

No. S 86

CONSTITUTION OF BRUNEI DARUSSALAM

(Order under section 83(3))

DEBTORS ORDER, 2000

In exercise of the power conferred by subsection (3) of section 83 of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order —

Citation, commencement and long title.

1. (1) This Order may be cited as the Debtors Order, 2000 and shall commence on the 16th. October, 2000.

(2) The long title of this Order is "An Order relating to Debtor".

Interpretation.

2. In this Order, unless the context otherwise requires —

"court" means the High Court, an Intermediate Court or a subordinate court;

"judge" means a judge of a court;

"judgment" includes any order for the payment of money.

PART I

ARREST, EXAMINATION AND IMPRISONMENT OF JUDGMENT DEBTORS

Arrest of judgment debtor.

3. Where a judgment for the payment of money remains wholly or in part unsatisfied, whether a writ of execution has been issued or not, the court or a judge may order the debtor to be arrested and brought before the court forthwith for examination as hereinafter provided, if it appears to the court or judge that there is probable reason for believing, having regard to his conduct, or the state of his affairs, or otherwise, that he is likely to leave Brunei Darussalam with a view to avoiding payment of such money or to avoiding examination in respect of his affairs.

Examination of debtor.

4. (1) The examination referred to in section 3 shall be an oral examination of the debtor before the court respecting his ability to pay or satisfy the judgment or so much thereof as remains due, and shall be conducted in the manner and subject to any rules for the time being prescribed for the examination of a debtor by way of discovery in aid of execution.

(2) If the examination is adjourned, the court may order the debtor to be committed to a civil prison until the adjourned hearing, or until such time as he furnishes security in an amount to be named in the order for his appearance at the adjourned hearing.

Interim order for protection of debtor's property.

5. The court may, upon an examination under this Part, make any interim order which it may consider expedient for the protection of any property appearing likely to be available for the discharge of the judgment debt.

Powers of court on examination.

6. (1) On the conclusion of the examination, the court may commit the debtor to a civil prison for a term which may extend to 6 weeks or until earlier payment of the judgment debt, or may order that the judgment debt be paid by instalments of such amount and at such times as it thinks fit.

(2) Subject to any rules of court made under or having effect by virtue of the Supreme Court Act (Chapter 5), an order for the payment of instalments under this section shall not be a bar to proceedings in execution unless and except to the extent that the court so directs.

(3) If the debtor makes default in the payment of any instalment ordered to be paid, the judgment creditor may apply in such manner as may be prescribed by rules of court made under or having effect by virtue of the Supreme Court Act (Chapter 5) for a notice in the prescribed form, to be issued from the court office, calling upon the debtor to attend before the court at a day and time therein mentioned, and to show cause why he should not be committed to prison for such default and may cause such notice to be served personally upon him; and if on the day and time so mentioned or any subsequent day and time to which the matter may be adjourned, no sufficient cause is shown by the debtor, the court may commit him to a civil prison for a term which may extend to 6 weeks or until earlier payment of any instalment due.

(4) A debtor shall not be committed to prison under this section unless it appears that he has, since the date of the judgment or of the order directing payment by instalments, had sufficient means to pay the judgment or comply with the order, as the case may be.

Rules.

7. Rules of court may be made under the Supreme Court Act (Chapter 5) for the following purposes —

- (a) for requiring the deposit, by the person at whose instance any order for arrest or imprisonment is issued, of a sum of money to provide for the expense of bringing the debtor before the court and the subsistence of the debtor while in prison; and
- (b) regulating any matter incidental to such deposit.

Arrest or commitment to be dependent on deposit of expenses.

8. (1) Where under any rules of court the judgment creditor is required to deposit money to provide for the expense of bringing the debtor before the court, the debtor shall not be arrested until such deposit has been made; and where the judgment creditor is required to deposit money to provide for the subsistence of the debtor while in prison, the order for committal shall not be executed until such deposit has been made.

