

**DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR
DI WILAYAH PERSEKUTUAN, MALAYSIA
(BAHAGIAN PELAKSANAAN)
NO. PELAKSANAAN: WA-37G-51-03/2022**

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ANTARA

SHAHIZAN BIN HASNAN
(No.K/P: 670918-05-5391)

...PEMIUTANG PENGHAKIMAN

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DAN

1 NAHZATUL AIN BINTI MOHD KHALID
(No.K/P:731103-01-5942)

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2 MUHAMMAD IQBAL BIN SAINY
(No.K/P:830703-14-5963)

3 MALANIA BINTI MATUYA
(No.K/P:661022-12-5292)

... PENGHUTANG PENGHAKIMAN

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DAN

MAYBANK ISLAMIC BERHAD
(No. Syarikat: 787435-M)

...PIHAK YANG DIGARNIS

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JUDGMENT
(Enclosure 23)

INTRODUCTION

[1] The plaintiff/appellant (P/appellant) appealed (Notice of Appeal - enclosure 23), against the decision of the learned Senior Assistant Registrar (SAR) dated 05.09.2020, dismissing the P/appellant's Notice of Application in enclosure 1 for Garnishment with costs of RM150.00.

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[2] On 06.03.2022, after duly considering the cause papers and submissions by the respective learned counsels, I found no appealable error in the learned SAR's decision. Consequently, I found that appellate intervention was not warranted and dismissed enclosure 23 with costs of RM3,000.00 against the P/appellant, payable within 14 days. Dissatisfied, he filed this appeal, and my reasons are as follows:

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BRIEF FACTS

40 **[3]** The facts, in brief, are as follows:

3.1 On 09.04.2021, the P/appellant filed an OS: WA-24NCvC-737-04/2021 against the defendants/respondent (Ds/respondent). On 21.02.2022, before Justice Dt Rozana Ali Yusoff, the P/appellant obtained a judgment against the Ds/respondents, the said Order
45 reads:

“MAKA ADALAH DIPERINTAHKAN seperti berikut:-

- 1) *Bahawa suatu Perintah Perlaksanaan Spesifik mengarahkan Defendan-Defendan secara berasingan dan/atau bersama untuk melepaskan baki wang Pembelian sebanyak RM3,368,144.00
50 kepada Plaintiff dalam masa empat belas (14) hari dari tarikh Perintah di sini;*
- 2) *Kadar faedah 5% ke atas baki wang Pembelian dari tarikh penghakiman sehingga penyelesaian penuh; dan*
- 3) *Kos sebanyak RM 5,000.00 dibayar oleh Defendan-Defendan
55 kepada Plaintiff.”*

3.2 On 28.03.2022, the P/appellant filed the present writ of execution (WA-37G-51-03/2022) to enforce the said Order under O.49 r.1 and r.2 Rules of Court 2012 (RC 2012) for a garnishment.

60 3.3 On 05.09.2022, the learned SAR, having perused the cause papers, submissions by the learned counsels and the said Order, found that the P/appellant mode of enforcement against the Ds/respondents was not by an appropriate or reasonable enforcement consonant with the said Order and dismissed it accordingly. Dissatisfied, the P/appellant
65 appealed in enclosure 23 for appellate intervention.



THE PARTIES ARGUMENTS ON ENCLOSURE 23

[4] The parties argued as follows:

70 4.1 This appeal is determined under O.56 RC 2012 as a rehearing of the garnishee proceeding before the learned SAR that led to her impugned decision on 05.09.2022: **Seloga Jaya Sdn Bhd v pembinaan Keng Ting (Sabah) Sdn Bhd [1994] 2 CLJ 716, SC.**

75 4.2 The P/appellant submitted that there is no dispute that the said Order, granted the appellant an Order that the defendants, who are solicitors/partners in the legal firm of Messrs Khalid, Iqbal & Associates, are (1) by Specific Performance ordered to jointly or severally release the balance purchase price of RM3,368,144.00 to the
80 appellant within 14 days from the date of the Order, (2) with 5% interests until full realization, and (3) costs of RM5,000. The P/appellant further submitted that no appeal had been lodged against this said Order. It is a trite position that, in law, would make it a final and binding Order of the parties.

