IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS 12/2012

[2014] SCSC 199

DAN PONAN

Plaintiff

versus

HILDA CHRISTINE BRENDA CHETTY

Defendant

Heard:

Counsel: Mr. Camille for plaintiff

Mr. Gabriel for defendant

Delivered: 6th June 2014

JUDGMENT

Karunakaran Acting Chief Justice

This is a suit for damages arising from an alleged breach of contract. By a plaint dated 27th February 2012, the Plaintiff instituted the instant suit seeking for a judgment against the defendant in the sum of Rs 4,404,000/- **for loss and damage, which the plaintiff suffered as a result of a breach of contract by the defendant. Having thus instituted the suit, the plaintiff feared that**

the defendant may dispose of her assets and moneys in the bank accounts at any time before the determination of the suit; that would deprive the plaintiff from realizing the fruits of the judgment the court may give in his favour. Hence, after instituting the suit, the plaintiff applied to this court for an urgent interim order for the provisional attachment of moneys to the extent of Rs 4,404,000/- **belonging to the defendant with or due from third party namely,** Nouvobanq of Seychelles, State House Avenue, Victoria **pending final determination of the suit. For the reasons stated in the Ruling dated the 19th March 2012, this Court accordingly, made an order for the provisional attachment of monies to the extent of Rs 4,404,000/- due to or belonging to the defendant, which were in the hands of Nouvobanq of Seychelles, State House Avenue, Victoria, Mahé, Seychelles. The said Ruling on the provisional attachment of the money may be read as part of the Judgment hereof. Be that as it may, the defendant in her statement of defence denied the entire claim of the plaintiff. According to the defence, there was no agreement between the parties that the defendant should refund the money to the plaintiff, which the former received from the sale of two parcels of land namely S270 and S 1946. For, the money belonged to her personally. Out of the sale proceeds, which she had deposited in her account with Nouvobanq, she withdrew a sum of Rs500, 000/- and gave that sum to the plaintiff as a loan. Hence, the defendant claimed that she was not in breach any agreement and so not liable to refund any sum to the plaintiff.**

The facts that transpired from the evidence on record are these:

The Plaintiff, Don Ponan, aged 55, was at all material times, a British national. He fell in love with a Seychellois national by name Lindy Charlette. They got married. After the marriage they were residing in England. After some time, they decided to migrate and settle in Seychelles for good. The

plaintiff therefore, disposed of all his assets in England and transferred all his funds to Seychelles. The plaintiff arrived in Seychelles with his family. His intention was to establish his permanent family and a matrimonial home in Seychelles and live happily with his Seychellois wife and children. He wanted to make wise investments of his funds in Seychelles. During marriage the plaintiff purchased a number of immovable properties in Seychelles. Since he was a non-Seychellois, he was not able to register any of those properties in his own name because of the statutory restrictions stipulated under the Immovable Property (Transfer Restriction) Act. Hence, he had to register the ownership of all the immovable properties he purchased in Seychelles, in his wife's name. However, time progressively brought in marital discord. Their married life eventually came to an end and the marriage was dissolved. Following the dissolution of marriage, the parties entered into an amicable settlement of the matrimonial properties, especially for sharing the immovable properties, which all then remained registered in the sole name of Lindy. A settlement agreement was proposed by the parties upon the advice and assistance of their respective Attorneys. Ms Karen Domingue - DW2 - was the Attorney for the plaintiff Mr Ponan, whereas Attorney Mr Frank Ally was the one then acting as legal adviser to the Plaintiff's ex-wife Lindy. Ms Domingue was playing a major role in the negotiation and the settlement process between the parties. Eventually, in April 2008, Ponan and Lindy reached a mutual agreement - vide exhibit P1 - to the effect that a part of the immovable property namely, two parcels of land registered as S 1946 and S 270, (hereinafter referred as "the property") which remained registered then in the sole name of Lindy should be transferred to Ponan as his share and the rest of the property were to be retained by Lindy in her own name for her share. Since the Plaintiff was a non-Seychellois, ownership of the property could not immediately be transferred into his name. That time Lindy was about to leave Seychelles for her employment in the UK. Hence, with a view of expediting the matrimonial property settlement and avoiding the potential delay in applying for government sanctions, on the two transfers, Ponan instructed his Attorney Ms Domingue that he would get

