

**DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR**

**(BAHAGIAN DAGANG)**

**DALAM KEBANKRAPAN NO. D8-29-1399-2002**

**PER: TAN BEE HOON  
(No. K. P.: 520125-10-5068)**

**... PENGHUTANG  
PENGHAKIMAN**

***EX-PARTE:* STANDARD CHARTERED BANK  
MALAYSIA BERHAD**

**... PEMIUTANG  
PENGHAKIMAN**

**ALASAN PENGHAKIMAN LISAN**

**OLEH YANG ARIF HAKIM DATO' KANG HWEE GEE**

**(Oral Judgment delivered immediately after submission.)**

This is an appeal by the judgment debtor against the decision of the Senior Assistant Registrar in dismissing her application to stay execution of the AO and RO made earlier against her.

**This is my oral judgment: (*ex-tempore*)**

In the present proceeding the judgment debtor is absent. Her husband Loke Ah Foo informs the court that she is unable to attend because she is not well. She submits through her husband a prepared submission by her counsel as follows:

“Permohonan untuk Penangguhan Pelaksanaan perlu dibenarkan kerana:-

1. Penghutang Penghakiman bermastautin di New Zealand sebelum Bankruptcy Notice dikeluarkan. Fakta ini telahpun dimaklumkan kepada peguamcara Pemiutang Penghakiman. Jika penangguhan pelaksanaan tidak dibenarkan Penghutang Penghakiman akan amat diprejudiskan kerana tidak boleh melakukan perjalanan di New Zealand ke Malaysia. Ini perlu kerana masih ada urusan-urusan yang perlu diselesai oleh Penghutang Penghakiman di Malaysia.

Penghutang Penghakiman juga telah memfail Rayuan ke Mahkamah Rayuan terhadap keputusan Mahkamah Tinggi (kandungan 45) melalui Rayuan Sibil No. W-03-144-05 di mana ia belum dibicarakan.

Penangguhan Penghakiman harus dibenarkan mengguna kesemua hak beliau sehingga kes menjadi muktamad memandangkan Rayuan di Mahkamah

Rayuan belum didengar lagi.

Memandangkan kes belum muktamad dan hak Penghutang Penghakiman bergerak tidak disekat, maka adalah dihujahkan ini adalah 'special circumstances' dan satu penangguhan pelaksanaan perlu dibenarkan sehingga Rayuan diputuskan.

2. Prinsip "nugatory"/Pembelaan (merits of case)

Penghutang Penghakiman telah bermastautin di New Zealand sekarang Bankruptcy Notis dikeluarkan dan ini telah dimaklumkan kepada peguamcara Pemiutang Penghakiman.

Pemiutang Penghakiman perlu memaklumkan atau cuba memaklumkan Penghutang Penghakiman sebelum menggunakan prosedur Penyampaian Ganti untuk serah Bankruptcy Notis.

Memandangkan peguamcara Pemiutang Penghakiman telah dimaklumkan tentang alamat akhir maka, Bankruptcy Notis perlu diserahkan di alamat terakhir dan tidak boleh diserahkan secara Penyampaian Ganti dan prosedur ini adalah salah.

Adalah dihujahkan, Penghutang Penghakiman mempunyai pembelaan yang bermerit dan sehingga Mahkamah Rayuan membenarkan Rayuan, maka ia

akan menjadi 'nugatory' kerana hak Penghutang Penghakiman telah pun disekat untuk tempoh tersebut dan beliau juga akan amat diprejudiskan.

Penghutang Penghakiman bekerja dan jika hak beliau untuk bergerak dan sebagainya disebut, ia amat memprejudiskan beliau.

3. Jikalau penangguhan pelaksanaan diberikan, ia tidak akan memprejudiskan Pemiutang Penghakiman sebaliknya Penghutang Penghakiman akan amat diprejudiskan. Oleh yang demikian '*status quo*' perlu dikekalkan sehingga Mahkamah Rayuan memutuskan kes ini.

### **Kesimpulan**

Berdasarkan fakta-fakta kes ini dan hujahan di atas, Penghutang Penghakiman memohon supaya permohonan beliau dibenarkan dengan kos.”

The above was read out by the court interpreter.

The appeal is opposed on the following grounds by counsel for the Judgment Creditor:

1. At the hearing of the application to oppose the Bankruptcy Notice (Enclosure 22) the contention that the bankrupt was residing in New Zealand when the Judgment Creditor commenced bankruptcy proceedings had been canvased.
2. The contention was rejected by the Senior Assistant Registrar (subsequently confirmed by the court - Enclosure 38) as bankrupt was unable to produce any proof that she was residing there. Neither did she produce any proof that she was residing in New Zealand at the hearing of the stay application before the Senior Assistant Registrar on 28.8.2005 and also 29.11.2006.
3. We had served the Bankruptcy Notice on the last known address based on the record that our client has *ie* Block 12-2-10 Prisma Cheras Condominium, Jalan Midah 8A, Off Jalan Midah 8, Taman Midah, 56000 Kuala Lumpur. This address appeared in the Guarantee Agreement which she signed.

4. In her affidavit in reply to oppose the Bankruptcy Notice (Enclosure 22) she did not deny that she was staying in the stated address. She only stated that at the time when we served the Bankruptcy Notice she was in New Zealand. Based on the affidavit of service of our process server Enclosure 8 affirmed on 10.6.2002, he was informed by the daughter of the Judgment Debtor that the Judgment Debtor was not at home - twice. We sent notice of appointment to serve - unsuccessful because on the appointed date the Judgment Debtor was not at home.
5. Consequently we applied for substitute service - we posted at 3 places - last known address, Kuala Lumpur High Court Notice Board and advertisement in The Sun. All done on 21.4.2003.
6. Creditor's petition subsequently served on the same address by substitute service (tried twice to serve personally - informed by person residing there that bankrupt had moved out). So we served by substitute service.

## **Findings and Decision**

1. There is no merit in this appeal. The Senior Assistant Registrar had correctly dismissed the bankrupt's application for stay.
2. The Bankruptcy Notice was based on the judgment of the High Court of Sabah and Sarawak (Enclosure 11).
3. The Bankruptcy Notice had been properly served by substitute service by the posting of a copy of the notice on the door of the bankrupt's last known address and on the notice board of the High Court as well as by advertisement in The Sun.
4. The fact that the bankrupt had appealed against the decision of the court in dismissing her application to oppose Bankruptcy Notice (Enclosure 38) and also for stay of proceedings on that application (Enclosure 45) is not a valid ground to allow stay of the AO and RO.

Appeal dismissed with costs.

DATO' KANG HWEE GEE  
Hakim Mahkamah Tinggi  
Bahagian Dagang 8  
Kuala Lumpur.

Tarikh: 6.2.2007

Didengar pada 6.2.2007.

Kaunsel:

Encik Fadil Azuwan Zainon  
Tetuan Arifin & Partners

... bagi pihak Pemiutang  
Pengkakiman

(Tidak hadir)  
Tetuan J. Gurunam Singh & Co.

... bagi pihak Penghutang  
Pengkakiman