IN THE SUPREME COURT OF SEYCHELLES

Civil Side: MA 97/2015

(arising in CS 120/2008)

[2016] SCSC 14

CHARLES PIERRE-LOUIS

Petitioner

versus

ANNE MARIE VEL

Respondent

Heard: 20 October 2015

Counsel: Ms. L. Pool for petitioner

Mr. F. Elizabeth for respondent

Delivered: 20 January 2016

RULING **ON MOTION**

Karunakaran J

[1] This is a petition for a new trial filed by the petitioner under Section 194(c) of the Code of Civil Procedure seeking the Court for an order to set aside an ex parte judgment given against him in the original suit Civil Side 120 of 2008. The petitioner and the respondent herein were respectively the defendant and plaintiff in the original suit.

[2] On 16th January 2015 the Court entered the said ex parte judgement for the plaintiff and against the defendant in the original suit after taking the evidenceof the plaintiff in the absence of the defendant. The background facts and circumstances which led the Court to enter that judgment are as follows:

[3] The original plaint was first filed in May 2008, wherein the plaintiff claimed that she had been living in concubinage with the defendant for over 15 years. Out of their concubinage three children were born. Throughout their concubinage the plaintiff contributed/invested all her earnings for the construction of a house, the family home on a plot of land belonging to the defendant. Their concubinage came to an end in 2005. Parties separated. The plaintiff was driven out of the family home with her three children. Since then the defendant has been in sole possession and occupation of the house. The plaintiff requested the defendant to compensate her for the loss due to such contribution/investment she made. The defendant initially agreed to refund, compensate or reimburse the plaintiff for the same; but, subsequently refused to do so. The plaintiff claimed that the defendant has been unjustly enriched from the contribution/investment made by the plaintiff in the construction of the house. Despite several requests, the defendantneglected or refused to compensate the plaintiff. In the circumstances, she came before this Court seeking justice. She filed the suit in 2008 seeking a judgment against the defendant in the sum of Rs 250,000/- so that she can be compensated or refunded of her hard earned money invested in the construction of the family home.

[4] In the original suit the pleadings were not closed until September 2011. Going by the record, it appears that the defendant has been applying delay tactics to procrastinate the case abusing all procedural rules and technicalities, asking for better particulars, change of counsel at least for three times and giving false hopes of settlement and other maneuvers. The case had been fixed for hearings at least on 3 occasions but all aborted because either parties were absent or Counsel were in others Courts or for some other reason. However, on most of the occasions neither the Defendant nor his Counsel was present. The defendant changed his counsel three times, for reasons best known to him only. On first two occasions, when the case came up for hearing the Court encouraged the

parties to settle their dispute amicably, in the interest of justice. However, despite several attempts by the Court, no settlement was reached.

[5] On 4th June 2014, the Court had finally fixed the case for hearing on 16th January 2015. The date was set, when both parties and their respective counsel were present in court. The hearing date had also been cause-listed in the weekly cause-list. However, when the case came up for hearing on the appointed date, the plaintiff and her counsel Mr. Elizabeth were in attendance in court; well prepared for the hearing, whereas the defendant and his counsel were absent without any excuse. At the request of the plaintiff's counsel, and having considered the entire background facts of the case as found on record and in the interest of justice the court proceeded to hear the case ex-parte and on the same day that is, the 16th January 2015 and delivered *an extempore ex-parte* judgment in the sum of Rs 250,000/- for the plaintiff and against the defendant with interest on the said sum at 4% per annum as from the date of the plaint and with costs.

[6] Neither the defendant nor his counsel did take any steps to check what had happened to their case that had been set for hearing on 16th January 2016. They waited exactly for three months for reasons not disclosed to the court. On a sudden realization of the ex parte judgment, the petitioner has now come before the Court with the instant petition dated 16th April 2016, for an order for a new trial invoking Section 194 (c) of the Code of Civil Procedure, which reads thus: A new trial may be granted on the application of either party to the suit, *when it appears to the court to be necessary for the ends of justice.*

[7] In essence, the reason given by the petitioner for his absence in court on the date of hearing is that his counsel had inadvertently mixed up the dates as she had no diary for the year 2015, when the court fixed the hearing date. It is also the contention of the petitioner that it is unjust and unfair for the case to be heard ex-parte because of a mix-up in the hearing dates and without informing the petitioner that the Court would proceed to hear the matter ex-parte. Hence the petitioner seeks an order for a new trial.

[8] On the other side, learned counsel for the respondent objected to an order for new trial contending in essence, that on a proper consideration of all the authorities, the legal principle the Court should apply when deciding whether or not to exercise its discretion

to grant a new trial, is the very exceptional circumstances. This is the general rule. As was held in *Naiken Vs Pillay (1968) SLR 101* a new trial under 194 (c) ought not to be granted except in very special circumstances. In the instant case, the alleged forgetfulness of counsel to enter the hearing date in her diary does not constitute a very exceptional circumstance to justify an order for a new trial. Hence, the respondent urged the court not to grant an order for anew trial and dismiss the petition accordingly.

[9] I carefully considered the submission made by both counsel for and against the petition in the light of the relevant provisions of law.

[10] The relevant sections of law relating to new trial read thus:

When a new trial may be granted

194. A new trial may be granted on the application of either party to the suit

(a) where fraud or violence has been employed or documents subsequently discovered to be forged have been made use of by the opposite party;

(*b) when new and important matter or evidence, which after the exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the hearing of the suit, has since been discovered or become available;*

(*c) when it appears to the court to be necessary for the ends of justice.*

Procedure to obtain new trial

195. Application for a new trial shall be made by petition supported by an affidavit of the facts, and shall be served on the opposite party in the same manner and subject to the same rules as to time for appearance as in the case of plaints.

Application, when to be made

196. Application for a new trial must be made, -

(a) if judgment was given against the defendant in default, within three months from the date when execution of the judgment was effected or from the earliest date on which anything was paid or done in satisfaction of the judgment;

(b) in all other cases, within three months from the date of the judgment.

[11] As I see it, under section 194 (c) the Court has a discretion to order a new trial for the ends of justice. This discretion conferred on the Court should be in my view exercised judicially for end of justice, which requires the existence of very exceptional circumstance. Obviously, the reason given by the petitioner for his absence on the hearing date, is unsatisfactory, which does not in my considered view constitute an exceptional circumstance to justify an order for a new trial. Going by the records, I find that unreasonable delay in making an application for a new trial and the defendant's delay tactics behavior in the past 7 years indicate his intention to protract the case rather than a genuine wish to oppose the plaintiff's claim. In the circumstances, I conclude that the instant petition for a new trial is the petitioner's last-ditch attempt to delay justice and defeat the respondent from realizing the fruits of the judgment she obtained in her favour after 7years of legal battle in court.

[12] Hence, I find that the instant petition for a new trial is devoid of merits. It is therefore, dismissed accordingly, with costs.

Signed, dated and delivered at Ile du Port on 20 January 2016

D Karunakaran
Judge of the Supreme Court