

(11)

**IN THE SEYCHELLES COURT OF APPEAL**

1. **COSIMO CENTARO**  
2. **CENPIR (PROPRIETARY) LTD** **APPELLANTS**

**VERSUS**

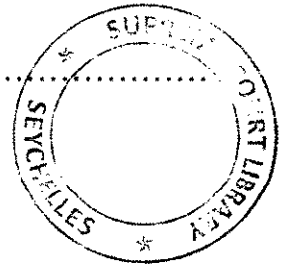
**COSMEMAR SPA** **RESPONDENT**

Civil Appeal No. 11 of 1996

Before: *Goburdhun P., Ayoola, Adam, JJA*

.....

Mr. B. Georges for the Appellant  
Mr. K. Shah for the Respondent



**JUDGMENT OF THE COURT**

**Delivered by Ayoola, J.A.**

This eventually is an appeal by Mr Cosimo Centaro (the 1st appellant) from the decision of the Supreme Court (Amerasinghe, J.) entering judgment against the "defendant" (sic) in a sum of SR43,626.00 with interest at 14% per annum from 1st April till payment in full and costs. Initially there were two appellants (both of them defendants at the Supreme Court). The 2nd appellant which was the 2nd defendant at the Supreme Court withdrew his appeal. The 1st appellant prayed that the judgment of the Supreme Court be set aside.

Cosmemar SPA ("the respondent") as plaintiff in the Supreme Court sued the two appellants claiming Italian Liras 22,500,000 (equivalent to SR96,750). The respondents' case was that the two appellants ordered various goods in Italy and instructed it to ship them to Seychelles between 1989 and 1990 upon an undertaking by the appellants that they would pay for the shipping of the goods. The

respondent shipped the goods but the appellants despite repeated requests refused to pay for the shipment of the goods. The respondents claim related not to the cost of goods but to shipment of goods.

By their joint statement of defence the appellants admitted that they "ordered various goods in Italy and instructed the plaintiff to ship them to Seychelles" as averred in paragraph 2 of the plaint and that "it was the term of the agreement that the defendants would pay for such services." In addition to these admissions, they denied the averment in the plaint that "goods were shipped" at all or as per the particulars contained in paragraph 3 of the plaint and averred on their own in paragraph 8 of the Statement of Defence that:

**"The Defendants ... paid the plaintiff for all goods ordered and delivered save for goods not delivered or wrongly supplied, for which they had no obligation to pay."**

It is evident that as the pleadings stood it was common ground that there was a contract for services between the respondent and the appellants and they both undertook liability to pay for such of the services rendered in performance of the contract by the respondent. The only issues left to be resolved were whether and to what extent the respondent had rendered those services and whether or to what extent the appellants had paid for such services. Amerasinghe, J. rightly comprehended those issues when he made appropriate findings which are not challenged on this appeal and found that shipping services were rendered as alleged by the respondent and partial payments made by the appellants in relation thereto for which they were entitled to be credited. After deducting payments made by the appellants from the total claimed he entered judgment against both appellants for the balance.

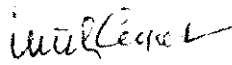
The only point taken by the 1st appellant on this appeal is that the learned judge should not have entered judgment against the 1st

appellant. It was argued that the 1st appellant was not acting in his personal capacity but for the 2nd appellant and consequently was not liable even if the 2nd appellant was. The same point had been canvassed in the affidavit evidence tendered by the appellants at the trial. It was rightly ignored by the trial judge since, in the face of clear admissions on the pleadings and the state of the pleadings, the capacity in which the 1st appellant contracted was not an issue in the case. It was argued by counsel for the 1st appellant that it should be implied that the issue now sought to be canvassed had been impliedly raised on the pleadings. That argument is untenable. Not only is there nothing on the pleadings justifying any such implication as now canvassed but also the provisions of section 75 of the Seychelles Code of Civil Procedure are clear that: "The statement of defence must contain a clear and distinct statement of material facts on which the defendant relies to meet the claim." (emphasis supplied)

There being no substance whatsoever in the only ground canvassed on this appeal, the appeal must fail. The appeal is accordingly dismissed with costs to the respondent against the 1st appellant.



H. Goburdhun  
President



E.O Ayoola  
Justice of Appeal



M.A Adam  
Justice of Appeal

Delivered on this .....<sup>30th</sup> day of October, 1996.