

IN THE SUPREME COURT OF SEYCHELLES

ANICETTE DELCY

PLAINTIFF

VERSUS

CHRISTELLE CAMILLE

DEFENDANT

Civil Side No 55 of 2001

Mr. F. Chang Sam Counsel for the Judgment Creditor

Mr. P. Boulle Counsel for the Judgment debtor

RULING

B.Renaud

On 27th October, 2003, the judgment creditor obtained a judgment of the Court against the judgment debtor for the payment of French Franc 469,667 and SR20,000 plus SR8,975 for costs. The said judgment still remains unsatisfied. By way of execution the judgment creditor invoked the provision of Section 251 of the Seychelles Civil Procedure Code (**CPC**) to show cause why the judgment debtor should not be imprisoned for failing to satisfy the judgment debt.

Section 251 states as follows:

“A judgment creditor may at any time, whether any other form of execution has been issued or not, apply to the Court by petition, supported by affidavit of the facts, for the arrest and imprisonment of his judgment debtor and the judge shall there upon order a summons to be issued by the Registrar, calling upon the judgment to appear in Court and show cause why he should not be committed to civil imprisonment in default or satisfaction or the judgment or order.”

The judgment debtor was accordingly summoned and she appeared before the Court. A date was fixed for the hearing as required by Section 252 for the Court to make a determination in accordance with Section 253.

Section 252 states:

“The judgment debtor on the day on which he has been summoned to appear, shall be examined on oath as to his means and witnesses may be heard on his behalf and on behalf of the judgment creditor.”

Section 253 states:

“If the judgment debtor does not appear at the time fixed by the summons or refuses to make such disclosures as may be required of him by the Court or if the Court is satisfied that the judgment debtor:-

- (a) has transferred, concealed or removed any part of his property after the date of the commencement of the suit in which the judgment sought to be enforced was given or that after that date he has committed any act of bad faith in relation to his property with the object or effect of delaying the judgment creditor in enforcing his judgment or order; or*
- (b) has given an undue or unreasonable preference to any of his other creditors; or*
- (c) has refused or neglected to satisfy the judgment or order or any part thereof, when he has or since the date of the judgment has had the means of satisfying it,*
the court may order such debtor to be imprisoned civilly unless or until the judgment is satisfied.”

At the hearing, Mr. P. Boule Learned Counsel for the judgment debtor raised a preliminary objection contending that the judgment debtor by virtue of Section 7 of the Imprisonment for Debt Act, Cap. 96 (**IDA**) has good cause in law why she should not to be committed to civil imprisonment.

The Court invited the Learned Counsels to address the Court on this point of law as to whether Section 7 of **IDA** is applicable in the circumstances.

Section 7 states:

“Imprisonment for debt shall not be decreed in suits between husbands and wives, ascendants and descendants, and brothers and sisters. It shall not be decreed against minors, against women, or against men who have commenced their 70th year.”

In his address Mr. Boule submitted that Section 7 of **IDA** figures under the heading “*General Dispositions*”, which provision imports a concept that the Court has to take into consideration. Mr Boule argued that that provision is an exceptional dispensation relating to civil imprisonment in general and as such it is not necessary that it should be specifically imported for it to be read as a follow up to Section 254 of the **CPC** for the Court to apply it.

Section 254 states:

“The imprisonment which may be ordered under the last preceding section may be for the periods specified by section 10 of the Imprisonment for Debt Act, Cap. Section 10 to 15 of that Act shall apply to and be read with sections 251, 252 and 253 of this Code.”

Mr Francis Chang Sam, Learned Counsel for the judgment debtor in addressing the Court submitted that Section 7 of **IDA** is specifically restricted to that Act for two reasons. Firstly, he refers to Section 5 of **IDA** which

provides for the four specific instances when a Court can decree civil imprisonment.

Section 5 is as follows:

“In any civil suit or action before the Supreme Court, it shall be lawful for the said Court to decree that its judgment shall be enforced by imprisonment, whenever the said Court shall have condemned to the payment of a sum of money or to the restitution of property any of the parties to the said suit or action, in any of the following cases:-

- (i) when a contract is annulled, as having been obtained by fraud or violence, or as having been made for the purpose of defrauding third parties;*
- (ii) when damages have been given by the court as amends for a prejudice caused by a fraudulent act, or by an act of bad faith;*
- (iii) when lessees of property do not produce at the expiration of their lease the cattle leased to them under a contract of mutual profit, or the farming or agricultural implements, or the chattels which have been entrusted to them, unless they prove to the satisfaction of the court that such cattle, implements or chattels have perished or are deficient by no fraud of theirs;*
- (iv) when damages have been obtained on account of any fraudulent possession of property.*

Mr. Chang Sam further argued that Section 7 of **IDA** is not of general application, and it applies only to the specific circumstances referred to under Section 5 of that Act.

