

IN THE SEYCHELLES COURT OF APPEAL

[Coram: A. Fernando (J.A) , B. Renaud (J.A) F. Robinson (J.A)]

Civil Appeal SCA 10/2016

(Appeal from Supreme Court Decision MA260/2015 Arising in CS295/2006)

Allied Builders (Seychelles) Limited

Appellant

Versus

Resort Development Limited

Respondent

Heard: 22 August 2018

Counsel: Mr Bonte for Appellant

Miss Benoiton for Respondent

Delivered: 31 August 2018

JUDGMENT

F. Robinson (J.A)

1. This is an appeal against the Order on Motion of the Learned Chief Justice dismissing an application for clarification of a judgment (MA260/2015 arising in CS295/2006), which was delivered by a learned Judge of the Supreme Court on 28 March, 2012.
2. The circumstances out of which the appeal arose were as follows. On 1 August, 2006, Allied Builders (Seychelles) Limited, the present appellant (the applicant in MA260/2015 and the plaintiff in CS295/2006) brought a case in damages against Resort Development Limited, the present respondent (the respondent in MA260/2015 and the defendant in CS295/2006) based on the delays foreseen as breaches in a construction contract. The

appellant sought reparation in the sum of 3,758,560.42/- rupees, moral damages and an unpaid sum of 39,245.25/- rupees.

3. The learned Judge gave judgment for the appellant and ordered the respondent to pay the appellant (a) 2,658,848.92/- rupees as damages for the various breaches incurred; (b) 239,245.25/- rupees as unpaid sums for works completed; (c) the money retained as *"percentage of certified value of retention"*; (d) 10,000.00/- rupees as moral damages; (e) all such sums of money to be paid with interest at the commercial rate from the date of judgment, along with costs. The learned judge also ordered ***"(f) Following the practice adopted herein before, the above sum shall be paid in United States Dollars (USD) at the prevailing market rate"*** [Emphasis is ours].
4. For the avoidance of doubt, judgment CS295/2006 dated 28 March, 2012, is hereinafter referred to as The Judgment.
5. The respondent appealed The Judgement, which appeal was heard and dismissed in August, 2014.
6. The appellant commenced proceedings under the Immovable Property (Judicial Sales) Act by which a sale by levy was sought on Parcel H657 belonging to the respondent. In view of certain procedural irregularities in the Commandment, the court on 24 July, 2015, annulled the proceedings in the Commandment Notice, but stated that the *"plaintiff [was] free to take necessary steps to clarify the disputed issue in CS295/2006 as regards the judgment debt"*.
7. On 22 September, 2015, the appellant made application to the Supreme Court to clarify The Judgment. Clarification is sought in relation to the following passage of The Judgment

—

"31 (f) Following the practice adopted herein before, the above sum shall be paid in United States Dollars (USD) at the prevailing market rate".

8. Counsel on behalf of the appellant contended in his submissions before the Supreme Court that the Supreme Court is empowered to make clarifications of its judgments by virtue of its equitable powers under section 6 of the Courts Act. The appellant had applied the "*breach date rule*" to its interpretation of paragraph 31 (f) of The Judgment and was adamant that the payments made by the respondent were only part payment towards a judgment debt of USD 799,091.00/-, including interest. This position was reiterated on appeal.
9. Counsel on behalf of the respondent contended, in his oral submissions before the Supreme Court, that the respondent had paid and satisfied The Judgment debt, interest and costs awarded in The Judgment in USD at the rate prevailing at the date of the delivery of The Judgment, which the respondent submitted is the proper interpretation of The Judgment. In this respect, he contended in his submissions that the clarification sought would, if acceded to by the court, amount to an amendment of The Judgment. This position was reiterated by Miss Benoiton on appeal.
10. The learned Chief Justice in refusing to exercise her discretion to clarify The Judgment regarding paragraph 31 (f) stated, *inter alia* —

"[10] A legal remedy is available under section 147 in the Seychelles Code of Civil Procedure for the correction of clerical mistakes or errors arising from accidental slips or omissions by the court at any time...

