

IN THE SUPREME COURT OF SEYCHELLES

PETER CLARKE

PLAINTIFF

VERSUS

ZITA MONNAIE

DEFENDANT

Civil Side No 402 of 2005

Mr. C. Lucas for the Plaintiff

Defendant absent and unrepresented

JUDGMENT

Perera J

The plaintiff seeks to claim Pound Sterling 2,275 and Euro 7540 loaned to the defendant. It is averred that by a writing dated 28th April 2005, the defendant confirmed her indebtedness and undertook to repay at the end of May 2005. It is further averred that despite several demands, the defendant has failed to repay the loan. The plaintiff therefore seeks to recover the two amounts together with Sey Rs. 20,000 as moral damages.

Although the plaint was duly served on the defendant, she defaulted appearance, and hence the case was heard *ex-parte*.

The petitioner in the course of his testimony produced the writing dated 25th April 2005 (P1) wherein the defendant acknowledged the debt and undertook to repay the full amounts before the end of May 2005. That document was signed by both parties before two witnesses. He also produced a letter dated 22nd July 2005 whereby his lawyer demanded payment of the debt from the defendant. He testified that payment has not been made so far, and as inconvenience has been caused to him, he claims in addition Rs.20,000 as moral damages.

On the basis of the evidence of the plaintiff, the Court is satisfied that the defendant has breached the undertaking given on 25th April 2005, and that hence, the plaintiff is entitled to recover £ 2278 and Euro 7840 (*which on conversion he claims Rs.75,515*). As regards moral damages, Article 1153 provides that where the obligation merely involves payment of money, moral damages are payable only where "*special damages (have) been caused by the debtor in bad faith and not merely by reason of the delay*". In the absence of such proof, judgment is entered in favour of the plaintiff in sums of £ 2275 and Euro 7540 (*approximately Sey. Rs. 75,515*), together with interest and

costs.

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A.R. PERERA

JUDGE

Dated this 17th day of March 2006