

IN THE COURT OF APPEAL OF SEYCHELLES

CIVIL APPEAL NO. 3 OF 1986

RAJAGOPAL NATARAJAN PILLAY . . . . . APPELLANT

Versus

BANQUE FRANCAISE COMMERCIALE . . . . . RESPONDENT

JUDGMENT OF MUSTAFA, P.

Banque Francaise Commerciale, the respondent in this appeal, had filed a suit in the Supreme Court against three parties, A. S. Pillay, R. N. Pillay and Raja Chetty. The respondent had claimed against A. S. Pillay, as principal debtor a sum of Rs. 61,130.63 being a sum due and owing to the respondent in respect of overdraft facilities granted to A. S. Pillay, and against R. N. Pillay as guarantor for the said overdraft to the extent of Rs. 25,000 and against Raja Chetty as guarantor to the extent of Rs. 15,000.

A. S. Pillay, the principal debtor and Raja Chetty admitted liability and submitted to judgment against them. However by then A. S. Pillay had become insolvent. R. N. Pillay denied liability and filed a statement of defence. The case against R. N. Pillay went to hearing, and judgment was given against him. R. N. Pillay is appealing from that decision to this Court.

The respondent bank relied on a guarantee document duly signed by the appellant to secure repayment of the sum of Rs. 25,000 in respect of the overdraft facilities granted to the principal debtor. The guarantee was in the usual standard form of guarantee and was executed by the appellant on 12th April, 1979.

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The appellant admitted signing the guarantee document and in defence alleged that the guarantee was orally modified and was only valid for a limited period, during the principal debtor's absence from Seychelles on a visit to India. He alleged that the guarantee was to lapse and be of no effect on the principal debtor's return to Seychelles. The principal debtor was absent for about two months, as he returned to Seychelles in or about June 1979.

The bank official who dealt with the appellant in connection with the guarantee was one Antoine Leon. This official had left Seychelles in 1982 and is now believed to be in Texas, U.S.A. Mr. Leon was not called as a witness by either party, presumably because of the costs and inconvenience involved.

The respondent bank relied on the guarantee document, which was produced and exhibited in Court by its Assistant Manager Mr. Lablache. Mr. Lablache has no personal knowledge of the circumstances of the transaction. The respondent bank's position was that the guarantee document speaks for itself. Mr. Lablache stated that there was no record in the bank to indicate that the guarantee signed by the appellant was to be valid for a limited period of two or three months only. He also stated that there was no record to show that the appellant had ever complained to the respondent bank about the guarantee.

The appellant testified. He stated that Mr. Leon had told him that the guarantee he had signed was operative for two months only, during the temporary absence of the principal debtor from Seychelles.

The principal debtor A. S. Pillay also testified, and supported the appellant's testimony. He said that Mr. Leon had informed him and the appellant that on his (A. S. Pillay) return to Seychelles the guarantee signed by the appellant would lapse and expire.

The trial judge (Proag, J.) in a short judgment disbelieved and rejected the appellant's allegation that the guarantee was valid for a limited period only. He found for the respondent bank and gave judgment in its favour.

The appeal is based on the same ground as that advanced at the trial. Mr. Lucas for the appellant has pointed out that there was no evidence from the respondent bank to challenge the testimony given by the appellant and his witness concerning the alleged oral modification of the terms of the guarantee. However, it is pertinent to note that according to the appellant both he and his witness went to see Mr. Leon about the guarantee after the return of the witness from India. Mr. Leon was alleged to have told them then that the guarantee was no longer valid. If that were so, it is inexplicable why the guarantee document was not either cancelled in the appellant's presence or returned to him.

Again the plaint was filed in February 1984. If there was any truth in the appellant's allegation one would have expected him to have immediately gone to the bank and informed it of the true position as regards the validity of the guarantee. Nothing of the sort was done, and it was only when the statement of defence was filed in November 1985 that such an averment was made.

It is also relevant that the other guarantor Raja Chetty had submitted to judgment. He did not allege any oral modification or amendment to the guarantee he had executed. His guarantee was in the same terms as the appellant's, except as to the amount guaranteed. No reason has been advanced as to why the respondent bank should have treated the two guarantors differently.

The trial judge heard and saw the witnesses and said rather tersely:

"The argument that the guarantee was limited to three months ..... has no foundation of truth in it".

On a consideration of the facts and circumstances, I am in agreement with the trial judge. I would dismiss the appeal with costs.

DATED at VICTORIA this 24<sup>th</sup> day of 11-4 1987.

  
A. MUSTAFA  
PRESIDENT

In the Seychelles Court of Appeal

R N Pillay

Appellant

v

Banque Francaise Commerciale

Respondent

Civil Appeal 3 of 1986

Judgment

This appeal arises out of a judgment of the Supreme Court ordering the appellant to pay to the respondent (hereinafter called the Bank) the sum of R25,000 in respect of a guarantee given by the appellant to the Bank securing repayment of overdraft facilities to the extent of R25,000 extended to one A S Pillay.

The guarantee was given in writing by the appellant on 12.4.1979. By a plaint dated 9.2.84 the Bank claimed from the appellant as guarantor the sum of R25,000. The defence of the appellant was that his guarantee was limited only to the period during which A S Pillay was absent from the country.

