

IN THE SEYCHELLES COURT OF APPEAL

COLIN CHITTY

APPELLANT

versus

TROPICOLOR LIMITED

RESPONDENT

Civil Appeal No: 28 of 1998

*[Before: Ayoola, P., Pillay & De Silva, J.J.A]*

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Mrs. A. Georges for the Appellant

Mr. J. Renaud for the Respondent



JUDGMENT OF THE COURT

*(Delivered by Pillay J.A)*

This is an appeal against a decision of the trial Court which –

- a) awarded, inter alia, to the respondent, then plaintiff, the sum of Rs.37,690 claimed from the defendant, now the appellant, in respect of a number of items of equipment allegedly taken away by the latter when he left the employment of the respondent; and
- b) dismissed the counterclaim of the appellant relating, among others, to the sum of Rs.42,614.01cs, including interest, which the respondent allegedly owed to the appellant in respect of income tax due by the respondent on the appellant's salary and benefits and not paid by the respondent.

We agree with Counsel on both sides that the decision of the trial Court in respect of the award of Rs.37,690 cannot stand as the learned Judge misconstrued the simple denial of the appellant as an admission of the claim when it was clearly not so, in the light of evidence adduced by

the appellant in the course of the trial that certain items of equipment belonged to him or had been consumed by ordinary wear and tear, without any objection on the part of the respondent. Consequently, we order that the issue relating to the items of equipment must be heard afresh. We allow the appeal, quash the award made by the trial Court and make an order for that issue to be tried anew before another Judge.

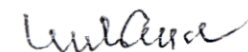
With regard to the sum of Rs.42,614.01cs claimed by the appellant in respect of income tax paid by him and not refunded by the respondent, we allow only the sum of Rs.29,704 (Rs.30,704 – Rs1000 already awarded by the Court under exhibit D12) after having perused the record, in the light of the submissions of Counsel, for the following reasons –

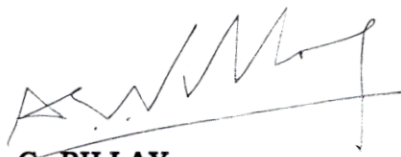
- a) the claim of the appellant was never contested at all by the respondent which did not even file a reply to the counterclaim of the appellant;
- b) Exhibit D5 makes it clear that the appellant was expected by the respondent to declare his taxable salary to the Income Tax Department while it was for the respondent to deduct from his salary any tax due under the P.A.Y.E system;
- c) the appellant produced receipts in his name for the various payments effected in respect of income tax due and paid by him which totalled the sum of Rs.30,704;
- d) it would have been easy for the respondent to adduce cogent and direct evidence, by way of its own documentary evidence or that of the Income Tax Department, to show that the respondent had indeed paid the income tax due by the appellant in respect of the sum of Rs.30,704 for which

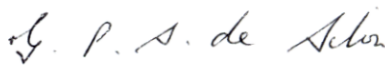
receipts were available from the appellant but it had failed to do so.

We consequently hold that the learned Judge was wrong to have found on the evidence that the appellant had only paid out of his own funds the sum of Rs.1000 but not the additional sum of Rs.29,704, representing income tax which should have been paid by the respondent and which the latter consequently owed to the appellant.

We accordingly amend the judgment of the trial Court on the counterclaim by deleting the words "for a sum of Rs4025.90cs" and replacing them by the words "for the sums of Rs.29,704 and Rs.3025.90cs". The respondent is to pay the costs of this appeal.

  
**E.O. AYoola**  
**PRESIDENT**

  
**A. G. PILLAY**  
**JUSTICE OF APPEAL**

  
**G. P. S. DE SILVA**  
**JUSTICE OF APPEAL**

Dated at Victoria, Mahe this 22<sup>nd</sup> day of April 1999.