

**Colling v Labrosse & Or
(2001) SLR 236**

Ramniklal VALABJI for the Plaintiff
Philippe BOULLE for the Defendants

Ruling delivered on 13 June 2001 by:

KARUNAKARAN J: At the instance of the Plaintiff, this Court on 18 September 2000 granted an ex parte interim injunction restraining the Defendants from entering and occupying the Plaintiff's house at Glacis. This was granted following the commencement of an action instituted by the Plaintiff in Civil Side No: 206 of 2000. The Defendants being aggrieved by that injunction, on 2 October 2000 applied to this Court by way of two motions:

1. seeking an order for leave to appeal against the said injunction to the Court of Appeal; and
2. seeking an order to vacate the said injunction.

The Plaintiff resisted both motions. On the first motion, this Court by its ruling dated 22 November 2000 has already granted leave for the Defendants to appeal against the said injunction to the Court of Appeal. In the same ruling, the Court went on to state that it would deliver the ruling on the second motion after hearing further submissions from both sides. Accordingly, the Court heard the submissions. Hence, I now proceed to deliver the ruling on the second motion. For the sake brevity, the previous ruling on the first motion may be read as part of the present ruling in this matter. Be that as it may.

Mr Boule, the Learned Counsel for the Defendants based his arguments on a number of grounds in support of the motion. In essence, he challenged the constitutionality, legality, propriety and regularity of the said interim injunction. Further, in his submission he questioned the equitable jurisdiction exercised by this Court in granting an injunction of this nature. First, I note that the grounds relied upon by the Defendants in the second motion are nothing but replica of the grounds that were originally raised in the first motion. As the grounds in effect allege that this Court has erred in law I believe, it is not proper for the same Court to sit on appeal in order to determine whether it has erred in law or not. Indeed, this Court has no jurisdiction to do so either. That is why this Court has already granted the Defendants leave to appeal in this matter. Since the Defendants have already preferred an appeal to the Court of Appeal, I leave those issues to the competent Court for determination.

Having said that I pause here to note that the power to grant an interim injunction has been inherited from the jurisdiction of the High Court of England. An injunction is an equitable as well as a discretionary remedy. The power to grant or refuse the injunction lies within the discretion of the Court of equity ipso facto the same Court has power to

vacate, alter, or revoke the injunction it has ordered. However, that discretion should be exercised judicially not arbitrarily. Indeed, the purpose of granting an ex parte interim injunction is only to prevent an irreparable and imminent injury to a party, which is substantial and could not be adequately remedied or atoned for by damages. Notwithstanding section 304 of the Code of Civil Procedure, which set out the procedure for an injunction pendente lite, the Court, in the exercise of its equitable jurisdiction may grant an ex parte injunction on urgent matters. In that case, the Court ought to follow the procedure of the High Court of England and is therefore not obliged to follow the procedure prescribed in section 304 and 305 of the Code of Civil Procedure. See, *Bonte v Innovative Publications* (1993) SLR 19. However, the injunction of this nature can be granted only in extraordinary circumstances, where the Court is called upon to act as a Court of equity. Therefore, as I see it, since granting the injunction if there had been any change of factual circumstances that no longer requires the injunction and if equity had already served its purpose, then the Court may vacate or revoke the injunction at any time.

Now, let us turn to the facts of the case pertaining to the injunction in question. On the 23 August 2000, the Plaintiff, who was then a minor commenced the civil action against the Defendants. Therein he sought inter alia, an order from this Court for a permanent injunction restraining the Defendants from interfering with Plaintiff's peaceful possession and enjoyment of his house. The Defendant No: 2 was a foreigner and nonresident. On 7 September 2000, that is two weeks after entering the action the Plaintiff urgently moved this Court for an ex parte interim injunction to stop the Defendants from entering and occupying the Plaintiff's house. According to Plaintiff's affidavit dated 5 September 2000 filed in support of the motion, the Defendant No: 2 was then planning to come to Seychelles from Germany within the next few weeks thence and to stay in Plaintiff's house causing irreparable loss to the Plaintiff and damage to his house and so the Plaintiff feared. In view of extraordinary circumstances, which allegedly existed then, this Court was called upon to act as a Court of equity and grant an ex parte injunction urgently in this matter. The Court being satisfied of the circumstances granted the said injunction in favour of the Plaintiff invoking equity in aid.

However, I note the extraordinary circumstances, which prevailed then due to fear and urgency as portrayed by the Plaintiff in his affidavit has now changed. Admittedly, the Plaintiff himself is no longer a minor. The alleged period within which Defendant's intended visit to Seychelles as deponed by the Plaintiff in his affidavit has already elapsed. Many a month has passed since then. The imminent threat of interference by the Defendants and the urgent need for protection are bygones and have now vanished. As I see it, since this Court granted the injunction in this matter, the factual circumstances have changed to such an extent that the interim injunction is no longer required. Its continuation does not serve any purpose any more. In my view, the player "equity" has played his part well in the field and has rendered justice to the minor Plaintiff in this matter. However, it seems to me that he has held up the game too long after scoring the goal of justice. It is high time he should be sent off the field with appreciation. I do so accordingly and hence, vacate the said ex parte interim injunction in this matter.

Record: Civil Side No 206 of 2000