The Bank based its claim on the guarantee document signed by the appellant. The appellant gave evidence to the effect that one Leon, an employee of the Bank, had told him that the guarantee was only for the period during which A S Pillay would be absent from the country. Mr Pillay absented himself from the country for about 2 months.

The document which has been produced in Court makes no mention of any limitation of its validity. The learned trial Judge found that the version of the appellant "had no foundation of truth in it". The appellant is challenging the findings of the learned trial Judge mainly on the ground that the evidence of the appellant which was supported by that of A S Pillay and was not challenged by Counsel for the Bank should have been accepted by the Court.

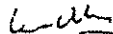
The evidence shows that Leon who was an employee of the Bank had left the country for the United States since 1982. He could not be called as a witness without considerable expenses. The fact that the appellant's evidence to the effect that Leon had told him that the document would be valid only for a limited period was not challenged did not make that evidence true. It was for the trial Judge to appreciate such evidence.

Had the guarantee been limited as alleged by the appellant one would have expected to find some mention of it on the document. There is absolutely nothing of the sort.

I cannot find fault with the learned trial Judge for rejecting the version of the appellant.

The appeal is of no merit and I would dismiss it with costs.

Delivered at Victoria this .....<sup>24<sup>th</sup></sup> day of .....<sup>July</sup>..... 1987

  
H Goburdhun  
Justice of Appeal

IN THE SEYCHELLES COURT OF APPEAL.

Civil Appeal No.3 of 1986

BETWEEN -

Rajagopal Natarajan <sup>Pillay</sup> ... Appellant  
and <sup>PILLAY</sup> ...  
Banque Francaise Commerciale ... Respondent

JUDGMENT OF LAW J.A.

✓ This is an appeal by R.N.Patel <sup>Pillay</sup> ("the appellant") from a judgment of the Supreme Court (Proag J.) in favour of the Banque Francaise Commerciale ("the Bank") in respect of a guarantee given by the appellant to the Bank to secure the repayment of moneys owing to the Bank by one A.S. <sup>Pillay</sup> ~~Patel~~.

The guarantee was in the usual standard form. The appellant signed it on 12th. April, 1979. He undertook to pay to the Bank on demand all sums of money which A.S. <sup>Pillay</sup> ~~Patel~~ owed or might from time to time owe to the Bank, to the extent of R.25,000. By a plaint dated 9th. February, 1984, the Bank claimed from A.S. Pillay the amount of the overdraft owed by him, then amounting to R.61,130, and from the appellant as guarantor the sum of R.25,000. A.S. Pillay admitted the debt, but claimed to be insolvent. By his defence dated 25th. November, 1985, the appellant pleaded that he had signed the guarantee on the understanding that it would only be valid for the period of the absence of A.S. Pillay in India, to which country he had gone temporarily to get married. A.S. Pillay was away for about 2 months from April 1979. He then returned to Seychelles. The official employed by the Bank when the appellant signed the guarantee, and who is alleged by the appellant to have agreed that the guarantee would only be valid for the period of A.S. Pillay's absence from Seychelles, was Mr. Antoine Leon. Mr. Leon left Seychelles in 1982 and is now believed to be in Texas, in the U.S.A. He was not called as a witness.

At the trial the only witness called by the Bank was its present Assistant Manager, Mr. Lablache. He produced the guarantee, but had no personal knowledge of the facts surrounding the transaction.

The document contains no clause limiting the <sup>period</sup> ~~period~~ of its validity, nor is there any endorsement on it to this effect. 81

The appellant gave evidence, and called A.S.Pillay as a witness on his behalf. A.S.Pillay confirmed the appellant's evidence that they were both present when the appellant signed the guarantee in the presence of Mr. Leon, who assured them that the guarantee was only required for the period of A.S.Pillay's absence in India, and that on his return from India it would no longer be valid.

The learned judge in a short judgment said that the appellant's version that the guarantee was limited to a period of a few months to enable A.S. <sup>Pillay</sup> ~~Pillay~~ to go to India and <sup>would</sup> ~~cease~~ to be valid on his return to Seychelles "had no foundation of truth in it", and he found the case against the appellant proved. 81

The principal ground of appeal is that the appellant's version, supported as it was by A.S.Pillay, was not challenged and should not therefore have been rejected. We do not know why Mr. Leon was not called to testify, it was presumably because of the expense and inconvenience involved. The Bank relied entirely on the wording of the guarantee, which contains no limitation as to the period of its validity. I would have expected, if the guarantee had been intended only to run for a limited period, that this would have been so stated in the document, or in an endorsement to it. It is <sup>also</sup> ~~less~~ relevant, to my mind, that at no time after A.S.Pillay's return from India in 1979, did the appellant ask the Bank to cancel his guarantee as having served its purpose. The summons was served on the appellant in January, 1984. Even then did the appellant not present the Bank with his version of the facts. It is not until the defence was filed, nearly two years later, that the version of the guarantee being limited to a short period was first mooted. It is not surprising in these circumstances that the learned judge held that the appellant's version had no foundation of truth in it. He had heard and seen the appellant and A.S.Pillay giving evidence, and is the person best able to assess the reliability and credibility of that evidence. I see no reason to think that he came to a wrong conclusion. 81

I would dismiss this appeal. 81