

**Zaccari v Andre
(2008) SLR 136**

Ex Parte

Daniel BELLE for the plaintiff/applicant

Order delivered on 2 October 2008 by:

KARUNAKARAN J: This is an application filed by the plaintiff under section 280 of the Code of Civil Procedure. In this application, the plaintiff seeks an order to attach provisionally the monies belonging to the defendant, which are in the hands of third parties.

By a plaint dated 28 January 2008, the plaintiff has commenced the suit in C S No 16 of 2008, claiming the sum of R 2,100,000 from the defendant for loss and damage, which the plaintiff allegedly suffered as a result of a breach of contract by the defendant. The suit is still pending before the Court for determination. The plaintiff now claims that the defendant has already disposed of his assets, and has left the jurisdiction of this Court pending the determination of the suit. Thus, the defendant is attempting to deprive the plaintiff from realizing the fruits of the judgment the Court may give in his favour. Hence, the plaintiff has now come before this Court with the present motion for an urgent order attaching any money/s belonging to the defendant with or due from third party namely, Bank of Baroda and the Mauritius Commercial Bank, both of Victoria, Mahe, Seychelles.

Upon a careful perusal of the plaint, the application, the affidavit of facts filed in support thereof, I am satisfied that the plaintiff has a bona fide claim against the defendant in this suit. From the averments on record, it appears that there is a clear danger that the defendant may avoid satisfaction of judgment, if given for the plaintiff. I reasonably believe that unless an order of provisional attachment is granted, the plaintiff would not be able to realise the fruits of the judgment, if given in his favour in the original suit. Furthermore, I find that it is an appropriate case, where the Court should make an urgent ex parte order of provisional attachment of the monies belonging to the defendant, in the interests of justice. See, *Mareva Companies Naviera SA v International Bulkcarriers SA* [1980] 1 All ER 215.

In view of all the above, I hereby make an order attaching provisionally any money/all the monies - but not exceeding the sum of R 2,100,000 due to or belonging to the defendant, which is/are in the hands of/due to or belonging to the defendant, with or due from Bank of Baroda and the Mauritius Commercial Bank, both of Victoria, Mahe, Seychelles.

The above order for provisional attachment is made pending the final determination of the suit Civil Side No 16 of 2008 in this matter or until further order of this Court.

Further order

In pursuance of the above order, I direct the Registrar of the Supreme Court to issue the warrants for the provisional attachment of the monies accordingly. A copy of the order made herein to be served on the defendant along with a copy of the application. Mr Daniel Bell, counsel for the plaintiff also be furnished with a copy of the above order accordingly.

Record: Civil Side No 16 of 2008