85 4.3 The money arises from a property sale and purchase transaction involving the said legal firm of Messrs Khalid, Iqbal & Associates.

[5] The parties further argued, as follows:

90 5.1 The P/appellant believed:

5.1.1 The said Order was a monetary judgment against the Ds/respondents. After the service of the said Order, the Ds/respondents persisted in refusing to obey the said Order forcing the P/appellant to take execution proceedings to
95 enforce the Order via O.49 r.1 RC 2012 for Garnishment.



5.1.2 In contrast, the Ds/respondents argued that such belief is untenable in the circumstances of the facts before the Court;

(a) The said impugned Order stated clearly that the Ds/respondents are specifically ordered to release the sum of RM3,368,144.00 within 14 days of the Order.

(b) That cannot make it a monetary judgment as such. It was an order to compel the Ds/respondents to release the sum paid into the legal firm's account of the Messers Khalid, Iqabal & Associates.

(c) The Ds/respondents are solicitors/partners and the said impugned Order seek to compel the release of the monies.

(d) It cannot be extended to the personal accounts of Ds/respondents. Otherwise, it would cause injustice to the Ds/respondents.

(e) D1, in several affidavits, stated that she was the only one handling the monetary transaction, unknown to D2 and D3.

(f) Not a monetary judgment, but a Specific Performance Order, this garnishment proceeding is inconsistent with O.45 r.1 RC 2012 (enforcement for recovery on money), but must accord with O.45 r.5, r.6 and r.8 RC 2012 (an Order compelling performance).

(g) In light of the circumstances, there is no monetary judgment against the Ds/respondents and will not accord with the intent of O.49 r.1 RC 2012. In **Malaysian International Trading Corporation Sdn Bhd v RHB Bank Berhad [2016] MLJU 13, FC** held that O.49 r.1 entitles a successful judgment creditor to enforce a monetary judgment.

(h) In **Cheah Tjeng Siong v Lim Sin Oo & Ors [1991] 3 MLJ 38, HC** in setting aside a bankruptcy notice, it ruled that if a defendant fails to comply with the performance of an Order for completion, the plaintiff cannot immediately proceed to execution, but must firstly apply for a further Order compelling the defendant to comply.



130 (i) It is trite that when the wrong mode of proceeding is used,
the Court has the inherent power to strike it out. The
P/appellant action is unsustainable nor is it tenable.

135 5.2 The P/appellant argued that Specific Performance Order can be
enforced through Garnishment proceeding under O.49 r.1 RC 2012.
He argued that the legal position should be construed widely and not
exclude Specific Performance Orders. There is no such restriction.
Otherwise, it would render the said Order futile in denying the
P/appellant the fruits of his litigation, citing:

140 **Dato' Abu Hasan Bin Sarif v Dato' Dr Abd Isa Bin Ismail [2012] 2
MLJ 429, FC; Re Mammoth Empire Land Sdn Bhd (wound up)
(liquidators appointed) (Lotus profit Sdn Bhd, applicant) (Heng
Hua Piang & Ors, petitioners) [2022] MLJU 3030, HC.**

145 5.3 To my mind, the P/appellant arguments that the said Order constitutes
a monetary judgment per-se, is not probable because:

5.3.1 In the foregoing circumstances, the manner the said Order was
drawn generates a contrary position.

150 5.3.2 The terms of the said Order were spelt out with sufficient clarity
that the Ds/respondents (solicitors/partners in the legal firm of
Messers Khalid, Iqabal & Associates) were explicitly ordered to
release the sale and purchase price.

155 5.3.3 That rendered the said Order to be one that had compelled a
performance on the part of the Ds/respondent to release the
balance purchase price within 14 days from the date of the
Order.

5.3.4 In that circumstance, it cannot be read in any other way by the
P/appellant in support of his garnishment proceeding.

