

DALAM MAHKAMAH PERSEKUTUAN MALAYSIA

(BIDANG KUASA RAYUAN)

PERMOHONAN SIVIL NO. 02(i)-29-2009(W)

ANTARA

MEGAH TEKNIK SDN. BHD.

... PEMOHON

DAN

MIRACLE RESOURCES SDN. BHD.

...RESPONDEN

CORAM: ZAKI TUN AZMI, CJ

MOHD. GHAZALI BIN MOHD. YUSOFF, FCJ

HELILIAH BINTI MOHD. YUSOF, FCJ

JUDGMENT OF ZAKI TUN AZMI, CJ

1. Leave to appeal in this case was granted although the Respondent was not present then nor in the appeal at the Court of Appeal. In fact the Respondent's counsel/ solicitors had been discharged.

The Court of Appeal dismissed the appeal by the Appellant against the decision of the High Court refusing its application to set aside the order of winding up. This refusal according to counsel for the appellant was made based on the decision of *Vijayalakshmi Devi d/o Nadchatiram v Jegadevan s/o Nadchatiram & Ors* [1995] 1 MLJ 830. The High Court did not even hear his arguments.

2. Counsel for the Appellant has put in a lot of effort in preparing his written submission which according to him covered arguments for and against him. We do not doubt this. However we do not consider it proper for us to decide on the question of law posed to us in an appeal such as this when only one party was represented. One of the reasons for granting leave to appeal pursuant to section 96 of the Courts of Judicature Act 1964 is that it involves a question of importance and the decision of the Federal Court would be to public advantage. The decision would be a precedent to be followed in future cases. In this case however we consider it rather dangerous to answer the question without having heard both parties, bearing in mind that our system is the adversarial system. On the other hand we are also obligated to hear this appeal since leave has been granted.

3. The facts of this case were that the Appellant had failed to appear and contest the petition to wind it up because its director relied on the words of one Najib that he would sort out the problem. According to counsel, Najib had nothing to do with the Appellant's company. He was neither a shareholder nor a director of the Appellant's company. The Appellant claimed that it took one year thereafter for the directors to come to know of the status of the company. This was when one of its directors approached a bank for a loan. It was then that it was discovered that the company had been wound up.
4. For the purpose of this appeal only, even if the Appellant was right in their submission that a petition to wind up can be set aside when the company petitioned to be wound up is not present, we do not find any merit on the facts to allow this appeal.
5. We therefore dismiss this appeal but make no order as to cost.

DATED: 13 OCTOBER 2010

sgd.

**ZAKI TUN AZMI
CHIEF JUSTICE
MALAYSIA**