

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: MA 119/2015
(arising in CC 14/2015)

[2015] SCSC 197

AJAY SINGHVI
Applicant

versus

SHANMUGA RETHENAM
Respondent

Heard: 8th June 2015
Counsel: Mr. Kieran Shah for applicant
Mr. Basil Hoareau for respondent
Delivered: 24th June 2015

ORDER ON MOTION

Robinson J

[1] **Background**

[2] The present proceedings stem from the grant of several interlocutory prohibitory injunctions and several interlocutory mandatory injunctions, *ex parte*, against the first defendant, second defendant, third defendant, fourth defendant, fifth defendant and sixth defendant in the head suit, CC14/2015, on the 18th March, 2015.

[3] Mr. Ajay Singvi, the applicant, is the first defendant in the head suit, CC14/2015.

[4] The applicant has filed application before this court, on the 11th May, 2015, seeking the following orders from this court —

- "1. That the 1st Defendant Ajay Singhvi can instruct a lawyer in the above case to represent the 5th Defendant.
2. An order that the Plaintiff provides security for compensation in case the court shall be of the opinion that the Defendants shall have sustained any damage as a result of the interlocutory orders having been made.
3. An order compelling the shareholders of the 5th Defendant to hold a meeting of members."

[5] The applicant has sworn to an affidavit, on the 11 May, 2015, in support of the application (hereinafter referred to as the "Applicant's Affidavit"). This court reproduces the Applicant's Affidavit —

"I Ajay Singhvi, the 1st Defendant and one of the Directors of the 5th Defendant solemnly affirm and state as follows —

1. That on the 18th March 2015 the Judge of the Supreme Court of Seychelles made an order of interlocutory injunctions against the Defendants.
2. I refer and repeat the statements in my affidavits dated 28th March 2015 and 15th April 2015 respectively.
3. That the Plaintiff and I, as Directors and shareholders, have not been able to meet to discuss the legal representation for the 5th Defendant.
4. In view of the conflict of interest between the Plaintiff and the Defendants, it is necessary that I be authorized by the court to appoint a lawyer to represent the 5th Defendant.
5. The said order of the court prohibits me from taking any steps of disposing the assets of the company or its subsidiaries and also prohibits me from issuing any show cause notice to the Plaintiff whatsoever.
6. The 5th Defendant's assets including its subsidiary SG Resources Mozambique LDA are deteriorating and being

vandalized, I am informed by the CEO of the Mozambique subsidiary, namely Captain Ronald Herman, that on the 16th March 2015 the assets were worth USD800, 000/- and on the 27th April 2015 the assets were worth USD 630,000/- due to theft and vandalism. The Plaintiff being a shareholder has no interest in protecting these assets.

7. I would like the assets of S G Resources Mozambique LDA sold as they are not being used and they may be seized for unsatisfied Mozambique's Tax which has not been paid. The amount outstanding for taxes, plus staff wages and utilities as of 9th December 2014 amounts to USD 228,000/- which increased by day.
8. In addition to paragraph 7 the Mozambique Port Authority is owed approximately USD 2 million.
9. There are over USD 5 million in assets of the 5th Defendant which are also not maintained, not secured, and probably being vandalized that need to be sold immediately.
10. The Plaintiff as the Director and Shareholder is doing nothing to these matters as well as other matters and claims involving the 5th Defendant and is conveniently shielding behind the court order which prohibits any show cause notice to be issued.
11. I estimate the potential loss of the 5th Defendant in the sum of USD 3 million.
12. I request this Honourable Court to order the Plaintiff to provide security by way of deposit into court or into a bank operating in Seychelles in the sum of USD 3 million in order to abide by any order the court may make as to damages in case the court shall hereinafter be of the opinion that any of the Defendants shall have sustained any damages by reason of the interlocutory orders, which the Plaintiff ought to pay.

[...]."