160 5.3.5 As such, it is not a monetary judgment to qualify enforcement
under O.45 r.1 (b) and O.49, r.1(a) RC 2012. The Order would
be consonant with O.45 r.1(c) RC 2012:



O.45 RC 2012:

(1) *Subject to the provisions of these Rules, a judgment or Order for the payment of money, not being a judgment or Order for the payment of money into Court, may be enforced by one or more of the following means:*

(a) *a writ of seizure and sale;*

(b) *garnishee proceedings;*

(c) *in a case in which rule 5 applies, an order of committal.*

(1A)

(2)

(2A)

(3)

(4)

5.3.6 There are conflicting authorities on whether an order for a committal may enforce a judgment to recover money from a person. **Hong Kwi Seong v Ganad Media Sdn Bhd (and another appeal) [2012] 6 AMR 221; [2012] MLJU 845; [2013] 2 MLJ 251, CA**, held that a monetary judgment might be enforced by way of committal. The HC in **Khoo Peng Lai v Tan Ah Hin & Ors [2017] AMEJ 1753; [2017] MLJU 2179** observed that the Singapore Court of Appeal in **Mok Kah Hong v Zheng Zhuan Yao [2016] SGCA 8** preferred the view pronounced in Hong Kwi Seong, and suggested that "a distinction ought to be drawn between a judgment or order for the payment of money within a specified time, to which an order of committal is available as a mode of enforcement, and a judgment or order for the payment of money simpliciter without a specified time-frame, to which an order of committal will not be available".

5.3.7 O.45 r.5 RC 2012 provides for enforcement of judgment to do or abstain from doing an act. O.45, r.5(b)(A) with sufficient clarity provides that if a person disobeys a judgment or Order requiring him to abstain from doing an act, then, subject to these Rules, an order of committal may enforce the judgment or Order. Commencing a proceeding for committal must result from disobeying a judgment or Order: **Golden Star & Ors v Ling Peek Hoe & Ors [2021] 2 MLJ 257; [2021] 3 CLJ 443, FC**.



200 5.3.8 In the circumstances, the position taken by the P/appellant is untenable. Why the P/appellant settled for such an Order, can only be answered by him. If there was any ambiguity in its terms, a clarification should have been sought to bring it in line with the intent of the suit. These are questions that only the P/appellant can answer.

205 5.3.9 In its current form, I find that the garnishment order will not be in consonant with the terms of the said Order. Resort must be had to O.45, r.1(c), and O.45 r.5(b)(A) RC 2012, for enforcement of the said Order. This ground alone is sufficient to dismiss the Garnishment proceeding.

210 **[6] Believing the said Order to be a monetary judgment:**

215 6.1 The P/appellant proceeded with enclosure 1 for Garnishment, which was allowed by the Court on 20.5.2022 (ex-parte) and a Show Cause Order was granted (for inter parte hearing). The Ds/respondents have a right to attend the hearing to contest why the Garnishee Order Nisi should not be made absolute, citing **Pernas Trading Sdn Bhd v Senali Construction Works Sdn Bhd & Anor [1991] 3 CLJ 439, HC.**

220 6.2 In opposing this Garnishment, that it is inconsistent with the rules of the Court, the Ds/respondents cited:

Hong Kong & Shanghai Banking Corp v Goh Su Liat (Telecommunication Authority of Singapore, Garnishee) **[1986] 2 MLJ 86, HC; Ceder Trading Sdn Bhd v Dong Ah Construction Industrial Co Ltd** (SCB, Garnishee) **[1999] 5 MLJ 65:**

225 The Court is empowered with an inherent jurisdiction to hear arguments to set aside a garnishee order where the facts warrant it, and I am persuaded that there are circumstances that call for it in the present case.



230 **[7]** The P/appellant submitted that:

7.1 Order to Show Cause was served:

(a) Garnishee (Maybank Islamic Berhad): 30.5.2022.

(b) D1: 21.6.2022; and

(c) D2 & D3: 21.6.2022.

