

IN THE SUPREME COURT OF SEYCHELLES

**OPPORTUNITY INTERNATIONAL
GENERAL TRADING LLC**

Plaintiff/Applicant

VERSUS

KRISHNAMART COMPANY

Defendant/Respondent

Civil Side No. 111 of 2003

Mr. F. Ally for the Plaintiff
Mr. Rajasundaram for the Defendant

D. Karunakaran, J.

RULING

I will now proceed to give an extempore ruling in this matter. I believe there is no need to give a detailed ruling by rehearsing herein all background facts of the case as they are simple, clear and found on record, which may be read as part of the ruling hereof. I will begin by saying that this case is only the tip of the iceberg indicating clearly how a noble profession in our jurisdiction has declined in its ethical standard, to a low ebb causing dismay to all concerned. Some may not like to hear it; but nevertheless it must be stated that the legal profession in this country has suffered – to say the least - *a dent in the public confidence* because of the increasing unethical practice amongst some of the members of the Bar. It is sad to note that some members of the Bar value their privileges over principles to the detriment of their professional ethics and in the process they eventually sacrifice justice for the sake of their business-objectives.

Be that as it may, by a ruling dated the 25th February 2008, learned Judge Gaswaga has made an order directing Mr. Chang Sam, counsel for the Plaintiff to return/refund the sum of Rs.500,000/- to the Defendant; this sum Mr. Chang Sam then had in his possession having received the same from the Defendant by virtue of a judgment-by-consent the Court had entered on the 6th January 2004. The said judgment-by-consent was subsequently - on 5th May 2006 - set aside by the Court on an allegation of fraud in obtaining the said judgment. The operative part of the ruling of Justice Gaswaga - dated 25th February 2008 - reads thus;

“In the light of the forgoing, I shall make additional orders that the Respondent, Opportunity International General Trading LLC refunds to the Applicant the sum of Rs.500,000/- as forwarded to and receipt thereof acknowledged by Mr. Chang Sam (counsel for the Plaintiff) on the covering letter dated the 27th May 2004. Given the period, the money has been in the account of the Respondent, I shall order that the said money be paid within a period of 3 months from the date thereof.”

Obviously, the Court made the said order for the refund on the 25th February 2008. Nearly one year has now elapsed; Counsel has not yet returned the money having disobeyed the order of the Court. Instead of complying with the Court-order, the learned counsel, Mr. Chang Sam has conveniently transferred the brief to Mr. Ally, who has now come before this Court with the instant application for provisional attachment of the said sum Rs.500,000/- which is still in the hands of Mr. Chang Sam and that is the same money, subject to the ruling of the Court made on the 25th February 2008, whereby Mr. Chang Sam was ordered to refund. Besides, it was not the first time the Court ordered Mr. Chang Sam to refund; even prior to the said ruling of Justice Gaswaga this Court has also on 6th October 2006, ordered the refund in this matter but of no avail until todate.

It is very unfortunate to note that both counsel Mr. Chang Sam and Mr. Ally having taken the order of the Court for a slight, have now filed this application before this Court undoubtedly to defeat the said lawful orders repeatedly made by this Court as well as by my brother Justice Gaswaga for the refund in this matter. In fact, the present application for provisional attachment cannot be made in law against the money which has already been subject to the order made by the Court. As long as the order for refund is in force whoever is in possession of the sum Rs.500,000/-, whether Mr. Chang Sam or the present counsel Mr. Ally (who now represents the Opportunity International General Trading Ltd) person concerned is in contempt and bound to refund the money to the other side (the Defendant) in compliance with the successive orders made by the Court. Indeed, the authority and the dignity of this Court are jeopardised, when counsel, who have never learnt to obey its orders, are given the right of audience and the privilege to appear before it.

Going into the merits of this application, I have to make it clear that this Court in its judgment dated 5th May 2006, found it necessary that the said judgment-by-consent dated the 6th January 2004 entered in this matter ought to be set aside. Hence, the Court ordered a new trial as it found on a balance of probabilities that the said judgment-by-consent had been vitiated by adverse factors involving fraud and negligence, vide page 10 of the said judgment of the 5th May 2006. In the circumstances, I beg to differ with the contention of Mr. Ally that this claim is bona fide on the face of the pleadings. Having said that, if one carefully peruse Section 280, pertaining to provisional attachment, it is evident that the Court may order provisional attachment of monies only in the hands of any “third person”. In my considered view, Mr. Chang Sam is not a “third person” in the eye of law; he holds or retains the money on behalf of his client namely, Opportunity International General Trading. A party who has the control and

possession of the money through his appointed counsel cannot come to the Court to attach his own money, in the pretext of engaging another counsel, simply for the purpose of obtaining an attachment order from this Court. If the Court allows this type of deceitful applications in my view, that would be tantamount to a mockery of justice.

A party who comes before this Court for provisional attachment of money under Section 280 of the Seychelles Code of Civil Procedure should in the first place satisfy the Court that (i) the claim is bona fide and (ii) the money belonging to the Defendant is in the hands of a “third person”. The expression “third person” used in this Section, in my view, means a person who is not under the control of the party who seeks the order of attachment under Section 280 of the Civil Procedure Code. In the circumstances, I hold Mr. Chang Sam (counsel for the Plaintiff) liable to refund the said sum to the Respondent or to his counsel in compliance with the order made by my brother Justice Gaswaga dated the 25th February 2008 in this matter.

Having considered the entire circumstances surrounding this case, I hereby direct Mr. Chang Sam to refund the said sum Rs.500,000/- either to the Respondent or to its counsel within two weeks from the date hereof. The application for provisional attachment is therefore, dismissed with cost.

D. KARUNAKARAN

JUDGE

Dated this 28th day of January 2009