

IN THE SEYCHELLES COURT OF APPEAL

HERMAN MARIA AND COMPANY LIMITED

Appellant

VERSUS

UNITED CONCRETE PRODUCTS LTD

Respondent

Civil Appeal No: 17 of 1999

[Before: Ayoola, P., Pillay & Matadeen, J.J.A]

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Mr. J. Renaud for the Appellant
Mr. A. Juliette for the Respondent



JUDGMENT OF THE COURT

(Delivered by Pillay, J.)

This is an appeal against a decision of the Supreme Court which found that the appellant, then the defendant, owed to the plaintiff, now the respondent, the overall sum of Rs.539,803.59 up to 1998, by way of capital amounting to Rs412,655.31 and agreed interest amounting to Rs.127,148.28. The trial Court then ordered the appellant to pay the sum of Rs.539,803.59 minus Rs.75,447.35 which the respondent in its turn owed to the appellant i.e. Rs. 464,356.24, with interest at the commercial rate of 14% for the year 1999 until payment thereof.

There were originally two grounds of appeal but at the hearing only one ground was pressed by the appellant, namely that interest should not have been awarded by the learned Judge on the sum of Rs.412,655.31 beyond the 6th day of April 1998 when it admitted the debt for three reasons. First, the appellant had admitted in its defence on 6th April 1998 that it owed that sum of the respondent. Second, the appellant could not effect payment of its debt to the respondent owing to the fact that a sum of

Rs.451,970.74 belonging to the appellant had been provisionally attached in the hands of the Ministry of Education as from September 1996. Third, the learned Judge did not award interest on the sum of Rs68,957.35 which the respondent owed to the appellant.

Learned Counsel for the respondent, for his part, referred to Section 284 of the Seychelles Code of Civil Procedure and submitted that his client had to wait for the judgment to be delivered by the trial Court before commencing proceedings within 8 days after the judgment to validate the provisional attachment made in its favour in September 1996. Moreover, there was a material difference between the appellant's willingness to pay its debt and the actual payment of its debt. Consequently, the interest awarded by the trial Court was quite proper in the circumstances.

Section 284 of the Seychelles Code of Civil Procedure reads in part as follows:-

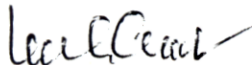
“If the plaintiff obtain judgment in his favour, any money or other movable property attached in the hands of a third person shall remain under attachment, unless the plaintiff otherwise request, until the attachment is validated ...”

It is pertinent to note that, pursuant to Sections 284 and 249 of the Code of Civil Procedure, validation of the attachment is not an automatic process. The process of validation involves a hearing at the end of which the Court may either validate the attachment and direct that the money or other movable property be seized in execution or shall release the same from the attachment.


We agree with the views of learned Counsel for the respondent. We note, moreover, that despite the appellant's admission that it owed to the

respondent the sum of Rs.412,655.31 as far back as April 1998, it has never paid a cent to the respondent up to now.

As rightly conceded by learned Counsel for the respondent, we take the view that the learned Judge should also have awarded interest at the commercial rate on the sum of Rs.75,447.35 admittedly due to the appellant. We so order. The appeal is otherwise dismissed.


E. O. AYoola
PRESIDENT


A. G. PILLAY
JUSTICE OF APPEAL


K. P. MATADEEN
JUSTICE OF APPEAL

Delivered at Victoria, Mahe this 17 day of December 1999.