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7.2 Citing O.49, r.3(1) RC 2012: The Order to Show Cause must be served at least 7 days before the time appointed for the hearing. The first hearing date was fixed on 20.06.2022 but was rescheduled to 15.08.2022 at the insistence of the Ds/respondents. In light of this legal requirement, D2 and D3/respondents argued that the service of the Show Cause Order was flawed (short service). It was rescheduled as the Ds/respondents wanted their day in Court and to be heard on their opposition to the Garnishment proceeding. The short service, they argued, is not curable, though I am not entirely persuaded.

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7.3 The P/appellant also submitted that he had complied with the procedural requirements for O.49 r.1 RC 2012 proceeding:

(a) There is a Judgment/Order to be enforced.

(b) An amount remains unpaid.

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(c) The Garnishee had been identified; and

(d) The Garnishee is within the jurisdiction.

7.4 Citing **Malaysian International Trading Corporation Sdn Bhd v RHB Bank Berhad [2016] MLJU 13, HC**: The Court must be convinced that the debt of the Garnishee to the judgment debtor must relate to any debt due or accruing to the judgment debtor, which includes a current or deposit account with a bank or other financial institution.

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[8] The D1 and D2/respondents alleged that:

260 8.1 The P/appellant failed to make full disclosure when making the ex-
parte application for the Garnishment by not disclosing to the Court
that the parties negotiated for settlement.

8.2 It was, however, negated by the P/appellant that it is trite in law that it
265 was not required to be disclosed because the without-prejudice
negotiations failed between the parties. Citing:

**Section 23 Evidence Act 1950; Malayan Banking Bhd v Foo See
Moi [1981] 2 MLJ 17, HC; Oh Kuang Liang v Associated Wood
Industries Sdn Bhd [1995] 4 MLJ 390, HC; Tripple International
270 Limited v Belia Cermat Sdn Bhd & Ors [2016] MLJU 573, HC.**

8.3 In circumstances of the facts before me I had already determined that
this Garnishment proceeding taken by the P/appellant is an
inappropriate mode of action vis-à-vis the construct of the said Order.
275 It, therefore, renders the forgoing arguments on the without -prejudice
negotiations inconsequential to this finding.

[9] The 1st and 2nd defendants/respondents also contended:

9.1 They, at all material times, intended to comply with the said Order.

280 9.2 I determine that having an intention to and fully complying with the
terms of the said Order are two distinct issues.

9.3 Similarly, my determination on the inappropriate mode of enforcement
renders the forgoing arguments on the issue of the intention of the
defendants to comply with the Order inconsequential to this finding.

285 **[10]** In the circumstances, the P/appellant prays that his appeal is allowed
with costs, while the Ds/respondents sought the dismissal of enclosure 23
with costs.



THE LAW

[11] Enforcement of Judgment and Order

290 11.1 **O.45 RC 2012:**

(1) Subject to the provisions of these Rules, a judgment or Order for the payment of money, not being a judgment or Order for the payment of money into Court, may be enforced by one or more of the following means:

(a) a writ of seizure and sale;

295 *(b) garnishee proceedings;*

(c) in a case in which rule 5 applies, an order of committal.

(1A) In addition to rule 1(1) and subject to the provisions of these Rules, a judgment or Order for the payment of money, not being a judgment or Order for the payment of money into Court, may be enforced in the High Court by one or more of the following means:

300 *(a) a charging order; and*

(b) the appointment of a receiver.

(2) Subject to the provisions of these Rules, a judgment or Order for the payment of money into Court may be enforced in a case in which rule 5 applies by Order of committal.

305 *(2A) In addition to rule 1(2) and subject to the provisions of these Rules, a judgment or Order for the payment of money into Court may be enforced in the High Court by the appointment of a receiver.*

310 *(3) Paragraphs (1) and (2) are without prejudice to any other remedy available to enforce such a judgment or Order as is therein mentioned or to the power of a Court under the Debtors Act 1957 [Act 256] to commit to prison a person who makes default in paying money adjudged or ordered to be paid by him, or to the written law relating to bankruptcy or the winding up of companies.*

315 *(4) In this Order, references to any writ shall be construed as including references to any further writ in aid of the first-mentioned writ.*

11.2 A judgment or Order for the payment of money to a person may be enforced by writs of execution, such as the writ of seizure and sale, a garnishee order, and a committal, which are not alternative but cumulative and concurrent remedies.

