

How can I get paid via debtor's bank account?

Q I HAVE in my favour a judgment against debt owed by a debtor who defaulted on the second instalment.

I want to recover the money by acting on my own and I would like to know how I can proceed with the garnishee method - which allows funds in the debtor's bank account to be frozen and the monies used to settle debt to the creditors.

I do not want to go by writ of seizure or bankruptcy unless I have no other choice.

I know of the debtor's bank account with a particular bank but would like to have garnishee orders served on two other banks too.

How do I obtain proof that the debtor may have an account with the other two banks?

A THERE are two points to note before commencing garnishee proceedings.

First, I assume that the judgment is in your personal name and not that of a company that you are a director of.

This is because while you can act on your own, a company must, under the law, act through a lawyer.

The second point concerns the amount that you are going to garnish.

Did the instalment arrangement contain the usual default clause which would have provided that the entire balance sum will become due and payable in the event of a single default?

If it did not, you can garnish only the amount due under the second instalment.

Garnishee proceedings involve several steps.

First, you have to file an 'ex-parte' application together with a supporting affidavit giving evidence that the debtor owes you money and why you believe that the debtor has a current or savings account with the bank.

Usually, copies of the cheques issued by the debtor drawn on the bank would be sufficient evidence.

After you file the application, the Registrar of the Courts will consider your application.

If the Registrar feels that the affidavit contains all the necessary evidence, he will grant your application by order and give you another date, usually about a month later, to appear before the court (the return date).

In the meantime, you would have to obtain the seal copy of the order known as a garnishee order to show cause and serve it on the bank.

Once the Order of Court is served on the bank, the account would be frozen.

On the return date, a representative from the bank will inform the court as to the amount available to be garnished, up to the amount owed to you.

But do note that from whatever funds there are in the account, the garnishee bank is entitled to retain a sum of between \$150 and \$300 before remitting any balance to you.

After the hearing, you would then have to obtain the final seal of Order of Court and serve it on the bank before the bank makes the payment to you.

With regard to the second part of your query, the banks will not disclose whether a particular person is holding an account with them as they are restrained by banking secrecy laws.

What you can do is to make an application to court to examine the debtor so as to ascertain his financial position.

During the hearing, he would be required to disclose to you all his bank account details if you so require.

With this information, you can then apply to the court to garnish his other accounts. Note that this is a separate action from the garnishee proceedings.

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