

Summary of the Constitutional Court Ruling No. 34/2548

Dated 10th March B.E. 2548 (2005)*

Re: The Civil Court referred the objections of the defendant (V.S.A. Agriculture Company Limited) to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) in the case where section 55, section 271 to section 290 of the Civil Procedure Code, and section 194 and section 204 of the Civil and Commercial Code were contrary to or inconsistent with section 3 and section 30 of the Constitution.

.....

1. Background and summarized facts

The Civil Court referred the objections of the applicant (V.S.A. Agriculture Company Limited), the defendant in Pending Case No. Ngo.58 (or Ngo.058)/2545, to the Constitutional Court for a ruling under section 264 of the Constitution. In the said case, Kiatnakin Finance Company Limited, as plaintiff, filed a lawsuit against the defendant in disputes arising out of loan, suretyship, bills, mortgage, and transfer of claims. The applicant, previously known as V.S.A. Holding Company Limited, entered into a loan contract with Srimitr Finance and Securities Public Company Limited in the sum of 10,000,000 Baht. Upon receipt of money, the applicant issued a promissory note and mortgaged its own land as security for debt. In addition, Mr. Veerawat Shonlavanich, as second defendant, was surety of such debt. The applicant had paid interest on that loan until 31st October, B.E. 2540 (1997), but it had failed to pay all principal and interest thereon as from 1st November, B.E. 2540 (1997). Thereafter, Ministry of Finance issued an order suspending the operation of Srimitr Finance and Securities Public Company Limited, and the Board of Financial Sector Restructuring Authority took control and operated its business. In this connection, the Board sold all debt instruments and claims with relevant documents of previous creditors to the plaintiff. The plaintiff was thus transferred of all rights and obligations which the previous creditors had over the applicant and the second defendant. Thereafter, the plaintiff filed the lawsuit against the applicant and second defendant. Under the complaint, the plaintiff required the defendants to be liable for the principal and interest thereon. If the defendants failed to pay all debt or pay it incompletely, the debt should be paid from the mortgaged land and constructions thereon. If the net proceeds received from the enforcement of mortgage were not adequate to pay all debt, the applicant and the second defendant remained liable for the difference.

* Published in the Government Gazette, Vol. 122, Part 118a, dated 14th December B.E. 2548 (2005)

The applicant argued that after the debt being created, there was the occurrence of economic crisis which resulted in the impossible performance of obligations. In addition, the Constitutional Court had already determined in the Ruling No. 1/2541 that such crisis caused the applicant to become the person impossible to perform the obligations. The applicant must be allowed to provisionally suspend the performance of its obligations until the circumstance causing the performance impossible were ended or until Baht value be back to 25 Baht per 1 US\$. The complaint of the plaintiff requiring the applicant to be liable for the debt was to request the Court to apply the provisions of section 55 and section 271 to section 290 of the Civil Procedure Code, and section 194 and section 204 of the Civil and Commercial Code against the applicant despite non-ending economic crisis. The applicant should thereby be protected under section 8, section 150, section 205, and section 219 of the Civil and Commercial Code. Such the action by the plaintiff against the applicant was therefore contrary to section 1, section 3, section 4, section 27, section 28, section 29, section 30 and section 48 of the Constitution, in particular section 3 and section 30 thereof. The applicant applied to the Civil Court for referring its objection to the Constitutional Court for a ruling on whether or not section 55 and section 271 to section 290 of the Civil Procedure Code, and section 194 and section 204 of the Civil and Commercial Code were contrary to or inconsistent with section 3 and section 30 of the Constitution.

2. The issue considered by the Constitutional Court

After consideration, the issues to be considered were as follows:

First issue, it was whether or not section 55 of the Civil Procedure Code and section 194 and section 204 of the Civil and Commercial Code were contrary to or inconsistent with section 3 and section 30 of the Constitution. The Constitutional Court determined by the Ruling No. 87/2547 dated 16th December, B.E. 2547 (2004) that section 55 of the Civil Procedure Code and section 194 and section 204 of the Civil and Commercial Code were neither contrary to nor inconsistent with section 3 and section 30 of the Constitution.

Second issue, it was whether or not section 271 to section 290 of the Civil Procedure Code were contrary to or inconsistent with section 3 and section 30 of the Constitution.

The Constitutional Court held the followings. Section 271 to section 290 of the Civil Procedure Code were the provisions contained in the chapter on execution of judgments which would be applied after the judgment was made. The execution of judgment occurred where the applicant became the judgment debtor or defeated party and failed to comply with the judgment. According to the application, the case between the plaintiff and the applicant was still pending in the Court of First Instance. No judgment, whether in favor of the plaintiff or the applicant, had been pronounced. There was therefore no ground for the execution of judgments or orders to be occurred. Section 271 to section 290 of the Civil Procedure Code were not the provisions of law to be applied to the case pursuant to section 264 paragraph one of the Constitution. In addition, the applicant's application did not state the clear reasons why

the said provisions of the Civil Procedure Code were contrary to or inconsistent with section 3 and section 30 of the Constitution.

3. Ruling of the Constitutional Court

By the aforesaid reasons, the Constitutional Court held that section 55 of the Civil Procedure Code and section 194 and section 204 of the Civil and Commercial Code were neither contrary to nor inconsistent with section 3 and section 30 of the Constitution. The Court needed not to consider the issue on whether or not section 271 to section 290 of the Civil Procedure Code were contrary to or inconsistent with section 3 and section 30 of the Constitution, because they were not the provisions of law to be applied to the case pursuant to section 264 of the Constitution.
