

# Summary of the Constitutional Court Ruling No. 15/2544

**Dated 26<sup>th</sup> April B.E. 2544 (2001) \***

**Re : Is the Bankruptcy Act, B.E. 2483 (1940) in the part relating to the powers to administer property after a Court order for an absolute receivership of the debtor's assets (the case of Mr. Paiboon Ratanaset, the applicant) contrary to or inconsistent with section 29 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997)?**

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## **1. Background and summarized facts**

The Court of Appeal Region 3 referred the objection of Mr. Paiboon Ratanaset, a defendant in Bankruptcy Case No. L. 11-12/2543, to the Constitutional Court for a ruling under section 264 of the Constitution on whether or not the Bankruptcy Act, B.E. 2483 (1940) in the part which provided for the official receiver to administer the properties of the debtor prior to a Court order of bankruptcy was a restriction of rights of the debtor in the administration of property contrary to or inconsistent with section 29 paragraph one of the Constitution.

The facts under the application could be summarised as follows:

Nakhonluang Thai Bank Public Limited Company, as plaintiff, filed a claim against Mr. Paiboon Ratanaset, or Yu Heng Sae-So, the defendant, at the Nakhon Ratchasima Provincial Court, requesting for an order of absolute receivership of the defendant's assets and a declaration of bankruptcy. The Nakhon Ratchasima Provincial Court ordered an absolute receivership of the defendant's assets under section 14 of the Bankruptcy Act, B.E. 2483 (1940). The defendant appealed against the order of absolute receivership. Whilst the case was being considered by the Court of Appeal Region 3, the defendant submitted an application to the Nakhon Ratchasima Provincial Court that the Bankruptcy Act, B.E. 2483 (1940), which was applicable to this case, might be a restriction of the defendant's rights in the administration of his property. Such provisions of law were therefore inconsistent with section 29 paragraph one of the Constitution. This was a case where the Court was going to apply a provision of law to a case prohibited by section 6 of the Constitution. The application was therefore made for the Constitutional Court to make a ruling under section 264 of the Constitution.

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The Nakhon Ratchasima Provincial Court held that the case under the application was an objection on the exercise of the Court's discretion. The objection was not on whether or not the Bankruptcy Act, B.E. 2483 (1940) was contrary to or inconsistent with the Constitution. This was therefore not a case for the Constitutional Court to rule upon under section 264 of the Constitution. The application was dismissed.

The defendant appealed against the order of the Nakhon Ratchasima Provincial Court dismissing the application.

The Court of Appeal Region 3 held that the defendant's application for a temporary stay on the case and reference of the matter to the Constitutional Court for consideration was made whilst the case was being considered by the Court of Appeal Region 3 and was within the jurisdiction of the Court of Appeal Region 3. As a result, the Court of First Instance's order dismissing the defendant's application was therefore dismissed. However, as the case had already reached the consideration of the Court of Appeal Region 3, an order can be made on the application without having to remit the matter back to the Court of First Instance. As the defendant had submitted an application objecting that the Court's application of the Bankruptcy Act, B.E. 2483 (1940) to the case was a provision for the official receiver to administer the properties of the defendant prior to a Court declaration of the defendant's bankruptcy, which was a restriction of the defendant's rights in the administration of his property inconsistent with section 29 paragraph one of the Constitution, the Court of Appeal Region 3 submitted an opinion on the application in the course of official service to the Constitutional Court for a ruling under section 264 paragraph one of the Constitution.

## **2. Preliminary issue**

Could the Constitutional Court accept the application for consideration under section 264 of the Constitution ?

It was held that the applicant submitted an application while the bankruptcy case, in which the applicant was a defendant, was being considered by the Court of Appeal objecting that the Bankruptcy Act, B.E. 2483 (1940) in the part applicable to this case which provided for the official receiver to administer the properties of the debtor prior to a Court order of bankruptcy was inconsistent with section 29 paragraph one of the Constitution. Such an application was in accordance with section 264 paragraph one of the Constitution. The Constitutional Court therefore had the power to accept this application for consideration.

## **3. The issue considered by the Constitutional Court**

The issue considered by the Constitutional Court was whether or not the Bankruptcy Act, B.E. 2483 (1940) in the part which provided for the official receiver to administer the

properties of the debtor prior to a Court order of bankruptcy was a restriction of rights of the debtor in the administration of property contrary to or inconsistent with section 29 paragraph one of the Constitution.

After consideration, it was held that the issue under the application was a request for a ruling on whether or not the Bankruptcy Act, B.E. 2483 (1940) in the part containing provisions on the powers to administer properties after a Court order for an absolute receivership of the debtor's assets was contrary to or inconsistent with section 29 paragraph one of the Constitution. In this regard, the Constitutional Court had ruled in Ruling No. 14/2544, dated 26<sup>th</sup> April B.E. 2544 (2001) that the Bankruptcy Act, B.E. 2483 (1940) in the part which contained provisions on the powers to administer properties after a Court order for an absolute receivership of the debtor's assets was not contrary to or inconsistent with section 29 paragraph one and section 48 paragraph one of the Constitution. Moreover, section 268 of the Constitution stated that "the decision of the Constitutional Court shall be deemed final and binding on the National Assembly, Council of Ministers, Courts and other State organs."

#### **4. Ruling of the Constitutional Court**

The Constitutional Court held that the application be dismissed.

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