(2) Where any further deposit is required during any period of imprisonment under this Part, the court or a judge may, if such deposit is not duly made, order that the debtor be discharged from prison.

Expenses to be judgment debt.

9. Unless in any case the court otherwise orders, the costs and expenses of and incidental to the arrest and imprisonment of any judgment debtor under this Order shall be added to the judgment debt and be recoverable accordingly.

Commitment of defaulting trustee, etc.

10. (1) Where the court is satisfied that there has been default by a trustee or other person acting in a fiduciary capacity in payment into court of any sum in his possession or under his control, the court may commit such trustee or other person to prison for a term which may extend to 6 months:

Provided that no such committal shall be ordered if it appears to the court that the trustee or other person has acted innocently in the matter.

(2) Upon payment of the amount due, the trustee or other person shall be immediately released.

Discharge or suspension of order.

11. The court or a judge may discharge or vary any order made under this Part, or may suspend its operation.

Imprisonment not to operate as satisfaction.

12. No imprisonment under this Order shall operate to satisfy or extinguish any debt, or deprive any person of any right to issue execution against the property of the debtor.

PART II

ARREST BEFORE JUDGMENT

Where defendant may be required to furnish security for appearance.

13. (1) If at any stage of any action, other than an action for the possession of immovable property, against a defendant who carries on business or ordinarily resides within the jurisdiction, the plaintiff satisfies the court or a judge by evidence upon oath that he has a good cause of action against the defendant, and that the defendant, with intent to prejudice the plaintiff, or to avoid any process of the court, or to obstruct or delay the execution of any judgment that may be made against him —

- (a) has absconded or left Brunei Darussalam;
- (b) is about to abscond or leave Brunei Darussalam; or
- (c) has disposed of or removed from Brunei Darussalam his property or any part thereof, the court or judge may issue an order to arrest the defendant and bring him before the court or a judge to show cause why he should not furnish security for his appearance:

Provided that the defendant shall not be arrested if he pays to the officer entrusted with the execution of the order any sum specified in the order as sufficient to satisfy the plaintiff's claim. Such sum shall be held in deposit by the court until the action is disposed of or until further order.

(2) Where the defendant fails to show such cause, the court or judge shall order him either to deposit in court money or other property sufficient to answer the claim against him or to furnish security for his appearance at any time when called upon while the action is pending and until satisfaction of any order that may be made against him in the action, or shall make such order as it or he thinks fit with regard to any sum which may have been paid by the defendant under the proviso to subsection (1).

(3) Every surety for the appearance of a defendant shall bind himself to pay, in default of such appearance, any sum of money which the defendant may be ordered to pay in the action.

Procedure on application by surety to be discharged.

14. (1) A surety for the appearance of a defendant may at any time apply to the court or a judge to be discharged from his obligation and on such application the court or a judge shall summon the defendant to appear, or may issue an order for his arrest.

(2) On the appearance of a defendant pursuant to any such summons or order, the court or judge shall discharge the surety from his obligation and call upon the defendant to furnish fresh security.

Procedure where defendant fails to furnish security or to find fresh security.

15. (1) Where the defendant fails to comply with an order under section 13 or 14, the court or a judge may order that he be detained in a civil prison until the disposal of the action.

(2) No person shall be detained in prison under this section —

(a) after he has complied with such order; or

(b) in any other case, for a longer period than 6 weeks.

Application by defendant.

16. A defendant may, at any time after his arrest, apply to the court or a judge to rescind or vary the order, or discharge him from custody, and the court or a judge may make such order as seems just.

PART III

ATTACHMENT OF PROPERTY BEFORE JUDGMENT

Seizure of property before judgment.

