

IN THE HIGH COURT OF FIJI
APPELLATE JURISDICTION

Civil Action No. HBA 01 of 2023

BETWEEN: **SANJAY SINGH VERMA** OF Vusuya Road, Nausori and 31 Donu Place, Lower Ragg Avenue, Namandi Heights, Suva Businessman, in the Republic of Fiji Islands.

APPELLANT

A N D : **SANGEETA DEVI SAGAR** of Tacirua Heights, Suva t/a Shiv's Enterprises, in the Republic of Fiji Islands. Businesswomen

RESPONDENT

Counsel Appellant In Person
 Mr. Kumar P. for the Respondent

Date of Judgment : 07.05.20250

JUDGMENT

- [1] Appellant filed Notice of Intention to Appeal on 4.1.2023 against decision of learned Resident Magistrate (RM) handed down on 29.12.2023 (The Ruling). Grounds of Appeal were filed on 23.1.2023.
- [2] The Ruling held committal warrant issued against judgment debtor (Respondent) cancelled and the judgment creditor (Appellant) was directed to notify Official Receiver of judgment debt for the payment of the same.
- [3] RM had made the Ruling considering Sections 9(1) and 20 of Bankruptcy Act 1944 and also a decision of this court by a brother judge.

- [4] Appellant does not dispute that there was a Receiving Order issued against Respondent. He had become aware of the Receiving Order through a letter of Official Receiver dated 16.9.2022 addressed to him. He was also advised by the Official Receiver to file his 'proof of debt claim' to their office directly. Instead of doing that Appellant had sought orders in court below compelling Respondent to pay the debt and also obtained penal sanction from court below from RM.
- [5] RM had conducted an inquiry as to 'means test' of Respondent on 14.9.2022 and both parties had appeared *in person*.
- [6] Appellant had notified to the court below in the said 'means test' that there was a Receiving Order against Respondent and had produced a letter from Official Receiver to prove this fact. Respondent had stated that she was 'bankrupt', which was legally incorrect as she was only issued with Receiving Order. The court below had failed to consider legal consequence of such Receiving Order in 'Ruling on Means Assessment' handed down on 23.11.2022. This is clear in said decision of court below in paragraph 11. (see page 64 of Record of the Magistrate's court at Nasinu)
- [7] Subsequent to this order Respondent had through a counsel had made an application and shown to RM correct legal provisions. RM after inter partes hearing had cancelled committal warrant issued *per incuriam* by the Ruling on 29.12.2022
- [8] Section 9(1) of Bankruptcy Act 1944 is determinative of the issue of legal status of Respondent as regard to judgment debt of Appellant after issuance of Receiving Order in bankruptcy proceedings by a court.
- [9] Section 9(1) of Bankruptcy Act 1944 states

Effect of receiving order

9.-(1) **On the making of a receiving order** the official receiver shall be thereby constituted receiver of the property of the debtor, and thereafter, except as directed by this Act, **no creditor to whom the debtor is indebted** in respect of **any debt provable in bankruptcy** shall have **any remedy against the property or person of the debtor in respect of the debt**, or shall commence any action or other legal proceedings, unless with the leave of the court and on such terms as the court may impose.

(2) But this section shall not affect the power of any secured creditor to realize or otherwise deal with his security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed.

[10] Appellant is not a secured creditor and the word secured creditor is exclusively defined by using 'means' in the interpretation provision of Bankruptcy Act 1944 which reads;

"secured creditor" **means** a person holding a mortgage, charge or lien on the property of the debtor, or any part thereof, as a security for a debt due to him from the debtor;"

[11] Section 9(1) of Bankruptcy Act 1944 is conclusive as to all the creditors of Respondent. It is immaterial as to how the debt of Respondent had arisen. The sanction contained in Section 9(1) of Bankruptcy Act 1944, applies to all unsecured creditors who can prove such debt in bankruptcy.

[12] Appellant is not a '*secured creditor*' hence he is a creditor who has a '*debt that is provable in bankruptcy*' and he shall not have '*any remedy against the property or person of the debtor in respect of the debt*'. This is a clear bar for any form of action against Respondent and her property for recovery of Appellant's judgment debt after Receiving Order was made. Appellant was notified by the Receiving Order of Respondent by the Official Receiver on 16.9.2022.