Secondly, Mr. Chang Sam submitted that **CPC** is an old Act which has been on record prior to 1952 edition, but Sections 252 to 254 did not exist in

that Act in its 1952 edition. Sections 251 to 254 appeared in the Act in the 1971 edition for the first time. **IDA** on the other hand already appeared in the 1952 edition. This, Mr. Chang Sam said, goes to show that sections 251 to 254 of **CPC** are provisions which were enacted much later and therefore could not be subjected to the provisions of Section 7 of **IDA**. If that was the intention of the Legislature, such would have been stated when Sections 251 to 254 of **IDA** were enacted. Mr. Chang Sam emphasised that those sections made reference specifically to the provisions of sections 10 to 15 of **IDA** only and not to any other provisions.

Upon my reading of section 253 of **CPC** it becomes obvious as to why section 254 had to be enacted. It could be seen that, at that time the Court, when applying section 253 of **CPC**, had no option but to incarcerate a judgment debtor for an indefinite period. The only condition upon which the Court can order the release of the judgment creditor from imprisonment **was** **“unless and until the judgment debt is satisfied.”** It was to obviate such extraneous situation that the legislature enacted section 254 of the Civil Procedure Code which in effect imports sections 10 to 15 of the Imprisonment of Debt Act to be read as part of the Civil Procedure Code and in so doing sets out limitations on the term of imprisonment that a Court can decree on a judgment debtor.

Section 10 of the Imprisonment for **Debt Act** states:

“The imprisonment which the Supreme Court may decree under the provisions of this Act shall not exceed one month, when the award in execution of which imprisonment is decreed does not exceed Rs.500, shall not exceed three months if the award exceeds Rs.500 but does not exceeds Rs.1,000, and shall not exceed one year if the award exceeds Rs.1,000”

Section 11 states:

“It shall be lawful for the Court, in decreeing that its judgment shall be enforced by imprisonment, to grant a reasonable time to the debtor to satisfy the judgment.

At the expiration of such time, the Registrar of the Supreme Court shall, ex-officio, issue a writ or warrant for the arrest of the debtor and shall forward the same to the Commissioner of Police for execution.

The writ or warrant shall be executed by any officer or non-commissioned officer of police, in the same manner in which warrants of arrest issued by the Supreme Court are executed.

The debtor, upon his apprehension, shall as soon as possible be taken to the prison of Victoria and delivered into the custody of the Chief Officer of the prison.

The said Chief Officer shall mark upon the aforesaid writ or warrant the date and hour when the prisoner was handed over to his custody and he shall return the same to the Registrar of Supreme Court, who shall file it among the records of the court.”

Section 12 marks provisions for the judgment debtor not to be arrested on certain occasions; section 13 provides for the treatment of the judgment debtor during the time of his imprisonment; section 14 provides for the release of the judgment debtor and finally section 15 protects the rights of the judgment creditor.

From the marginal annotations it could be established that the Imprisonment for Debt Act traced its history back to 11th January, 1870 when it was originally entered on the statute book of Mauritius. It was amended by Mauritius Act 7 of 1890 and Act 34 of 1919 and that statute as it was, was also applicable to Seychelles until 1969 when Seychelles, by virtue of Act 16 of 1969 enacted the existing Imprisonment for Debt Act. Act 23 of 1976 amended sections 1, 4, 9, 13, 14 and 15 of **IDA** and has been in its present form since then.

Interestingly, the same Act 23 of 1976 amended the Seychelles Civil Procedure Code by adding the existing Section 254 which has been quoted in *extenso* above. That Code has been in application in Seychelles since 15th April, 1920 by virtue of Proclamation No. 6 of 1920. There has not been any amendment made to sections 251, 252 and 253 by any Seychelles' enactment since its original enactment.