320 11.3 Additionally, the High Court also has the power to make an order of equitable execution by the appointment of a receiver or a charging order. However, if the judgment or Order does not, and as a general



rule it will not, specify a time for the payment of the money to a person,
 the method of enforcement by way of an order for committal will not be
 available under para (1)(c) of this rule: **The United Malacca Rubber
 Estates v Pentadbir Tanah Alor Gajah [2008] 3 AMR 88; [2008] 7
 CLJ 301.**

**11.4 Enforcement of Judgment to do or abstain from doing an act
 O.45, r.5 RC 2012:**

(1) Where:

*(a) a person required by a judgment or Order to do an act within a time
 specified in the judgment or Order refuses or neglects to do it within that
 time or, as the case may be, within that time as extended or abridged
 under Order 3, rule 5; or*

*(b) a person disobeys a judgment or Order requiring him to abstain from
 doing an act, then, subject to these Rules, the judgment or Order may be
 enforced by one or more of the following means:*

(A) with the leave of the Court, an order of committal;

*(B) where that person is a body corporate, with the leave of the Court,
 an order of committal against any director or other officer of the
 body;*

*(C) subject to the provision of the Debtors Act 1957, an order of
 committal against that person or, where that person is a body
 corporate, against any such officer.*

*(2) Where a judgment or Order requires a person to do an act within a time therein
 specified and an order is subsequently made under rule 6 requiring the act to
 be done within some other time, references in paragraph (1) to a judgment or
 Order shall be construed as references to the Order made under rule 6.*

*(3) Where under any judgment or Order requiring the delivery of any movable
 property, the person liable to execution has the alternative of paying the
 assessed value of the property, the judgment or Order shall not be enforceable
 by Order of committal under paragraph (1) but the Court may, on the
 application of the person entitled to enforce the judgment or Order, make an
 order requiring the first-mentioned person to deliver the property to the
 applicant within a time specified in the Order, and that Order may be so
 enforced.*



- 360 11.4.1 **Rotta Research Laboratorium SpA & Anor v Ho Tack Sien & Ors [2019] 2 AMR 817; [2019] 7 CLJ 113, HC** held that as the Registrar's Order, which required the delivery of certain information and documents: constituting "moveable property" within the meaning of O.42, r. 6(2) was a mandatory order. The
- 365 Order was required by O.45, r. 5(1)(a), (A), (B), (2) and r. 6(2) to specify a time for its compliance. The fact that it did not constitute a valid ground to dismiss committal proceedings (see also **QU v QV [2008] 2 SLR 702**).
- 370 11.4.2 A judgment or Order requiring any act to be done must state the time within which the act is to be done before the methods provided by this rule can enforce it. Such time may be specified either by the original judgment or Order (see O. 42, r.6) or by a supplemental order made subsequently under O. 4, r.6. It is, therefore, clear that where an order of the Court to do an act
- 375 requires the act to be done by a particular time, then that time must be specified.
- 380 11.4.3 Commencing a proceeding for committal must be as a consequence of disobeying a judgment or Order: **Golden Star & Ors v Ling Peek Hoe & Ors [2021] 2 MLJ 257; [2021] 3 CLJ 443, FC.**

11.5 Judgment or Order requiring act to be done: Order fixing time for doing it under O.45, r.6 RC 2012:

- 385 (1) *Notwithstanding that a judgment or Order requiring a person to do an act specifies a time within which the act is to be done, the Court shall, without prejudice to Order 3, rule 5, have the power to make an order requiring the act to be done within another time, being such time after service of that Order, or such other time as may be specified therein.*
- 390 (2) *Where, notwithstanding Order 42, rule 6(1), or by reason of Order 42, rule 6(2), a judgment or Order requiring a person to do an act does not specify a time within which the act is to be done the Court shall have power subsequently to make an order requiring the act to be done within such time after service of that Order, or such other time, as may be specified therein.*



(3) *An application for an order under this rule shall be made by notice of application and shall, notwithstanding anything in Order 62, rule 10, be served on the person required to do the act in question.*