[13] Appellant is misconceived to contend in court below as well as in this court that there was no order declaring Respondent as bankrupt, so he could seek recovery of judgment debt through proceedings in court below. This is clearly prohibited in section 9 of Bankruptcy Act 1944. This provision also reduces cost of litigation in order to seek recovery of debt against person pending declaration of bankruptcy. Appellant who is appearing in person had neither considered legal provision stated in the Ruling of court below nor was considered due process of law. In his submission he requested committal of Respondent in order to compel her to pay his debt. This is clearly an unlawful order that Appellant request from court.

[14] Accordingly Appellant does not have any remedy against the property of Respondent or any remedy against Respondent regarding the judgment debt in the court below after Respondent was subjected to Receiving Order.

[15] So his remedy relating to judgment debt is not in court below but with Receiver appointed for Respondent in Bankruptcy proceeding in terms of Section 20(1) of Bankruptcy Act 1944.

[16] Appellant rightly state that Respondent is not declared bankrupt, but after Receiving Order was made by a court, Section 9(1) of Bankruptcy Act applies, and all unsecured creditors are required to seek payment of all such unsecured debt from the Receiver appointed by the court, in terms of Section 20(1) of Bankruptcy Act 1944 which reads

"Adjudication of bankruptcy where composition not accepted or approved

20.-(1) Where a receiving order is made against a debtor, then, if the creditors at the first meeting or any adjournment thereof by ordinary resolution resolve that the debtor be adjudged bankrupt, or pass no resolution, or if the creditors do not meet, or if a composition or scheme is not approved in pursuance of this Act within fourteen days after the conclusion of the examination of the debtor or such further time as the court may allow, the court shall adjudge the debtor bankrupt; and thereupon the property of the bankrupt shall become divisible among his creditors, and shall vest in a trustee.

(2) Notice of every order adjudging a debtor bankrupt, stating the name, address and description of the bankrupt, and the date of the adjudication, shall be gazetted and advertised in a local paper in the prescribed manner, and the date of the order shall, for the purposes of this Act, be the date of the adjudication.”

- [17] Appellant had filed appeal grounds and they are vague and repetitive so I decided to deal with them at this stage having discussed proper legal provision and the issue in appeal. So for convenience Appeal I Grounds are reproduced below and they are dealt briefly as possible

Appeal Ground 1

“(1)That the Learned Resident Magistrate erred in law and I fact when he failed analyse properly that the Respondent was not Adjudicated bankrupt and a receiving order against the Respondent does not constitute her to be declared Bankrupt and JDS in 2019, therefore the Appellant was put on enormous prejudice”.

- [18] This issue is already dealt in the judgment, but suffice to state there is no requirement to adjudicate Respondent as bankrupt in terms of Section 9(1) of Bankruptcy Act 1944 to prevent Appellant from seeking order against Respondent for a judgment debt.

Appeal Ground 2

“(2)That the Learned Resident Magistrate erred in law and in fact, by not considering properly the years of prejudice suffered by the Appellant in this action”.

- [19] RM had applied correct law and there is no error of law or fact. Delay is not a consideration for RM when there is clear statutory bar in section 9(1) of Bankruptcy Act 1944.

Appeal Ground 3

“(3)That the Learned Resident Magistrate has acted in contravention of the rules of natural justice and basic constitutional right of the Appellant herein; that is “not to be heard only but to be properly heard” and Justice is not to be done only but seen”. The Learned Magistrate has jeopardize a genuine JDS and subsequently Order of Commitment against the Respondent herein”.

- [20] The appeal ground is without merit. RM had allowed Appellant in the proceedings and had dealt the application of Respondent *inter partes*.

Appeal Ground 4

“(4)That the Learned Resident Magistrate erred in law and in fact by cancelling the Committal Warrant, after conducting a means test time and again and reaching to a conclusion that the JDR has means to pay”.

- [21] RM is correct in cancelling committal warrant against Respondent issued after she was subjected to Receiving Order in Bankruptcy Action.

Appeal Ground 5

“(5) That the Learned Resident Magistrate erred in law and in fact by not considering that the Respondent (If adjudicating Bankrupt) was to be represented by “Official Receiver” and not private counsel (Kumar Legal). Had the Learned Magistrate taken Judicial Notice that Official Receiver was not representing the Respondent in the application made 28th November 2022, the Court should have dismissed the application citing zero locus (If the Respondent was allegedly declared Bankrupt). The Resident Magistrate failed to observe that the application before him was just to sway and/ or mislead the Court caused a miscarriage of justice and a gross misconduct”.

- [22] This is an irrelevant consideration. A legal practitioner may appear for impecunious client. Order 110 of High Court Rules 1988 allows appointment of legal practitioner for ‘impoverish’ litigant by the court. This shows the importance of legal practitioner to litigation despite a party being subject to bankruptcy proceedings. So a party subjected to Receiving Order can be represented by legal practitioner and there is nothing to prevent such representation as right to representation in civil suit is to be recognized in terms of Section 15(10) of the Constitution of the Republic of Fiji. Right to representation of Respondent is not restricted to “Official Receiver” and there was no provision shown to me at this hearing; that restrict representation.
- [23] It should also be noted that when ‘means test’ was conducted in the court below both parties represented in person and this may have resulted RM not considering

Section 9(1) of Bankruptcy Act 1944 in his decision at paragraph 11 in the decision handed down on 23.11.2022(see page 64 of the Record of court below)

Appeal Ground 6

“(6) That the Learned Resident Magistrate erred in law and in fact, by not considering that the Respondent always absconded the Court and was numerously brought under police warrant, increasing the volume of work for the Appellant herein to write letter and emails to the Police department for arrest of the Respondent and eventually the court was misled under the pretense of Bankruptcy. The Learned Magistrate failed to apply the common principle that “One who comes to Court has to come with clean hands”.

- [24] RM had correctly applied Section 9(1) of Bankruptcy Act 1944, irrespective of prior conduct of Respondent. This shows impartiality of RM to all litigants. Prior conduct is irrelevant in application of clear statutory provision where RM is not given discretion.

Appeal Ground 7

“(7)That the Learned Resident Magistrate erred in law and in fact, by continuously allowing a third party to get the matter called without filing proper application by way of motion and affidavit to cancel the Committal warrant and when opposed the Court still entertained application thought a third party in absence of the JDR”.

- [25] It is noted that in the decision relating to ‘means test’ Respondent had appeared *in person* and stated that she was declared ‘bankrupt’. Though this is not the correct legal position RM was put on notice of an action for Bankruptcy against her. Receiving Order against Respondent was made on 27.1.2021 by another RM in Bankruptcy Action No 31 of 2020(See Letter Official Receiver of page 72 of Record of Magistrate Court at Nasinu). So RM could not have made an order to pay on 23.11.2022 or committal order on 03.12.2021 for default of payment pof Judgment debt in terms of Section 9(1) of Bankruptcy Act 1944 as the entire proceedings becomes *null and void*.

Appeal Ground 8

“(8) That the Learned Resident Magistrate erred in law and in fact, when he failed to analyse that the act of Bankruptcy did not apply on the Respondent as she was not adjudicating Bankrupt. Had she been adjudicating then all dealing was to be handled by the Official Receiver and in the within matter that was not done”.

[26] This is repetition of the issue and it was already dealt in this judgment.

Appeal Ground 9

“(9) That the Learned Resident Magistrate erred in law and in fact when cancelling the Committal warrant without making proper finding and evaluating the Bankruptcy procedures has caused gross misconduct and miscarriage of justice”.

[27] Under Appeal ground 7 I have dealt the miscarriage to Respondent despite being notified of bankruptcy proceedings in ‘means test’. There was no miscarriage of justice to Appellant. So the order by RM made against Respondent to pay on 23.11.2022 as well as Committal order made on 03.12.2021 were *per incuriam*.

CONCLUSION

[28] The Ruling had correctly identified the law and the facts were applied correctly. So there is no error of law or fact in the Ruling of RM. I affirm the orders of RM handed down on 29.12.2023. Appeal is accordingly dismissed. Considering the circumstances no costs ordered.

FINAL ORDERS:

- a) Appeal dismissed.
- b) Learned Resident Magistrate’s Ruling delivered on 29.12.2022 is affirmed.
- c) No order as to costs.



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Deepthi Amaratunga
Judge

At Suva this 07 May, 2025.

Solicitors

In person (Mr. Sanjay Singh Verma)

MIQ Lawyers