[6] Mr. Shanmuga Rethenam, the respondent to the application and the plaintiff in CC No. 14/2015, has opposed the application. The respondent has sworn to an affidavit in reply on the 8th June, 2015 (hereinafter referred to as the "Respondent's Affidavit in Reply"). This court reproduces the Respondent's Affidavit in Reply —

"1. Shanmuga Rethenam of 107, Burgundy Crescent, Singapore, 658803, being a Hindu hereby affirm and declare as follows —

1. I am the deponent above-named and the Respondent in the above Application and the plaintiff in the principal suit.
2. I take cognizance of the Notice of Motion in M.A. 119/2015, filed by the 1st Defendant in the principal suit of the 12th May, 2015.
3. In respect of prayer 1), regarding the legal representation for the 5th Defendant, I aver as follows:-
 - 3.1 I have no objection to the 1st Defendant instructing an Attorney-At-Law to represent the 5th Defendant in the principal suit; and
 - 3.2 that the 1st Defendant by an email dated 13th May, 2015, to me, had suggested as one of the proposed options that the 5th Defendant shall not be represented by any Attorney and that it will abide by the judgment of the court. I had agreed to the said proposal. It is now shown to me, produced and exhibited herewith as A1, the exchange of emails between the 1st Defendant and I regarding the said proposal.
4. In respect of the prayer 2, namely the furnishing for security for compensation, I aver as follows:-
 - 4.1 the demand has no merit whatsoever; and
 - 4.2 there is no evidence supporting the said demand. As a matter of fact, any averments in the Affidavit of the 1st Defendant in support of the application is vague and/or based on hearsay.
5. In respect of the prayer 3, namely to compel the shareholders of the 5th Defendant to hold a meeting of members, I aver that the application has no merit whatsoever.
6. The averments contained in the above paragraphs 1 to 5 are true to the best of my knowledge, information and beliefs.
7. I, therefore, pray that the 1st Defendant's application be dismissed with cost.

[...].”.

[7] **Submission and Discussion**

[8] This court has considered fully the application supported by the Applicant’s Affidavit and the Respondent’s Affidavit in Reply in light of submissions of counsel.

[9] Legal Representation for Southern Africa Resources Ltd

[10] The plaintiff and the first defendant have agreed that the latter should instruct an Attorney- At-Law to represent Southern Africa Resources Ltd, the fifth defendant.

[11] Undertaking as to Damages

[12] The issue for the determination of this court is whether or not the plaintiff’s undertaking ought to be fortified and, if so, to what amount. The first defendant has "*estimated the potential loss of the fifth Defendant in the sum of USD 3 million.*”. The plaintiff in contesting the application took the view that the demand has no merit whatsoever and there is no evidence supporting the demand.

[13] The *undertaking itself* is a standard requirement that accompanies the court’s grant of an injunction almost as "*a matter of course*”: See the English Court of Appeal decision of *Cheltenham & Gloucester Building Society v Ricketts* [1993] 1 WLR 1545; as well as the House of Lords decision of *F Hoffmann-La Roche & Co AG v Secretary of State for Trade and Industry* [1975] AC 295.

[14] Returning to the issue of whether or not the plaintiff’s undertaking ought to be fortified, this court notes that the applicant did not address this court on this issue. The applicant addressed this court on the question of the *undertaking itself*, which undertaking the plaintiff has given to this court in MA53/2015 arising in CC14/2015.

[15] The applicant addressed this court on the amount that the plaintiff should pay, namely, United States Dollars (US\$) 3 million. He stated that it is a relevant factor if the plaintiff is not within the jurisdiction and fifth defendant, a Seychelles International Business Company, conducts business outside of Seychelles.

[16] The alleged heads of claim are found in paragraphs 6 through 9 of the Applicant's Affidavit. The respondent has averred that there is no evidence supporting the demand of the applicant. This court concurs with this view.

[17] In light of the above, this court is not satisfied that the applicant has established to the satisfaction of this court firstly, that the plaintiff's undertaking ought to be fortified and, secondly, that evidence supporting the alleged heads of claim has been substantiated.

[18] *Order compelling the shareholders of fifth defendant to hold meeting of members*

[19] Regarding the prayer of the applicant that this court compel the shareholders of the fifth defendant to hold a meeting of members, this court states, in light of the Order on Motion, of this court, in MA53/2015 arising in CC14/2015, that the application is without merit.

[20] **Decision**

[21] Application dismissed. Cost to the plaintiff.

Signed, dated and delivered at Ile du Port on 24 June 2015

F Robinson
Judge of the Supreme Court