17. (1) If it is shown to the satisfaction of the court or a judge, at any time after the issue of a writ of summons, or summons, by evidence on oath, that the plaintiff has a good cause of action against the defendant, and that —

(a) the defendant is absent from Brunei Darussalam and his whereabouts cannot be discovered;

- (b) service of the writ of summons or summons cannot without great delay or difficulty be effected; or
- (c) the defendant, with intent to obstruct or delay the execution of any judgment which has been or may be made against him, has removed, is about to remove, has concealed, is concealing, making away with, or handing over to any other person, any of his movable or immovable property,

the court or judge may order that the property of the defendant, or any part thereof, be forthwith seized by the sheriff as a pledge or surety to answer the claim of the plaintiff, until the trial of the action and satisfaction of any judgment that may be made against the defendant; but such order shall not constitute the plaintiff a secured creditor if the defendant is adjudicated bankrupt:

Provided that any property of the defendant, if in the custody of any public officer or any member of any visiting forces lawfully present in Brunei Darussalam, in his official capacity, shall be seized only with the consent in writing of the Attorney General.

(2) In case land is subsequently seized in execution in satisfaction of judgment in the action, the order of court registered under this section pursuant to such seizure shall have priority as though it had been registered upon the date on which the order was made.

Court may release property.

18. The court or a judge may at any time, on reasonable cause being shown and upon such terms, if any, as to security or otherwise as seem just, release the property seized and order any movable property to be returned.

Order for sale of perishable goods.

19. The court or a judge may, at any time pending the trial of the action, order the sale of any property seized under this Part which is of a perishable nature, or which for any other reason it is desirable to sell without delay, and direct the proceeds of such sale to be retained by the sheriff or paid into court pending the trial of the action.

Property liable to execution.

20. Any property so seized, or the proceeds of sale thereof, shall be liable to execution in satisfaction of any judgment in the action against the defendant; but it shall be subject to the prior claims of any judgment creditor whose judgment was obtained within one year before the seizure thereof under this Part if that

judgment creditor had issued execution against the defendant's property before the making of any order under this Part.

PART IV

COMPENSATION FOR IMPROPER ARREST OR ATTACHMENT

Compensation for improper arrest or attachment.

21. (1) If at any subsequent stage of an action in which an order for arrest or attachment of property has been made under this Order it appears to the court that such arrest or attachment was applied for on insufficient grounds, or if the plaintiff's claim is dismissed and it appears to the court that there were no sufficient grounds for instituting the action, the court may, on the application of the defendant, award against the plaintiff such amount, not exceeding \$5,000, as it thinks reasonable to compensate the defendant for any injury or inconvenience caused to him by the arrest or attachment.

(2) An award under this section shall bar any action for damages, but nothing in this section shall preclude the defendant from maintaining an action for damages instead of applying for an award under subsection (1).

PART V

FRAUDULENT DEBTORS

Debts incurred by fraud.

22. Where a debtor makes any arrangement or composition with his creditors, he shall remain liable for the unpaid balance of any debt which he incurred or increased by any fraud, or for which before the date of the arrangement or composition he obtained forbearance by any fraud, provided the defrauded creditor has not assented to the arrangement or composition otherwise than by proving his debt and accepting dividends.

Penalty for fraudulently obtaining credit, etc.

23. Any person shall in each of the following cases be guilty of an offence and liable on conviction to imprisonment for a term not exceeding one year, a fine or both —

- (a) if in incurring any debt or liability he has obtained credit under false pretences or by means of any other fraud;

- (b) if he has, with intent to defraud his creditors or any of them, made or caused to be made any gift, delivery or transfer of or any charge on his property; or
- (c) if he has, with intent to defraud his creditors or any of them, concealed or removed any part of his property of any unsatisfied judgment or order for payment of money obtained against him.

PART VI

REPEALS

Repeals.

24. All statutes of general application of England, dealing with debtors so far as they are in force in Brunei Darussalam by virtue of section 2 of the Application of Laws Act (Chapter 2) are hereby repealed and shall cease to apply to Brunei Darussalam, but without prejudice to anything done thereunder before the date of commencement of this Order.

Made this 18th. day of Rejab, 1421 Hijriah corresponding to the 16th. day of October, 2000 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM