

DALAM MAHKAMAH RAYUAN MALAYSIA

(BIDANG KUASA RAYUAN)

RAYUAN SIVIL NO. N-03-49-2005

ANTARA

STEPHEN WONG LEONG KIONG ... PERAYU
(K/P NO. 480707-13-5327)(Baru) K152207 (Lama)

DAN

HSBC BANK MALAYSIA BERHAD ... RESPONDEN
(No. Syarikat 127776-V)
(Dahulu dikenali sebagai
Hongkong Bank Malaysia Berhad)

(Dalam Perkara Kebankrapan No. 29-155 Tahun 2001
Dalam Mahkamah Tinggi Malaya Di Seremban

Perkara : STEPHEN WONG LEONG KIONG
(K/P NO. 480707-13-5327)(Baru), K152207 (Lama))

Ex-Parte : HSBC BANK MALAYSIA BERHAD
(NO. SYARIKAT 127776-V)
(Dahulu dikenali sebagai
Hongkong Bank Malaysia Berhad)

Koram: Dato' Denis Ong, HMR
Dato' Hashim B. Dato' Hj. Ysoff, HMR
Datin Paduka Zaleha Zahari, HMR

ALASAN PENGHAKIMAN

1. This is an appeal by the Judgment Debtor (“the JD”) against the decision of the High Court at Seremban which had affirmed the Court Registrar’s decision dated 8 November 2002, in dismissing with costs the JD’s application by Summons in Chambers (Enclosure 8) to dismiss the Creditor’s Petition (the “CP”) pursuant to Section 6 (3) of the Bankruptcy Act 1967 (“the Act”). The appeal was unanimously allowed with costs. We now give our reasons.
2. The crux of this appeal is whether a formal defect would invalidate the bankruptcy proceedings?
3. At the hearing of this appeal we requested learned counsel for the Respondent to submit first.
4. Learned counsel for the Respondent refer to section 131 of the Act which provides:-

“131. Formal defect not to invalidate proceedings.

No proceeding in bankruptcy shall be invalidated by any formal defect or by any irregularity, unless the court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity and that the injustice cannot be remedied by any order of the court.”

5. He then cited two High Court authorities i.e. **Re Arif B. Sionggong; ex parte Arab Malaysian Finance Berhad [1995] 3 MLJ 252** and **Re Liow Fong Mooi; ex parte Malayan Banking Bhd. [2000] 6 MLJ 146**; where Tee Ah Sing JC (as he then was) in the former case and Clement Skinner JC (as he then was) in the latter held that an error in stating the date in which the act of bankruptcy took place was an irregularity only which was remediable under section 131 of the Act as no substantial injustice has been caused by it.
6. Further, it was argued that section 93 (3) of the Act enables the Court at any time to amend any written process or proceeding upon such terms, if any, as it thinks fit to impose.
7. However, learned counsel for the Appellant argued that in **Re Liow's** case supra, there was a formal application made by the Judgment Creditor ("JC") to amend the date of the act of bankruptcy as opposed to the case in the instant appeal where there was none made by the JC. But it was on the learned High Court judge's own volition that he amended the date. It was submitted before us that the learned High Court Judge should not have done so.
8. Before the High court, learned counsel for the JD had argued that the CP was defective and of no legal effect as the date of bankruptcy should have been 7 June 2001 and not 2nd June 2001 as stated in the CP. The learned High Court Judge in reckoning what was the correct date of the act of bankruptcy

found it to be the 7 June 2001 and not 2nd June 2001 as stated in paragraph 4 of the CP (see page 27 of the Appeal Record).

9. However, the learned High Court Judge subscribed to the concurrent views of Tee Ah Sing JC (as he then was) and Clement Skinner JC (as he then was) and disagreed with the decision of Richard Talalla J (as he then was) who held that the effect of the misstatement of the date of the act of bankruptcy was fatal (see **Re Fadzil Bin Othman; ex p Malayan Banking Bhd. [1994] 2 MLJ 474.**

10. Although the learned High Court Judge in the instant appeal was mindful of the statement of the Court of Appeal of Brunei in **Abdul Hamid & Anor v Polynesia Offshore Supplies (M) Bhd [1990] 3 MLJ 94,** which was followed by Syed Ahmad Iddid J (as he then was) in **Re: Pg. Ahmad Bin Pg. Haji Abdullah; Ex parte: Oriental Bank Bhd. [1991] 3 CLJ 2899,** that bankruptcy proceedings are of a quasi-penal nature, and so it is imperative that procedural requirements are strictly complied with, yet his Lordship found there was no substantial injustice caused by the mere misstatement of the date of the act of bankruptcy. We however agree with the view expressed by the Brunei Court of Appeal in the matter.

Conclusion

11. With utmost respect to the learned High Court Judge, we think that the High Court should have followed what was stated by

the Court of Appeal in Abdul Hamid's case, supra, and give effect to section 6 (3) of the Act which provides:-

“6. (3) If the court is not satisfied with the proof of the petitioning creditor's debt or of the act of bankruptcy or of the service of the petition, or is satisfied by the debtor that he is able to pay his debts, or that for other sufficient cause no order ought to be made, the court may dismiss the petition.”

12. On the facts of the instant appeal the learned Judge had found that the date of the act of bankruptcy was wrong, then his Lordship should have allowed the JD's appeal and dismissed the petition.
13. For the above reasons, we allowed this appeal with costs and ordered the deposit to be refunded to the Appellant. The order of the High Court is set aside.

Dated: 18th May, 2009.

Signed.
(DATO' HASHIM BIN DATO' HAJI YUSOFF)
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