[13] It is abundantly clear that section 147 of the Seychelles Code of Civil Procedure would not permit amendments sought in terms of anything touching on substantive issues that have to be relitigated...

[15] It is clear from the submissions of Mr. Bonte and the way in which the motion and the averments of the Affidavit are couched that the Applicant seeks a re-examination of the award granted by the trial Judge in the light of a particular interpretation of the decision...

[16] ... The Applicant could have cross-appealed on the issue he seeks

clarification of. This it again failed to do. There is no question of the court's equitable powers being exercised in such circumstances."

11. From the Order on Motion the appellant has appealed to this court contending essentially that —

- "The learned Chief Justice erred in holding that equitable powers could not be exercised as the appellant had failed to avail of possible legal remedies, is contrary to the pleadings and procedures in the case...
- The Chief Justice also erred in holding that the motion for clarification of paragraph 31 (f) of the judgment of Gaswaga J dated 28th March, 2012, was an attempt at revisiting issues that were litigated and adjudicated upon."

Analysis

12. The question for the learned Chief Justice was whether the Supreme Court had the jurisdiction to clarify on motion The Judgment on the basis of equity.

13. Prayer (b) of the appellant's prayers is asking for an order that will give effect to the appellant's interpretation of paragraph 31 (f) of The judgment as follows —

"...b) To order the defendant to settle the judgment debt USD 494,444/ with interest as per judgment..." [Emphasis is ours].

14. Having considered the appellant's case, we state that the appellant, apparently for a tactical reason — after having failed to appeal or cross appeal The Judgment and seeking to avoid the dismissal of an application under the "*slip rule*" for the correction of The Judgment — did not adopt any of these courses and decided to apply on the basis of equity. With regard to the "*slip rule*", in *Chetty v Chetty* [2014] SCAMA15/13 (Judgment delivered on 11 April, 2014), (cited by the learned Chief Justice), the Court of Appeal of Seychelles observed "*[t]he clarification and or correction of any slip or accidental error, if at all, has to be apparent from the record of an operative paragraph and not depend upon a construction given by the parties to any particular paragraph which is not the operative paragraph of a judgment.*". See also, for example *Revera v Dinan* (1983-1987) 3 SCAR

(Vol II) 225.

15. Section 6 of the Courts Act provides — "[t]he Supreme Court shall continue to be a Court of Equity and is hereby invested with powers, authority, and jurisdiction to administer justice and to do all acts for the due execution of such **equitable jurisdiction in all cases where no sufficient legal remedy is provided by the law of Seychelles**". [Emphasis is ours]. We mention that the appellant did not cite any dependable authorities in support of its position before the Court of Appeal. We accept Counsel's submission on behalf of the respondent that the learned Chief Justice had not said that "*equitable powers could not be exercised as the appellant had failed to avail of possible legal remedies*". It is clear on a reading of The Judgment that the learned Chief Justice had meant to say that a sufficient legal remedy was available to the appellant in the form of a cross-appeal. Having considered the appellant's case, we are satisfied that it would require reconsideration of The Judgment made and perfected. The appellant should have appealed or cross-appealed The Judgment. We are, therefore, of the opinion that the learned Chief Justice was right in arriving at the conclusion that she had no jurisdiction.

Decision

16. In light of the above, we dismiss the appeal with costs.

F. Robinson (J.A)

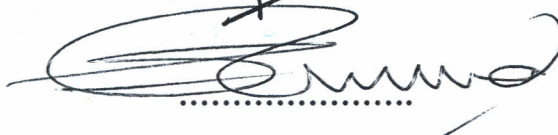


I concur:.

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A. Fernando (J.A)

I concur:.



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B. Renaud (J.A)

Signed, dated and delivered at Palais de Justice, Ile du Port on 31 August 2018