some Seychellois Citizen, who was reliable and trustworthy person in order to hold the title of the property until he gets his Seychellois Citizenship and thereafter he could get the property retransferred into his own name from that person. Mr Ponan had a blind trust in his mother-in-law, who is none else than the defendant herein. She was then appeared to be good to him. He therefore, chose her to be that trustworthy person and suggested her name to his Attorney Ms Domingue - vide exhibit P2 - to accept the property on his behalf from Lindy. With the consent of the defendant, Lindy also agreed to transfer “the property” into the sole name of the Defendant, who was after all her step-mother. This was done as part of a matrimonial property settlement agreement between herself and the Plaintiff. The transfers of the property - Titles S 1946 and S 270 - were effected in favour of the defendant in the law chambers of Miss. Karen Domingue, Attorney at Law and Notary Public of Trinity House, Victoria. The evidence given by Miss. Karen Domingue - DW2 - in this respect is very pertinent and significant, which reads in verbatim thus:

“My Lord, Mr Dan Ponan and Miss Lindy Charlette were married. They were my friends as well subsequently became clients. I acted for Mr Ponan whilst he was filing for divorce because they were consenting to the divorce. So I did not feel that there was any conflict (interest) especially given the friendship. I proceeded to do the divorce and during the course of their marriage they had acquired certain properties. They had a child and when the divorce was going through I tried to convince both of them to try and settle all matters - custody and matrimonial property matters in an amicable manner. And they both listened to me. At that time Ms Lindy Charlette was represented by Mr Frank Ally, who actually vetted whatever agreement that we concluded. So that was basically the background and after that at some point I was asked by my client to ask Ms Lindy Charlette to transfer two properties back on his name; but since he was not a Seychellois that was not going to be possible. So I advised him to wait until he obtained citizenship. But we could do a blank transfer of the properties. Mr Ponan advised me that

he had a good relationship with one Ms Hilda Chetty (the defendant) who was the step-mother of his ex-wife and he advised me that he found her a trustworthy person and he wished me to do the transfer from his ex-wife to Mrs Hilda Chetty's name for the two properties. And the agreement was that she would hold these two properties on her name until she would transfer back the properties on Mr. Ponan's name when he became a Seychellois. So I remember doing drafting the two sale deeds and they were signed before myself by both parties and I advised them both of the consequences of the documents and the pros and cons of the transaction.

In pursuance to the above agreement, it was agreed between Plaintiff and Defendant, that Defendant were to have no interest whatsoever in the property, but to hold the property in her name for and on behalf of the Plaintiff, who was the sole legal beneficiary of the property, pending final instructions from Plaintiff to her, as regards to any dealings with the property. In October 2010, upon his instructions the Defendant transferred land parcel S 1946 onto one Krisnaveni Kasinathan and one Rajangam Kasinathan jointly, for the consideration sum of SR 1,100,000 - vide exhibit P4. Again in July 2011, upon Plaintiff's instructions, Defendant transferred land parcel S 270 to one K Kannan Pillay and one K Shanmougasundaram Pillay jointly for the consideration in the sum of SR 3,350,000.

It was also agreed, as part of the agreement referred in Paragraph 2 above, between Plaintiff and Defendant, that all sums above referred were to be paid by the purchaser into a bank account held by the Defendant at Nouvobanq Seychelles and that the said sums were to be held by the Defendant, for and on behalf of the Plaintiff, on Defendant's bank account at Nouvobanq Seychelles. In view of the fact that Plaintiff was at the material time, residing in England and it was agreed that the said sums or part thereof were to be paid to Plaintiff by Defendant, upon demand by the Plaintiff.

Admittedly, the total sums being the proceeds of sale of the property and of which sum the Defendant held on plaintiff's behalf, in her bank account above referredto, stood at SR 4,450,000.

In August 2011, Defendant contacted the Plaintiff whilst he was in England and asked for a loan of Rs46, 000/- for former's repayment of her insurance loan which was outstanding. The Plaintiff readily agreed to help her out of courtesy and instructed her authorizing her to withdraw and deduct the sum of Rs 46,000 from the said bank account at Nouvobanq. Again in August 2011, Defendant requested for a sum of Rs50,000 to help with the roofing of an old couple's house known to Defendant, which again the Plaintiff agreed and instructed Defendant to deduct the sum of Rs 50,000 from Defendant bank account, which money belonged to Plaintiff. On the 16th December 2011, the plaintiff contacted the Defendant and instructed her to transfer the sum of Rs 3, 500,000 onto a bank account held at Barclays Seychelles, on the name of Soma Boutique. Despite her repeated promises that the money were to be transferred on the 19th December 2011, the Defendant, in breach of the above referred agreement, failed and refused to transfer the sum. Since then despite several requests and entreats by the plaintiff for the release of the funds, the defendant constantly refused to return the money to the plaintiff. Besides, the defendant was making unreasonable demands and put conditions to honour the agreement and refund what was due and payable to the plaintiff. Admittedly, the defendant wrote a letter dated 1st February 2012 - in exhibit P6 - to the plaintiff explaining her conditions for the return of the money to the plaintiff. It is important here to reproduce the contents of this letter, which reads thus:

"Hilda Chetty
Union Vale
Mahé
Seychelles

1st February 2012

Dear Mr Dhanarine Ponan,

Further to your request for me to release to you the proceeds of the sale of the two properties that I was holding in my name on your behalf, I hereby agree to release to you the said proceeds, provided you pay me a consideration of SCR1.500, 000.00 as a fair settlement for having held the properties in my name.

For many times, I had to appear in Court and the worries and sleepless nights before each Court appearance, as I had never been in Court before.

The amount claimed by Ms Lindy Charlette must be retained and will be transferred to your account only when the case is closed.

I believe it is a reasonable amount to compensate me with after all the troubles I've been through for you and you knowing very well the sum you have already collected.

You must remember that when you approached me to help, you never mentioned that I would have to go to Court.

Should you agree to this offer, please let me know and I will do the necessary to have the proceeds of the sale less my consideration transferred to you.

Thank you.

Regards

(Sd)

HILDA CHETTY"

Having received the shocking demand of Rs1.5 million as a ransom/ commission demanded by the defendant, the plaintiff in good faith replied to the defendant by a letter dated 3rd February 2012 - vide exhibit P7 - and offered her to pay the sum of Rs 250,000/- in full and final settlement of the cutthroat demands made by the defendant in this matter. However, despite various contacts with the Defendant either directly or through her attorney,

to effect the transfer of the total sum standing at credit, which sum was due and payable to the Plaintiff, from the said bank account at Nouvobanq, Defendant repeatedly refused to transfer the money or at all. This sum in the bank account was the one that was provisionally attached by the Court order first above mentioned. As a result of the defendant's dishonest behaviour, breach of trust and breach of the agreement above mentioned Plaintiff claimed that he suffered loss and damages as follows:

(i) Loss of balance of the sum the defendant owed: Rs 4, 354,000.00
(ii) Moral damages for anxiety and distress: Rs 50,000.00

Total Rs 4, 404,000.00

In view of all the above, the plaintiff urged this Court to be pleased to enter judgment in the sum of Rs 4, 404, 000 against the Defendant, plus costs and interest at the commercial rate from the date of judgment.

The plaintiff further testified that he never received either Rs 500,000/ or any other sum from the defendant at any time for any reason whatsoever, from the funds in the said bank account held by the defendant on behalf of the plaintiff in respect of the sale proceeds hereinbefore mentioned.

On the other side, the defendant, aged 51, who is working as a cleaner with H. Savy Insurance Company, testified that she never agreed to return the money in question to the plaintiff. Although she admitted that the money belonged to the plaintiff, she did not sign any paper agreeing to refund the sum to the plaintiff. According to her, she had a share in the proceeds of sale, as she was working hard and underwent a lot of problem because she had agreed to give her name for the transfer dealings in order to help the plaintiff. According to the defendant, her daughter Lindy had filed a case in Court against the plaintiff and so she had to defend the case on behalf of the plaintiff. In that process, he suffered a lot and had to spend her time and energy to help the plaintiff. Moreover, she claimed that her daughter Lindy requested her to look after the plaintiff's son Angelo, when she was away

from the country. Therefore, the defendant claimed that she should be compensated by the plaintiff from the sale proceeds as she also maintained and took care of his son Angelo. She however, admitted in cross examination that there was no agreement between the plaintiff and herself for the payment of any service charges or commission. Besides, the defendant testified that the plaintiff sent her a text message authorising her to withdraw SR500, 000/ from the said bank account as the plaintiff wanted to pay that sum to one Ms Laura Valabji. Therefore, according to the defendant on the 14th September 2011, following the plaintiff's instruction she went to Nouvobanq and withdrew Rs 500,000/- cash - vide exhibit D1 - and put the cash in an envelope and gave that envelope to the plaintiff, who was waiting with his son near MCB at Caravel House that day. However, in the statement of defence she has averred that she gave Rs500, 000/- to the plaintiff as a loan taking out from her own account with Nouvobanq. Moreover, she testified that she had setup admittedly a close friend of hers one Mr. Randolf Hoareau (DW2) as a witness to observe all the happening in respect of the cash Rs500, 000/- she paid to the plaintiff, for which she did not want to obtain a receipt from the plaintiff. Mr. Hoareau, who is admittedly a friend of the defendant testified that he was escorting the defendant and carried the cash and went inside MCB and watching through the glass panel when defendant was giving that envelop to the plaintiff. According to the defendant her husband was also witnessing at MCB, while she was giving that envelope to the plaintiff. However, she did not call her husband to testify on this issue falsely accusing the Court of preventing her from calling her husband as a witness in this matter. In the circumstances, the defendant contented that she is ready and willing to release the money from the bank account in question, provided she is given Rs 1.5 million as her share or commission or service charges for the help she rendered to the plaintiff in the entire episode.

Having carefully sieved through the pleadings, evidence, submissions and authorities cited by counsel, I find the following questions arise for determination in this matter:

1. Whether the plaintiff has established on a balance of probabilities that the sale proceeds of “the properties” which the defendant had received and deposited into her bank account belonged to the plaintiff?
2. Was there any agreement between the parties that the defendant should return the said “sale proceeds” to the plaintiff upon demand?
3. Whether the said agreement between the plaintiff and defendant for the return of the said “sale proceeds” to the plaintiff is a back-letter or affected by any back-letter rules?
4. Whether the said agreement between the plaintiff and defendant for the return the said “sale proceeds” to the plaintiff is unlawful or prohibited by law or against public policy?
5. Did the defendant pay SR500, 000/- to the plaintiff from the sale proceeds that had been deposited in her account with Nouvobanq?
6. Is the defendant liable to pay any moral damage to the plaintiff? If so, how much?
7. If the defendant is found liable, what is the amount outstanding, due and payable to the plaintiff?

Before, I proceed to find answers to the above questions, it is important to evaluate the credibility of the witness, who testified for the parties on factual issues. Having observed the demeanour and deportment of the plaintiff and her witness Ms Karen Domingue, I conclude that both of them are very credible and truthful witnesses. I believe both in every aspects of their testimonies particularly, on their version as to how, why and under what circumstances the sale proceeds of the two properties namely, S270 and S 1946 totalling SR 4,450,000 were entrusted to the defendant on the implied agreement or obligation that the defendant should return the sum as and

when required by the plaintiff. Their evidence pertaining to the defendant's breach of the agreement are very cogent, reliable and consistent in all material particulars. On the other hand, having observed the demeanour and deportment of the defendant and her witness Randolf Hoareau, I conclude that both of them are not at all credible witnesses. They were obviously, lying and were telling a cock and bull story to the Court in respect of their alleged payment of Rs500, 000/- cash to the plaintiff at MCB premises on the 14th September, 2011. I reject their evidence in toto in this respect. Since they were close friends, am sure that they have collaborated and concocted the story of the alleged payment Rs 500,000/- to the plaintiff. We will discuss the falsity of this story and the reasons therefor *infra*. I quite agree with the submission of Mr. J. Camille in that the defendant is an untruthful witness to the core for the following reasons, leave alone the inference the Court drew supra from her demeanour and deportment:

(i) Defendant in her statement of defence has denied being previously the mother in law of the Plaintiff; but, in her testimony in Court Defendant admitted that Plaintiff was indeed married to her husband's daughter, Lindy Charlette.

(ii) Defendant in her statement of defence has admitted that the transfer of the 2 properties from Lindy Charlette into her name was effected in the law chambers of Miss Karen Domingue. However, in her testimony of the 23rd January 2013, Defendant stated that the transfer documents were signed by her in the office of Mr Basil Hoareau, Attorney at Law. The Defendant's evidence in this respect is contradicted by the testimony of Miss Karen Domingue, whom I believe to be a credible witness, clearly testified that Defendant did sign both transfers in her chambers at Trinity House on the 3rd April 2008.

(iii) The Defendant has further denied acting for and on behalf of the Plaintiff in her statement of defence. Yet in her testimony,

Defendant has admitted that she was acting under Plaintiff's instructions for both properties.

(iv) Defendant also has denied in her statement of defence that all monies from the sale of the two properties were paid into her bank account at Nouvobanq in view of the fact that Plaintiff had been in England at the time of payment for the property. The Defendant however stated on oath that Plaintiff was at all material time in England and that she did bank the money in her account at Nouvobanq.

(v) The Defendant has also denied in her defence that the sum received and banked in Nouvobanq was Rs4, 450,000 on behalf of Plaintiff. In cross examination Defendant has refused to acknowledge the amount banked by her and how much is outstanding on her bank account. Yet when she was questioned by the Court on this issue Defendant confirmed that all the moneys are still on her bank account at Nouvobanq.

(vi) The Defendant in her defence has admitted to Rs46, 000 having been agreed between her and Plaintiff to be withdraw from the proceeds of sale and to pay to Defendant for payment of her outstanding loan with H Savy Insurance. However, on oath, Defendant denied such agreement and stated that she works and pays her own insurance loan. Defendant further testified that she has then withdrawn Rs500, 000 and paid cash to Plaintiff. Plaintiff denied that such payment was ever made. In that respect the Court finds that the evidence of DW2 Randolph Hoareau is unworthy of belief. Mr. Hoareau demeanour in Court clearly showed that he was not being truthful. One question remains. How can a bank employee who at the material time was on duty be made to leave his work and escort a client to make a payment to another person?

(vii) Defendant in her statement of defence denied that she requested Rs50, 000 to repair an old couple house and which

Plaintiff agreed to the withdrawal from the proceeds of sale held by her. Yet in her testimony, Defendant clearly admitted on oath, that there was such agreement with Plaintiff.

(viii) Defendant has also denied in her statement of defence that Plaintiff had contacted him and requested her to transfer Rs. 3.5 million into Soma Boutique bank account at Barclays Seychelles. On oath Defendant accepted that such request was made to her by Plaintiff.

(ix) The Defendant denied that Plaintiff contacted her for the transfer of the money to Plaintiff, in her statement of defence. Yet she did testify that there has been previous request made by Plaintiff as regards to transfer from the proceeds of sales.

Now I will proceed to find answers to the above questions in the same numerical order as they appear supra.

