Contempt Act Chapter 5:05. By section 15 of that Act, appeals lie to the Full Court. This Court found that that Act has no relevance to the facts under consideration. The Contempt Act treats with Contempt in the face of the Court. The circumstances of this case fall squarely within the provisions of the Debtors Act and Part IV of the Insolvency Rules.

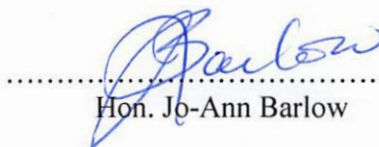
Disposition

22. This Court found that it has no jurisdiction to entertain the appeal filed by Mr. Bess from the decision of Singh J in a judgment summons proceedings.

Costs

23. Costs to the respondent in the sum of \$50,000.00 (fifty thousand dollars).


.....
Hon. Sandra Kurtziouis


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Hon. Jo-Ann Barlow

6th May, 2022