

2008

NO. 34-J

DEMERARA

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE

CIVIL JURISDICTION

BETWEEN:

GANGADAI RAMRATTAN

Judgment Creditor

-and-

SALIM AZAM

Judgment Debtor

Mr. B. De Santos, S.C., for the Judgment Creditor

Mr. J. Yassin for the Judgement Debtor

DECISION

The Judgment Creditor filed this Judgment Summons on the 9th October 2008 calling upon the Judgment Debtor to show cause why he should not be committed to prison for his contempt of Court for failing to honour a debt owing to the Judgment Creditor, the Judgment Creditor having secured a Court Order, granted by the Honorable Justice Jainarayan Singh on 30th November 2007, for the sum of \$685,000 against the Judgment Debtor in Action No. 26-W of 2007. The said judgment was granted in default of appearance, the Judgment Debtor not having appeared at the hearing of the matter.

A Marshall of the High Court swore to an Affidavit on 18th February 2010 that he served a certified copy of the Order on the Judgment Debtor on 6th November 2008 together with a copy of the Judgment Summons. It is to be noted that the Order was obtained ex-prate and that the Order was never served on the Judgment Debtor until a year later and after the Judgment Summons was filed.

Therefore, it would appear that the Judgment Debtor would not have known that an Order had been granted against him on the 30th November 2007. Had he known of the Order against him I would assume that the Judgment Debtor might or would have taken some steps either towards paying the judgment sum or applying to the Court to have the Order set aside.

However, that not having been done, this Court can only assume from the Affidavit evidence of the Marshall that the first time the Judgment Debtor knew of the Judgment was on the 6th November 2008 after the Judgment Summons was filed and both the Order and the Summons were served on him.

In his Affidavit in Answer the Judgment Debtor denies owing any money to the Judgment Creditor and denies ever having been served with High Court Action No. 26-W of 2007. Instead the Judgment Debtor says that it is the Judgment Creditor who owes him money for work done on her property.

The Judgment Debtor also states that he intends to file an action to have the said Judgment rescinded but has not done so to date. However, I am only called upon to decide whether the Judgment Debtor is in contempt of the Order, and not the merits of the judgment.

Evidence was given in this matter and witnesses were called. In his evidence the Judgment Debtor admits that he did work on the Judgment Creditor's house and charged \$360,000 which was never paid although he had done the work required. The Judgment Creditor said the sum claimed had been paid to the Judgment Debtor as an advance to do the work which was not done, but no evidence was forthcoming from either witness as to what the arrangement or agreement was. The Judgment Debtor also said he was served with the Order of Court. However, there is some confusion as to the date when the Court Order was served so I will have to rely on the Marshall's evidence that he

served the Order on the 6th November 2008 after the Judgment Summons was filed.

From the evidence given in Court, I am of the opinion that the Judgment Debtor owes the said sum of \$685,000 to the Judgment Creditor, no evidence having been adduced to show otherwise. I do not believe the Judgment Debtor when he says he does not owe any money to the Judgment Creditor or else he would have taken action to set aside the judgment. He cannot seek to do so in this hearing, which is only to decide whether the Judgment Debtor should be found guilty of contempt in disobeying the Court Order and if so whether he should be committed to prison.

I find on the evidence of the Power of Attorney for the Judgment Creditor that no money was paid towards repaying the debt which is still outstanding. I also find that the Judgment Debtor has done several jobs since the Order was served on him. However what I cannot ascertain from the evidence is how much the Judgment Debtor earns and how often he works and the level of work he does. He denies that he does any work, because he suffers from several ailments and that he has no tools to work with. He claims that the Judgment Creditor kept his tools. The evidence of the witness is that she has seen him working various places over the years but these times were few and far between. However, I do believe that the Judgment Debtor does work whenever he gets work and has been avoiding repaying the debt and is therefore in contempt of Court.

