

FUZAK M. v BRECKA I.
[The Supreme Court of Mauritius - Court of Civil Appeal]
2018 SCJ 63
SUMMARY

Facts: This is an appeal against a bankruptcy order made by a Learned Judge of the Supreme Court sitting in the bankruptcy division against the Appellant adjudicating him bankrupt as from 10.30 a.m. on the date of the judgment. According to the Respondent's petition, the Appellant was indebted to him in a sum of EUR 200,000 being the amount owed to him under a private loan agreement witnessed by an acknowledgement of debt.

There were initially six grounds of appeal which all summed up to one issue; namely that of the jurisdiction of the Learned Judge. It is the Appellant's contention that having regard to the evidence on record, the learned Judge ought to have referred the parties to the competent Court and should have refrained from adjudicating in bankruptcy on matters which are hotly disputed.

Held: The Court held that a Judge of the Supreme Court sitting in the Bankruptcy Division has jurisdiction to deal with contested issues although there is authority suggesting that the Master, when sitting as Judge in Bankruptcy, should refer the matter to the Supreme Court when the allegations contained in a plea to a petition for a bankruptcy order appear to him to raise a serious defence.

The Court referred to **Section 62(1), (2) and (4) of the Courts Act** and to the case of **Woventex Ltd (in receivership) v Benichou and Ors, Privy Council Appeal No. 27 of 2005**, whereby the Judicial Committee stated the following: "...*But from time to time more complex issues of law and fact will arise in matters within the jurisdiction of the Bankruptcy Division. It appears to their Lordships that the Bankruptcy Division has the means to deal with these exceptional cases, either by arranging for a Judge of the Supreme Court to sit in the Bankruptcy Division, or by referring the matter to one or more judges of the Supreme Court under section 71 of the Courts Act.*" The appeal was dismissed for the following reasons:

1. The petition was heard by a Judge of the Supreme Court sitting in the Bankruptcy Division.
2. The petition was heard not merely on affidavit evidence but also on documentary evidence as well as oral evidence. Moreover, the Learned Judge dealt with all the issues contained in the grounds of appeal.
3. The Learned Judge fully took into account the defence of the Appellant that the alleged loan was paid to a company for the purchase of immovable property but rejected his testimony upon not believing his version which she described as "a last minute defence".
4. The Learned Judge also dealt with the Appellant's contention that the acknowledgement was invalid and null and void due to a lack of cause. The Court of Civil Appeal held that the Learned Judge was generous enough in accepting that the acknowledgement of debt required a "cause" and found that there was indeed a cause stated to be a debt under the Private Loan Agreement.
5. To the Appellant's contention that his wife was the sole director and shareholder of the company and he was the Secretary, the Learned Judge found that the Appellant personally committed himself towards the Respondent both under the Private Loan Agreement and the acknowledgement of debt.

This summary is provided to assist in understanding the Court's decision and does not constitute legal advice. The full judgment of the Court is the only authoritative document.

Short summary

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This is an appeal against a bankruptcy order made by a Learned Judge of the Supreme Court sitting in the bankruptcy division against the Appellant adjudicating him bankrupt. The jurisdiction of the learned Judge was being challenged. The Court held that the Learned Judge had the jurisdiction to make a determination of facts in relation to the bankruptcy petition and the appeal was dismissed.