Upon a review of the **IDA** it is evident that this piece of legislation empowers the Court to impose terms of civil imprisonment in certain specific matters only.

Section 2 of the Act states:

"Imprisonment for debt in civil and commercial matters and against foreigners is abolished in Seychelles, except in the cases hereinafter provided for."

Section 3 of the Act further states:

"If by any clause in any contract, whether made in Seychelles or elsewhere, it has been agreed that the conditions of the contract shall be entered by caption of the body, such clause shall be deemed to be null and void."

This provision re-emphasises Article 18(15) of the Constitution which states:

"A person shall not be imprisoned merely on the ground of the inability to fulfil a contractual obligation."

The above-stated constitutional provision does not, however, limit the powers of the court in enforcing its orders made under any law. This is laid down in Article 18(16) of the Constitution which states:

“Clause (15) shall not limit the powers of a court under any law in enforcing its orders”.

It is my view that case when imprisonment may be decreed by the Supreme Court for the recovery of a judgment debt are only those specifically laid down in sections 5 and 6 of the **IDA**. I have already set out Section 5 above I now quote Section 6 of **IDA**.

Section 6 states:

“It shall further be lawful for the Supreme Court to decree that its judgment or orders in any civil suit or matter, shall be enforced by imprisonment, whenever the said court shall have condemned to the payment of damages, or to the restitution of money or property any person who shall have embezzled, fraudulently appropriated or employed, squandered away or destroyed, to the prejudice of the owner thereof or of any interested party whether such owner or party had kept possession or not thereof, any goods, money, merchandise, bill, acquittance, or other writing, containing or operating an obligation or discharge, which had been delivered to such person or obtained by him as a tenant, or depository or agent, or trustee, or as a guardian of a minor or interdicted person, or in any official or ministerial capacity, or for any labour, with the condition that the same be returned or produced or accounted for, or be employed for any special purpose, or for the benefit of the owner thereof, or of any party interested therein”.

The thrust of the argument of Mr. Boule, Learned Counsel for the judgment debtor was based primarily on Section 7 **IDA**. In that Section there is reference to “suits.”

The **CPC** defines “*suit*” as a civil proceeding commenced by plaintiff. Execution of judgment under the provision of Section 251 of **CPC** is commenced by a petition and not by plaintiff hence as such this process is not a suit falling within the ambit of Section 7 of **IDA**. I believe that Section 7 makes reference to suits specifically falling within the parameters of Sections 5 and 6 of the **IDA** as quoted above.

For that purpose, it is my view that the reference to the decreeing of civil imprisonment in a judgment of the Court relates to the original judgment at the conclusion of a suit falling within the parameters of Section 5 and 6 of **IDA** and not upon any subsequent process following a final judgment of the Court in respect of that suit, except in the process of execution under Section 251 of **CPC**.

The matter under consideration is a process of execution of unsatisfied judgment made under the provisions of Sections 251 to 254 of **CPC**. It is a matter that starts and ends under those specific legal provisions. The fact that Section 254 of **CPC** imports the provisions of Sections 10 to 15 of **IDA** it does not follow that all the provisions of that latter Act are also to be imported. That could be so if it is stipulated in those imported sections and particularly in Section 10. That unfortunately is not the case. To import any other provisions of **IDA** to be read as part of **CPC** falls outside the powers of the Court. At the time when the legislature amended the **CPC**, Section 7 of the **IDA** was already on the statute book and had it been the intention of the legislature to make that provision to be also read as part of **CPC** it would have done so. The legislature having left out that section, I believe that it is not for the Court to do so otherwise it would tantamount to the Court exercising the function of the legislature. The situation would have been otherwise had Section 7 of **IDA** been enacted at a date later than the amendment of **CPC** when the addition, of Section 254 was made thereto.

In my final analysis I conclude that Section 7 of the Imprisonment for Debt cannot be imported and be read as part of Section 254 of the Seychelles Code of Civil Procedure. Hence it is my finding that a woman judgment debtor may be committed to civil imprisonment in a process when execution of judgment is activated by a judgment creditor under Sections 251 to 254 of the Seychelles Civil Procedure Code.

I set aside the objection raised by Learned Counsel for the judgment debtor. The judgment debtor is called upon to show cause why she should not be committed to civil imprisonment for failing to satisfy the judgment of the Court.

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B.RENAUD

JUDGE

Dated this 19th day of July 2004