

# **IN THE SUPREME COURT OF SEYCHELLES**

**BERNARD J.M. DE ROBILLARD**

**PLAINTIFF**

**VERSUS**

**MARIE ANTOINETTE FRYARS**

**DEFENDANT**

Civil Side No 92 of 2000

Mr. C. Lablache for the Plaintiff  
Mr. J. Renaud for the Defendant

## **JUDGMENT**

### **Perera J**

The plaintiff claims a sum of Rs.300,000 which he avers was loaned to the defendant, his former concubine to finance her business activities. He also claims Rs.20,000 as moral damages. The defendant, in her statement of defence denies the claim and avers that her business “*Sandy’s Take Away*”, was financed with her own funds and that hence, no money is owed to the plaintiff.

The plaintiff testified that he lived in concubinage with the defendant for three to four years, but separated sometime around 1997. According to his testimony, the defendant left for the United Kingdom for nine months to study hairdressing. She sent a fax message on 29<sup>th</sup> July 1996 to the plaintiff to send her a reference from Banque Francaise Commercial certifying that she was trustworthy and could afford to pay £ 425 per month as rent, and also a statement of the daily earnings of the Take Away business. Admittedly, the plaintiff was managing the accounts of the business at that time.

As regards the alleged loan, the plaintiff testified that by an oral agreement with him, the defendant borrowed Rs.300,000. Oral evidence was admitted, first, on the basis of Article 1348, and the extension of the principle of moral impossibility by the decision in *Vidot v. Padayachy SC.A. 12 of 1990* to those living in concubinage, and secondly as the bank statement of the defendant (P2) shows a credit of Rs.300,000 on 16<sup>th</sup> June 1995 and a cheque remittance to her personal account “no. 55010 fry 00”. The plaintiff also produced a copy of a cheque no. 0243472 (P6) issued by Sunset Beach Hotel (Pty) Ltd. on 16<sup>th</sup> June 1995 to the plaintiff, which was endorsed and credited to the personal account no. 2 of the defendant the same day. The plaintiff also produced the “*Sole Trader’s business tax return and income*” form for the year 1996 (P1) furnished by the defendant to the Commissioner of Taxes, wherein Rs.300,000 is

shown as a loan. The trial balance of “Sandy’s Take Away” as at 31<sup>st</sup> December 1995 (P4) shows a sum of Rs.300,000 as “goodwill” of the business. The plaintiff testified that the sum of Rs. 300,000 was borrowed from him by the defendant to purchase the business from one Mr. Reynolds Benoiton. In the same document, under A/C 13000, it is recorded “loan account” B De Robillard” –Rs300,000. The plaintiff stated that that was the loan transaction of the defendant.

The plaintiff further stated that he suffered prejudice, as he had intended to purchase a hotel at that time, and due to the failure of the defendant to repay he was unable to do so. Hence he claimed moral damages.

The defendant in her testimony denied obtaining a loan of Rs.300,000 from the plaintiff, but however stated that if he had transferred that amount to her account, he must have done it without informing her, as she was in England at that time. Despite the bank statement (P2) being in the sole name of the defendant, she maintained that it was a joint account with the plaintiff. She however admitted that she was aware that Rs.300,000 had been transferred to that account by the plaintiff and that she made withdrawals therefrom. The defendant did not contest the validity of any of the documents produced by the plaintiff to establish his case.

On a consideration of the evidence in the case, the defendant was unable to adduce any evidence to substantiate her averment in paragraph 2 of the defence that she financed her business with her own funds. On the other hand, the plaintiff has produced documentary evidence to establish that a sum of Rs.300,000 which he obtained from Sunset Beach Hotel was endorsed and remitted to the personal account of the defendant on 16<sup>th</sup> June 1995. The business tax return, and the trial balance in respect of the Take Away business which was registered in the sole name of the defendant establish that that amount was utilized by the defendant, in the business. The only matter for consideration is whether the plaintiff transferred that amount as a loan, a gift or as a contribution towards the business as a partner as at that time he was living in concubinage with her.

On the basis of the pleadings, the defendant does not rely on a partnership. Her assertion that the Account at Banque Francaise Commerciale was a joint account is not borne out by exhibit P2, the bank statement. Her defence stands or falls on her assertion that she did not know how Rs.300,000 came into her account, and that her business was financed by her own funds. On a balance of probabilities, the overwhelming evidence adduced by the plaintiff establishes that the sum of Rs.300,000 was credited to the defendant’s account, and as I have already ruled that the defendant was unable to obtain written proof that it was a loan, due to moral impossibility, I accept the oral evidence that that sum of money was loaned to the defendant.

The plaintiff has also claimed Rs.20,000 as moral damages. However special damages, as envisaged in paragraph 3 of Article 1153 of the Civil Code have not been established, the plaintiff will be entitled to interest for delayed performance of the obligation.

Judgment is accordingly entered in favour of the plaintiff in a sum of Rs.300,000 together with interest and costs.

A.R. PERERA

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**JUDGE**

Dated this 25<sup>th</sup> day of September 2006