

IN THE SUPREME COURT OF SEYCHELLES

Marco Francis

Plaintiff/Petitioner

vs

**Daniel Port-Louis
Of Mont Buxton, Mahe
Keven Meme
Of Les Canelles, Mahe
Defendant/Respondent**

Civil Side No: 358 of 2008

Parte:
Mr. F. Bonte for the Plaintiff/Petitioner

D. KARUNAKARAN, J.

ORDER

This is an application filed by the plaintiff under Section 280 of the Seychelles Code of Civil Procedure. In this application, the plaintiff seeks this court for an order to attach provisionally the monies belonging to the defendant, which are in the hands of third parties and their motor vehicles registered either in their name or their company's name: Design & Build Ltd.

By a plaint dated 5th November 2008, the Plaintiff has commenced the suit in Civil Side No: 358 of 2008 against the defendants claiming loss and damage in the sum of Rs 357,516. 44, which the former suffered as a result of an alleged breach of contract committed by the latter. The plaintiff's claim is based on an allegation that the defendants failed or refused to complete the construction work in beach of a building-contract the parties had entered into on the 28th August 2007. The main suit is pending

before the court for determination. Having thus commenced the suit, the plaintiff now fears that the defendants may dispose of their assets and moneys in the bank accounts at any time before the determination of the suit, and which would 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 for an urgent order attaching provisionally any money/s belonging to the defendant with or due from third party namely, MCB and Barclays Bank and also the motor vehicles registered either in their names or in their company's name: Design & Build Ltd.

Upon a careful perusal of the plaint, the petition, the affidavit of facts filed in support, I am satisfied that the Plaintiff has a *bona fide* claim against the defendants in this suit. From the averments on record, it appears that there is a clear danger that the defendants may avoid satisfaction of judgment, if given for the plaintiff. I reasonably believe that unless an order of provisional attachment of the moneys in the hands of third is made, 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 in the interest of justice. See, *Mareva Compania Naviera SA V. International Bulkcarriers SA [1980] 1All E. R at p 215.*

In view of all the above, I hereby make an order attaching provisionally any money/all the monies - to the extent of Rs 357,516. 44 - due to or belonging to the defendants, which is/are in the hands of:

- i) **Mauritius Commercial Bank**
Barclays Bank
(Both of Victoria, Mahé, Seychelles)

However, as regards the plaintiff's application for the provisional seizure of the motor vehicles, this Court would not be able to make an order for such seizure unless and until the plaintiff furnishes to the Court the registration numbers of those motor vehicles with specificity of ownership. With due respect to the learned counsel for the plaintiff, it is not the function of the Court to investigate and ascertain the facts who owns what so as to make attachment orders for the benefit of a party to any litigation. In the circumstances, I decline to make any order as to provisional seizure of the motor vehicles in this matter.

Having said that, the above orders for provisional attachment re made is made pending the final determination of the suit Civil Side No. 358 of 2008 in this matter or until further order of this court.

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D. Karunakaran

Judge

Dated this 15th day of December 2008

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 orders made herein to be served on the defendants along with a copy of the petition, and the documents attached thereto.

Mention (First Time) on 20th January 2009 at 9 am before the master and Registrar. Summons to be served on the defendants along with a copy of the plaint.

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D. Karunakaran
Judge

Dated this 15th day of December 2008