I have now to decide whether the Judgment Debtor should be committed to prison for failing to repay the debt. In **Gordon v Gordon** 1946 1 AER 247 Lord Greene stated at page 250:

“Attachment and committal are very technical matters, and as orders for committal and attachment affect the liberty of the subject such rules as exist in relation to them must be strictly obeyed. However

disobedient the part against whom the order is directed may be, unless the process of committal and attachment have been carried out strictly in accordance with the rules he is entitled to his freedom”.

Order 35 Rule 5 of the High Court Rules, Cap. 3:02, states as follows:

“Every judgment or order made in any cause or matter requiring any person to do an act thereby ordered shall state the time, or the time after service of the judgment or order within which the act is to be done, and upon the copy of the judgment or order which shall be served upon the person required to obey the same there shall be endorsed a memorandum in the words or to the effect following:

“If you, the within-named A.B. neglect to obey this judgment (or order) by the time therein limited, you will be liable to process of execution for the purpose of compelling you to obey the same judgment (or order).”

The salient points to note in this section are the words underlined above “requiring any person to do an act” and “shall state the time within which the act is to be done”

I have observed that there was no penal notice endorsed on the Order. I also note that the Judgment Debtor had not been called upon to pay the debt since the order did not state a time within which the debt was to be repaid..

In Ramdat Sookraj v Comptroller of Customs (1992) 48 WIR 163

Chancellor George said at page 174:

“The other irregularity concerns the failure to indorse the penal admonition on the order, which is one that requires the doing of something as a requirement of Order 35 Rule 5. Here again I agree with the Full Court that this omission was a fatal objection to the Appellant’s quest for an order for committal or attachment (see *Hampden v Wallis* (1884) 26 Ch D 746) for it cannot be over-emphasised that, in proceedings for contempt or attachment,

every rule should be scrupulously observed (see *Townend v Townend* (1907) P 239.”

The Penal notice not having been endorsed on the order then the Judgment Creditor cannot succeed in her request that the Judgment Debtor be committed to prison. Neither did the order state a time within which the payment was to be made. A judgment which merely states that the plaintiff do recover against the defendant a particular sum cannot be enforced by committal or sequestration.

Halsbury’s Laws of England , Fourth Edition Re Issue Vol. 9 (1) at page 299 paragraph 484 states:

“When a judgment is merely that a plaintiff do recover against the defendant a sum of money, it cannot be enforced by committal or sequestration, even if the debt is one in respect of which imprisonment for the debt has not been abolished.”

In this case the order had no limit or time for payment and or specification of the period for payment. The order in this case provided that there be judgment for the plaintiff in the sum of \$685,000 together with interest at the rate of 6% per annum and thereafter at the rate of 4% per annum until fully paid and costs.

Furthermore the fact that the Judgment Debtor has not paid the Judgment sum does not amount to an admission that he is in contempt of the order. In **Ramdat Sookraj v Comptroller of Customs (supra)** at page 168 it is stated:

“The fact that a party admits that he has not complied with a mandatory order of court that has been made against him, does not amount to an admission that must necessarily result in punishment for contempt or in an order for attachment”.

Thus a bare declaration of a judgment in favour of the plaintiff could not result in a finding of contempt. In **Borrie & Lowe, The Law of Contempt**, 3rd. edition, at page 647 it was stated by the learned author that:

“The High Court can suspend any order of committal on the terms that the debtor pays to the Judgment Creditor the amount due at a specified time or by instalments.”

In the circumstances, I find that the Judgment Creditor has not complied strictly with the rules in relation to orders for committal, and therefore I find that the Judgment Debtor cannot be imprisoned for his contempt of Court. However, I am of the view that the order of court is still enforceable and the judgment debt is still a valid judgment and I hereby order that the Judgment Debtor do repay the judgment debt within six months of the date of this order, failing which the judgment debtor is to be committed to prison for a period of 21 days. No order as to costs.

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Diana F. Insanally

Puisne Judge

Dated this 14th day of April 2010.