11.5.1 Para (1) of the rule states the current practice under which a judgment or Order which specifies the time within which an act is required to be done may, by supplemental Order of the Court made subsequently, fix another time for the necessary action to be done. This practice extends to an order containing a positive undertaking to do a specific action within a specified time: **Granek Sdn Bhd v Lew Wa Chow [1991] 1 MLJ 125; [1990] 2 CLJ 989, HC).**

11.5.2 Para (2) of the rule empowers the Court to make an order specifying the time within which the required action is to be done in two cases, namely (1) where the judgment or Order does not itself specify such time as required by Order 42 r 6(1), whether by omission or inadvertence or otherwise; and (2) where the judgment or Order is to pay money to some other person, or to give possession of immovable property or to deliver movable property, and the time within which such action is to be done is not, as it generally would not be, specified by the judgment or Order:

First Consolidated Sdn Bhd v Padu Ehsan Sdn Bhd (Majlis Perbandaran Melaka Bandaraya Bersejarah, Garnishee) [2004] 1 AMR 117; [2003] 4 MLJ 759, HC.

11.6 Court may order act to be done at the expense of the disobedient party: O 45 r 8 RC 2012:

If a mandamus order, a mandatory order, an injunction or a judgment, or an Order for the specific performance of a contract is not complied with, then, without prejudice to its powers under the Act, where applicable and its powers to punish the disobedient party for contempt, the Court may direct that the act required to be done may, so far as practicable, be done by the party by whom the Order or judgment was obtained or some other person appointed by the Court at the cost



of the disobedient party, and upon the act being done, the expenses incurred may be ascertained in such manner as the Court may direct and execution may issue against the disobedient party for the amount so ascertained and for costs.

[12] Attachment of a debt due to a judgment debtor (Garnishment):

O.49, r. (1) RC 2012:

- (1) *Where a person (who is referred to as "the judgment creditor" in this Order) has obtained a judgment or Order for the payment of money by some other person (who is referred to as "the judgment debtor" in this Order), not being a judgment or Order for the payment of money into Court, and any other person within the jurisdiction (who is referred to as "the garnishee" in this Order), is indebted to the judgment debtor, the Court may, subject to the provisions of this Order and of any written law, order the Garnishee to pay the judgment creditor the amount of any debt due or accruing due to the judgment debtor from the Garnishee, or so much thereof as is sufficient to satisfy that judgment or Order and the costs of the garnishee proceedings.*
- (2) *An order in Form 97 under this rule shall, in the first instance, be an order to show Cause, specifying the time and place for further consideration of the matter and, in the meantime attaching such debt as mentioned in paragraph (1), or so much thereof as may be specified in the Order, to answer the judgment or Order mentioned in that paragraph and the costs of the garnishee proceedings.*
- (3) *In this Order, "any debt due or accruing due" includes a current or deposit account with a bank or other financial institution, whether or not the deposit has matured and notwithstanding any restriction as to the mode of withdrawal.*

12.1 The applicant (judgment creditor) must establish that:

- 12.1.1 There is an amount unpaid from the Judgment Sum.
- 12.1.2 The Garnishee is indebted to the judgment debtor, and the applicant must explain the source of this information.
- 12.1.3 The Garnishee is within the jurisdiction.
(O.49, r.2 (2)(a) and (b) RC 2012).

12.2 In Hong Kong & Shanghai Banking Corporation v Goh Su Liat

[1985] 1 LNS 119, HC SG held that the attachable debt must already be due to the judgment debtor at the time the application for Garnishment is made. Where the debt has not become attachable, this amount cannot be garnished. The debt claimed must have already



crystallised. The Garnishee order only affects debts in existence or actionable debts at the date of the service of the Garnishee Order Nisi/To Show Cause thereof: **Saw Swan Kee v Sim Lim Finance (M) Bhd [1985] 2 CLJ 256, FC**. A contingent debt is not a debt until the contingency happens: **Capital Insurance Bhd v Heng Loong Goldsmiths (KL) Sdn Bhd [2005] 6 MLJ 593, FC**.

