

**IN THE SUPREME COURT OF SEYCHELLES**

JOSIANNE CESAR

PLAINTIFF

VERSUS

IXORA CONSTRUCTION & CIVIL ENGINEERING  
CO. LTD (Rep by Simon Gill)

DEFENDANT

Civil Side No 11 of 2008

.....

Mrs. A. Antao for the Plaintiff

**JUDGMENT**

**B. Renaud J**

On 21<sup>st</sup> January, 2008 the plaintiff entered this plaint claiming for judgment against the defendant in the sum of Rs185,000.00 with interests and costs. The sum is particularized as follows:

- |       |  |                    |
|-------|--|--------------------|
| (i)   | <i>Refund of Deposit</i>   | <i>SR75,000.00</i> |
| (ii)  | <i>Liquidated damages @ 2,500.00 per month from August 2006 and continuing</i> | <i>SR30,000.00</i> |
| (iii) | <i>Moral damages for inconvenience</i>   | <i>SR30,000.00</i> |
| (iv)  | <i>Estimated costs of remedial works</i>                                       | <i>SR50,000.00</i> |

The summons and plaint were duly served on Mr. Simon Gill (*the representative of the defendant*) on 27<sup>th</sup> February, 2008 and he appeared in person before the Court on 4<sup>th</sup> March, 2008 and indicated that he intended to defend the claim. He undertook to file his statement of defence on 13<sup>th</sup> May, 2008. On that date the defendant neither appeared in person or by Counsel and nor he filed his Statement of Defence.

Upon the application of the plaintiff the Court granted leave for the matter to be heard ex-parte on 10<sup>th</sup> July, 2008 at 1.45 p.m.

The plaintiff testified that she was living with her grandmother Mary Cesar at Les Canelles when she made arrangement to start building her own house. It was then that things went wrong with the arrangement to construct the house. The house was to be built on the property Title C4059 belonging to her father George Bonne and mother Lydia Gamma Cesar. **Exhibit P1** is the Title Deed of Parcel Title C4059. On 15<sup>th</sup> February, 2006 she entered into an agreement between herself and the defendant to build a three bedroom house at the price of SR225,000.00. This Agreement is **Exhibit P2**. It was a term of the Agreement that the house would be divided into 5 phases and that at the 1<sup>st</sup> phase the plaintiff would have to pay SR75,000.00 as a deposit. The plaintiff paid the defendant said deposit of SR75,000.00 for which she obtained a receipt No. 0005 dated 15<sup>th</sup> February, 2006. The receipt is **Exhibit P3**. It was also a term of the Agreement that the house would be completed by 20<sup>th</sup> August, 2006, that is in 6 months. By 13<sup>th</sup> July, 2007 the house was not completed. On 13<sup>th</sup> October, 2006 the Officers from MLUH assessed the house and did not agree that the work which had been carried out by then was in conformity with the approved specifications and plans. The findings of the Officers are contained in a letter dated 13<sup>th</sup> October, 2006 from the MLUH. This letter is **Exhibit P4**.

In order to build her house, the plaintiff and her parents obtained a loan of SR208,000.00 from Nouvobanq as per a loan Agreement which is **Exhibit P5**. The plaintiff has not received back any money from the defendant and the house is not completed.

In July 2007 the plaintiff commissioned a Quantity Surveyor, Ms. Cecile Bastille, to evaluate the work that the defendant had done so far. In the Report of the Quantity Surveyor the value of completed works is estimated at SR14,300.00. The Quantity Surveyor's Report is **Exhibit P6**.

As the defendant had undertaken to complete the house in 6 months and this the defendant had failed to do, the plaintiff had to rent alternative house for SR2,500.00 per month and is claiming the reimbursement of that sum from the defendant from August, 2006 to date.

Because the work carried out by the defendant was to such a standard, it had to be demolished and re-done at an additional cost of SR50,000.00 to the plaintiff.

As a result of the defendant failing to construct the plaintiff's house and failing to refund the plaintiff any money, the plaintiff claimed to have suffered loss and damages as particularized above.

On the basis of the uncontroverted evidence of the plaintiff supported by documentary evidences, I am satisfied that the plaintiff has, on a balance of probabilities generally proved her claim against the defendant. I have now to consider the merit of each head of claim of the plaintiff and make appropriate awards.

### **Refund of Deposit**

According to the Quantity Surveyor, the defendant had carried out works to the value of SR14,300.00. Of the initial deposit of SR75,000.00, that sum ought to be deducted. I award the plaintiff the amount of SR60,700.00.

**Liquidated Damages**

There is no penalty clause in the Agreement between the parties. The parties did not envisage that condition at the time of entering into the Agreement. There is no reference in the Agreement that the defendant will be held liable to the plaintiff should he not deliver the completed house by August, 2006. I do not believe that it is now for this Court to import such a condition and award penalty in any way whatsoever. I decline to make any award under this head.

**Moral Damage for inconvenience**

I find that the plaintiff did indeed suffered moral damage arising out of the failure of the defendant to complete the house as agreed within the time specified. The plaintiff will now have to incur additional cost in view of the increase in the cost of construction materials and the devaluation of the Seychelles Rupees since 2006, as well as incurring monthly rental pending the construction of her house under a different arrangement. I award the plaintiff **SR30,000.00** under this head, as claimed.

**Estimated costs of remedial works**

The Quantity Surveyor indicated in her Report that "*valuation of works done to date on site is based on consideration that part has to be demolished and rebuilt*", but no amount is indicated as to what would be the cost of demolition and rebuilding. In such a situation the Court would have to determine the amount. I believe that the cost of remedial work cannot amount to more than the actual work done so far. In the circumstances I will award **SR14,300.00**.

I accordingly enter judgment in favour of the plaintiff as against the defendant in the total sum of SR105,000.00 with interest at the legal rate and costs.

.....

B. RENAUD

**JUDGE**

Dated this 6<sup>th</sup> day of November 2008