

SAINT AUBIN LIMITEE v THE MAURITIUS COMMERCIAL BANK LTD

2020 SCJ 267

Record No. 1589

THE SUPREME COURT OF MAURITIUS

(Court of Civil Appeal)

In the matter of:-

Saint Aubin Limitée

Appellant

v

The Mauritius Commercial Bank Ltd

Respondent

JUDGMENT

This is an appeal against an Order, dated 20 September 2019, of the learned Judge sitting in the Bankruptcy Division of the Supreme Court. The learned Judge granted the Order, pursuant to section 186(1)(a) of the Insolvency Act, appointing Mr Mushtaq Oosman and Mr Anjeev Hurry as joint Receivers and Managers of the appellant as follows:

“Subject to the condition that whatever powers a receiver may have under the Insolvency Act with regard to the realization or distribution of assets of the company shall in the meantime be stayed, I appoint Mr Mushtaq Oosman and Mr Anjeev Hurry as joint Receivers and Managers of Saint Aubin Limitee [The Company], in whom shall be vested the administration and possession of the assets of The Company, with the following specific mandate -

- (i) to take possession of and protect the assets of Saint Aubin and those of its subsidiaries;*

The respondent (then applicant) made the application *ex parte* for the appointment of a receiver and manager pursuant to section 186(1)(a) of the Insolvency Act. Section 186(1)(a) of the Insolvency Act stipulates as follows -

“186. Appointment of receiver by Court

(1) The Court may appoint a receiver or a receiver and manager on the application of a chargee or of any other interested person and on notice to the company, where the Court is satisfied that -

(a) the company has failed to pay a debt due to the chargee or has otherwise failed to meet any obligation to the chargee, or that any principal money borrowed by the company or interest is in arrears for more than 21 days;”

At the hearing of the appeal, learned counsel for respondent informed us that he is not supporting the judgment since the learned Judge was wrong in law to have granted the application *ex parte* pursuant to section 186(1)(a) of the Insolvency Act, as contended by the appellant.

Counsel for respondent has moved that the matter be remitted to the Court below for the case to proceed in conformity with section 186(1)(a) of the Insolvency Act. Counsel for appellant has no objection to the motion provided that the matter be heard by a differently constituted Bench.

We agree that the said Order cannot stand for the reason that section 186(1)(a) of the Insolvency Act requires that where there is an application to appoint a receiver to a company by the Court, the company, of which a receiver is to be appointed, has to be given notice of the application. The learned Judge erred when she proceeded to consider the application *ex parte* since the appellant was not given any notice of the application.

We, therefore, allow the appeal, quash the Order made by the Court on 20 September 2019 and remit the matter to be heard by a differently constituted Bench of the Bankruptcy Division.

The respondent shall bear the costs of the appeal.

**A. Caunhye
Chief Justice**

**C. Green Jokhoo
Judge**

26 October 2020

Judgment delivered by Hon. C. Green Jokhoo, Judge

**For Appellant : Mrs U. Boolell, SC
Mrs F. Maudarbocus-Moolna, SA**

**For Respondent : Mr M. Sauzier, SC together with Ms N. Behary Panray,
of Counsel
Mr T. Koenig, SA**