1. **The defendant did not deny the fact that she received and deposited the entire sale proceeds of "the properties" into her personal account with Nouvobanq. Also she did not deny the fact that both properties belonged to the plaintiff, who had sought her assistance in the entire episode for transfer and sale to third parties. It is very evident from the defendant's letter dated 1st February 2012 - in exhibit P6 - to the plaintiff that the defendant does not deny the basis of the plaintiff's claim. In fact, she was ready and willing to release to the plaintiff the said sale proceeds, which she was holding in her name on plaintiff's behalf, provided he pays her a consideration of SCR1.500, 000.00. In any event, exhibit P6 constitutes a "commencement de prevue par ecrit" which is supplemented by oral evidence by the plaintiff and presumptions. This is equivalent in reality to a complete proof of the material facts required and relied upon by the plaintiff to succeed in his claim vide Rayfield v Teemooljee & Co Ltd**

(SLR 1956-1962), Therefore, I conclude that the plaintiff has clearly established - more than on a balance of probabilities - that the sale proceeds of "the properties" which the defendant had received and deposited in her bank account belonged to the plaintiff. This answers the first question.

2. **On the question of the alleged agreement to refund the "sale proceeds" to the plaintiff upon demand, it should be noted that all agreements whether in writing or oral lawfully concluded shall have the force of law for those who have entered into them. They shall not be revoked except by mutual consent or for causes which the law authorises. They shall be performed in good faith - vide Article 1134 of the Civil Code. In any event, the agreements shall be binding not only in respect of what is expressed therein but also in respect of all the consequences which fairness, practice or the law imply into the obligation in accordance with its nature - vide Article 1135 of the Civil Code. Therefore, when the defendant agreed to receive the "sale proceeds" on behalf of the plaintiff, fairness and practice imply an obligation that she has to refund it to the lawful owner namely, the plaintiff. Evidently, the defendant entered into a gratuitous contract to receive the sale proceeds on behalf of the plaintiff and keep the money in her bank account for the advantage of the plaintiff. In the circumstances, I find that there was an agreement between the parties that the defendant should return the said "sale proceeds" to the plaintiff upon demand. This answers the second question.**

3. **Learned counsel for the defendant is attempting to apply the concept of back-letter to the alleged agreement that gave rise to the cause of action in this matter. Obviously, the said agreement between the plaintiff and the defendant for the return of the "sale proceeds" to the plaintiff and the alleged**

breach thereof by the defendant has nothing to do with any back-letter or affected by any back-letter rules. This agreement between the plaintiff and defendant to my mind is a separate transaction that is being challenged in this suit. This agreement has nothing to do with the transfer deed which Lindy executed in favour of the defendant. If at all any back-letter applies that could only affect the transfer deed between Lindy and the defendant. Legally speaking, the plaintiff was not a party to that contract of transfer deeds. He is only a third party to those transfers made by Lindy in respect of the two immovable properties namely, S270 and S 1946 in favour of the defendant. It is evident from Article 1321 that Back-letters shall only take effect as between the contracting parties; they shall not be relied upon as regards third parties. Therefore, had there been any back-letter between Lindy and defendant relating to the transfer deed, which cannot affect the third party namely, the plaintiff in this matter. Back-letters under our Civil Code shall apply only in respect of two scenarios contemplated under paragraph 3 and 4 of Article 1321 respectively, as to consideration in relation to immovable property and as to variation, amendment of any registered deed. Needless to say, the instant case pertains to money claim and does not fall under any categories that attract the concept of back-letter. Hence I find that the agreement between the plaintiff and defendant for the return the said "sale proceeds" to the plaintiff is not at all a back-letter or affected by any back-letter rules. This answers question No: 3 above.

4. **The said agreement between the plaintiff and defendant for return of the said "sale proceeds" to the plaintiff is neither unlawful nor prohibited by law nor against public policy. This is permitted in law under Article 1105 of the Civil Code. This**

reads thus: “In a gratuitous contract one of the parties procures to the other an advantage entirely free of charge”. Thus, I find answer to question No: 4 above.