12.3 Where the Garnishee and/or the judgment debtor fails to dispute the Order or fails to attend the hearing, a Garnishee Order Absolute would follow:

O.49, r.4(1) RC 2012; Abdul Samad Hj Alias & Anor v Public Bank Bhd & Anor [1984] 1 CLJ Rep 57, FC; Hong Kong & Shanghai Banking Corp v Goh Su Liat (Telecommunication Authority of Singapore, Garnishee) [1986] 2 MLJ 86, HC; Ceder Trading Sdn Bhd v Dong Ah Construction Industrial Co Ltd (SCB, Garnishee) [1999] 5 MLJ 65: That the Court has an inherent jurisdiction to hear arguments to set aside a garnishee order where the facts warrant it.

FINDINGS

[13] Considering the arguments of the parties herein with my determinations above, the scale of evidence undoubtedly tilted in the Ds/respondents' favour. In addition, it is also my determination that:

13.1 That enclosure 1, the P/appellant application for a Garnishment, is inconsistent with the nature and terms of the said Order. The legal position is trite that when the wrong mode is used, as in the present action, it must, as a matter of course, be struck off: **Majlis Perubatan Malaysia & Anor v Asia Pacific Higher Learning Sdn Bhd (Owner of Lincoln University College) [2019] 1 MLJ 471, CA; Yahya bin**



Kassim v. Kerajaan Malaysia [1997] 3 MLJ 749, CA. This renders the P/appellant appeal in enclosure 23 untenable. In the circumstances, the learned SAR did not make any error in judgment in dismissing enclosure 1, I concur with her findings.

13.2 The P/appellant has provided no evidential materials to clarify or explain the nature of the said Order as to why it was drawn up the way it did if it was merely a monetary judgment. He is, after all, the architect of the terms of the said Order that he had accepted. This Court can only act upon the terms of the said Order that is before it and would not be able to read or import into the said Order terms inconsistent with or not in its contemplation.

13.3 This fundamental determination renders other issues raised to become academic for this appeal as it no longer has a leg to stand on when the foundation is removed.

[14] I take cognisance of the P/appellant arguments that denying enclosure 1 for Garnishment causes injustice to him as he is being denied the fruits of his litigation. I find this argument misplaced and certainly further from the truth.

14.1 This argument is untenable in light of the legal position above and since it is the P/appellant that had accepted the terms of the said Order in the context in which it was drawn up, he has to account for it. The alleged issue of him being denied the fruits of his litigation does not arise.



14.2 O.45, r.1(c): is evident in the mode of enforcement of an Order for
525 performance, such as with the said Order that would accord with O.45
r.5, r.6, and r.8 RC 2012. It bears repeating in the circumstances that
O.45 r.5 RC 2012 provides for enforcement of judgment to do or
abstain from doing an act. O.45 r.5(b)(A) with sufficient clarity provides
that if a person disobeys a judgment or Order requiring him to abstain
530 from doing an act, then, subject to these Rules, an order of committal
may enforce the judgment or Order. Commencing a proceeding for
committal must result from disobeying a judgment or Order: **Golden
Star & Ors v Ling Peek Hoe & Ors [2021] 2 MLJ 257; [2021] 3 CLJ
443, FC.**

535 14.3 Therefore, it is the duty incumbent on the P/appellant to work with the
said Order that he had settled for in ways and modes conformable with
its express terms.

540 **CONCLUSION**

[15] After duly considering the cause papers and submissions by the
respective learned counsels, I find no appealable error in the learned
SAR's decision and appellate intervention was not warranted.
Therefore, I dismissed enclosure 23 with costs of RM3,000.00 against
545 the P/appellant, payable within 14 days from the date of this Order.

Dated 15.05.2023.

550 **HAYATUL AKMAL ABDUL AZIZ**
JUDGE
HIGH COURT OF MALAYA
WILAYAH PERSEKUTUAN KUALA LUMPUR



Parties:

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Mr Ganesh Magenthiran, together with Ms Noor Afikah
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Counsels for the Judgment Creditor

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Ms Jennifer Hiu
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565

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