

SUPREME COURT OF SEYCHELLES

Reportable
[2022] SCSC
CM 10/2021

In the matter between:

SEYCHELLES COMMERCIAL BANK LTD
(rep. by Alexandra Benoiton)

Execution Creditor

and

FAIZ MUBARAK ALI
(rep. by Alexia Amesbury)

Execution Debtor

Neutral Citation: *Seychelles Commercial Bank v Mubarak Ali* (CM 10/2021) [2022] SCSC
(29 September 2022).

Before: Burhan J
Summary: Judicial Sale / Adjudication of Property
Heard: 14 September 2022
Delivered: 29 September 2022

ORDER

I proceed to dismiss all the objections and proceed to adjudicate the property to the execution creditor Seychelles Commercial Bank Ltd.

RULING

BURHAN J

[1] On the 14th September 2022, a judicial sale under section 23 of the Immovable Property (Judicial Sales) Act (the Act) proceeded pursuant to a reading of the Memorandum of Charges, Clauses and Conditions (Memorandum) on the 3rd May 2022 in open court, for

the sale of land under title number J1807 (the property) owned by execution debtor, Mr Mubarak Ali.

- [2] After reading of the Memorandum the matter was fixed for sale for the 22nd June 2022. However on that day the sale had to be adjourned as the taxed costs of sale was not ready and as learned Counsel for the execution creditor Ms Alexandra Benoiton moved for an adjournment as there was a possibility of the land being sold to interested parties. The sale was thereafter fixed for the 14th September 2022.
- [3] On the 14th September 2022 the day of sale, the Court first ascertained if all the formalities required by the law were complied with by the execution creditor Seychelles Commercial Bank Ltd. The taxed costs of sale was announced as SCR 32,096. The Court also observed that since the earlier date of sale was postponed on the 22nd June 2022 publications had been made on the 1st July 2022 in the gazette and in a newspaper on the 4th July 2022. Thereafter again a publication had been made on the 19th August 2022 in the Gazette and 29th August 2022 in a newspaper.
- [4] With this, the execution creditor had complied with section 31 of the Act and filed proof of same as required under section 226 of the Act. Further the bill for taxed costs of sale was filed on the 1st September 2022 and the taxed costs of sale amounting to Seychelles 32,096 as prepared by the Registrar was read out in open court. Under section 32 of the Act the bill of cost of sale should be filed at least 24 hours before the sale. The execution creditor filed the bill for taxed costs of sale with the Registry on the 1st September 2022. There were no objections in respect of time limit at the time the taxed costs of sale was read out in open court.
- [5] Having gone through the above, the Court proceeded to ascertain the *mise a prix* which was confirmed by the counsel for the execution creditor, Ms Alexandra Benoiton to be at SCR 6,400,000. As such, the Court proceeded to open the bidding from SCR 6,400,000. It is to be noted that there were no objections of the said *mise a prix* or in respect of any of the documents before the bidding commenced.

- [6] The Court opened the bidding and there were no bidders. What would ensue next is adjudicating the property in favour of the execution creditor. This is in accordance with section 39 of the Act which provides that if the *mise a prix* is not covered, as was the case in this instance, the property must be adjudicated to the execution creditor.
- [7] However before the Court could act in accordance with section 39 of the Act and adjudicate in favour of the execution creditor, an objection was raised by attorney-at-law Mr Pesi Pardiwalla, learned Counsel for Mauritius Commercial Bank (MCB). It was his contention that in adjudicating the property at SCR 6,400,000 in favour of the execution creditor was improper given that the debt owed towards the same was less than the *mise a prix*. Mr Pardiwalla submitted that his client, MCB, is the second line mortgage for the sum of SCR 700,000, and a sum of SCR 563,238.94 still remained outstanding to be paid off by the execution debtor. According to learned Counsel Mr Pardiwalla, there was an agreement between his client and the execution creditor where the latter implored that no objection be raised against the sale and a higher *mise a prix* would be put to then cover MCB as the second line creditor and there would be sale of the property to a bidder and the amount owed to the MCB could be recovered. However, in view of the fact that there were no bidders for the property, and in accordance with section 39 of the Act, it is the contention of Mr Pardiwalla that the property will be adjudicated to the execution creditor, the effect of which is detrimental to MCB. As such, Mr Pardiwalla asked this Court to oversee an undertaking from the execution creditor that the excess sum above the debt owed is paid to MCB.
- [8] Mr Pardiwalla is essentially objecting to the *mise a prix* on the premise that the execution creditor ought to have put the price of SCR 5,400,000 the money owed to the execution creditor. In the same vein, Mr Pardiwalla for MCB a second line creditor asks this Court to intervene, to ensure the agreement between his client and the execution creditor is upheld, should the property be adjudicated in accordance with section 39 of the Act.
- [9] Another objection against the *mise a prix* was by attorney-at-law Mrs Alexia Amesbury who stated that the market value of the land is SCR 8,500,000 and therefore the *mise a prix* should not be SCR 6,400,000 in this instance case.

- [10] In addition to the above, Mr Pardiwalla challenges the taxed bill of cost in respect of when it was filed. Mr Pardiwalla questioned whether the bill was in fact filed at least twenty-four hours before the sale and adjudication. It is the view of this Court that such objection should have been taken at the time the taxed costs of sale was read out prior to bidding commencing. Mr. Pardiwalla remained silent at this crucial time.
- [11] What is clear to this Court is that there was an agreement between the two banks, that is Seychelles Commercial Bank Ltd the execution creditor, and MCB a second line creditor of the execution debtor. As stated earlier it is to be noted that the Court was and is not privy to this agreement.
- [12] The law on objecting against a *mise a prix* is clear. To begin, the law provides that where the creditor deposits a memorandum of charges in accordance with section 21 of the Act, a notice of the same must be effected on the execution debtor and inscribed creditors (sections 22 and 23 of the Act respectively). Subsequently, the memorandum of charges is read before a judge as provided by section 29 of the Act.
- [13] Subsequent to the reading of the memorandum of charges if any rectification or amendment is necessary and to be made the procedure to be adopted is laid out in section 30 of the Act. It states that such application for rectification or amendment must be made by petition at least 21 days previous to the date of sale. This has not been done either by Mr Pardiwalla or Mrs Amesbury. Such objections if made belatedly should have followed the procedure also set out in section 30 of the Act.
- [14] In terms of Mr Pardiwalla's submissions and objections after the sale was closed, it is clear to this Court that the parties had an agreement in respect of sharing the proceeds of the property. It is for this reason that Mr. Pardiwalla was silent. Evidently, there has been a hiccup to such an arrangement owing to there being no bidder and thus the property having to be adjudicated to the execution creditor and thereafter the somewhat belated objections began to come in fast due to the fall out in the agreement between the banks.
- [15] It is not for this Court to also make the present sale and adjudication a proceeding of ordering the compliance of an agreement between the parties. The parties have recourse

under the law to enforce such an agreement between them, written or otherwise, and it is not for this Court in this instance to make any determination or call for any undertaking in respect of the said agreement.

[16] I therefore proceed to dismiss all the objections and proceed to adjudicate the property to the execution creditor Seychelles Commercial Bank Ltd.

[17] Judgment of Adjudication to be delivered on 11th October 2022 at 2.00 pm.

Signed, dated and delivered at Ile du Port on 29 September 2022

Burhan J