5. **The defendant claims that she paid cash SR500, 000/- to the plaintiff on the 14th September 2011 upon the instruction through a text message she received on her mobile phone allegedly sent from the plaintiff’s phone. Strangely, without any prompting the defendant volunteered by saying that she lost that particular phone, which received that text message. She also made sure that the said incident of payment happened in a public place opposite MCB, that too, while a close friend of hers was there to witness the entire episode; starting from the time she withdrew the cash from Nouvobanq, then putting the money in an envelope and carrying the same all the way from Nouvobanq situated at State House Avenue to MCB at Caravel Building escorted by the same friend and eventually that episode ended up in delivering the envelop to the plaintiff. This interested witness presumably had the magical ability to know that the envelope had in fact contained SR500, 000/- . He also testified that while he was talking to another friend across the counter inside the bank (MCB), he could watch therefrom all the movements and whereabouts of the defendant and the plaintiff. According to this witness, delivery of envelope to the plaintiff by the defendant happened outside MCB in the car park. That witness, who appeared to have ESP (extra sensitive power), could see at the exact moment when the defendant happened to deliver that particular envelope containing Rs500, 000/- to the plaintiff. Whoever be the inventor of the story narrated by the defendant in collaboration with her close magician-friend, who had the ESP, the fact remains that the evidential burden of proving the payment solely lies on the defendant - vide Article**

1315 of the civil Code. Indeed, no oral evidence is admissible to prove the payment as it exceeds SR5, 000/-. In any event, the Court has already rejected her oral evidence in this respect for lack of credibility, abundance of inconsistencies and contradictions in her evidence. It has also rejected the evidence of her interested witness Mr. Hoareau for similar reasons. In the circumstances, I find that the defendant has miserably failed to discharge her evidential burden to prove her payment of SR500, 000/- to the plaintiff. In the circumstances, I conclude more than on a preponderance of probabilities that the defendant did not pay SR500, 000/- to the plaintiff from the sale proceeds that had been deposited in her account with Nouvobanq. This answers question No: 5 above.

6. **On the question of the plaintiff's claim for moral damages, it is evident that the defendant has been in breach of trust, which the plaintiff had genuinely reposed on her. The arm-twisting attitude of the defendant to extract money in millions from the plaintiff in the entire episode is appalling that should have definitely shocked the plaintiff to the core. The quantum of Rs 50,000.00, claimed by the plaintiff for moral damages, in considering the entire circumstances of the case, appears to be reasonable. Accordingly, I find that the defendant is liable to pay moral damages in the sum of Rs 50,000/- to the plaintiff.**
7. **In conclusion, I find that the defendant is liable to pay the entire sum she received from the proceeds of sale of the said two parcels of land registered as S 1946 and S 270, minus the sums the plaintiff had admittedly authorised her to withdraw for her own use.**

The balance of the amount outstanding, due and payable by the defendant to the plaintiff is calculated as follows:

(a) The total of the proceeds of sale
in respect of the said two properties: **SR 4,450,000/-**

(b) (Minus) The amount the plaintiff had authorised
the defendant to withdraw for her own use
for Insurance Repayment **SR 46,000/-**

(c) (Minus) The amount the plaintiff had authorised
the defendant to withdraw for changing the roof **SR 50,000/-**

Balance SR4, 354,000/-

(d) (Plus) Moral damages **SR 50,000/-**

Total SR4, 404,000/-

Before I conclude, I wish to mention - for the purpose appeal if any, in this matter - that although the plaintiff had made an offer of bribe in the sum of Rs250, 000/- in an attempt to entice the defendant for the lawful release of the money from her bank account, the defendant did not accept that offer. Therefore, I find that there was no agreement concluded between the parties for the payment of this sum. In any event, as found supra, the original dealing between the parties constituted a valid Gratuitous Contract contemplated under Article 1105 of the Civil Code. Therefore, the demand made by the defendant for a bribe or kickback or for any payment for that matter, in breach of a Gratuitous Contract is against the law, which is immoral and against public policy. The Court cannot and should not encourage such immorality by awarding any payoff in favour of the defendant.

For the reasons stated above, I enter judgment for the plaintiff and against the defendant in the sum of SR4, 404,000/- **and with**

costs. However, having regard to all the circumstances of this case, I make no order as to interest in this matter.

Signed, dated and delivered at Ile du Port on 6th June 2014.

D Karunakaran
Acting Chief Justice