

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: MA 113/2015

(arising in CS146/2007)

[2016] SCSC

MICHEL BENOIT

Petitioner

versus

**INTERIOR AND CONSTRUCTION DESIGN
PROPRIETARY LTD**

Respondent

Heard: 8 June 2016

Counsel: Mr. Georges for applicants

Mr. Derjacques for respondent

Delivered: 8 June 2016

RULING

D. Karunakaran, J

[1] This ruling relates to the application made by the Applicant/Plaintiff in CS 146 of 2007 seeking leave to appeal out of time against a judgment given in favour of the Defendant. The plaintiff filed a suit against the defendant claiming that the defendant was in breach of a contract and as a result the plaintiff suffered loss and damages in the sum of SCR 792,338.88. The Defendant made a counter claim against the plaintiff in the original suit claiming SCR 1,092,947.00 against the plaintiff. This Court delivered judgment in favour

of the Defendant on his counter claim awarding SCR 624,355.00 with interest on the said sum at 4% per annum as from the date of the plaint. The said judgment was delivered on 24th October 2014.

[2] Pending hearing of the said suit the plaintiff withdrew his claim against the defendant. Then the Court proceeded to hear the case on the issue of counter claim and entered judgment in favour of the Defendant. After 14 months the plaintiff has now come before this Court with the instant application seeking for leave to appeal against the said judgment out of time, mainly on two grounds;-

1. The Plaintiff was a non resident at the time of the said proceedings.
2. The Court did not have the opportunity to assess the detailed evidence when it awarded the sum in favour of the counter claimant, the Defendant.

[3] I carefully perused the affidavit filed by the plaintiff in this matter. I gave careful thought to the submission made by learned counsel Mr. Georges in support of this application. Also I heard Mr. Derjacques on his objections to this application. First of all, I note even though the “length of delay” in filing the appeal could be considered by the Court as a valid reason amongst others to grant or to refuse leave, in my view it is not simply counting the number of months constituting the delay but we must see what was the cause, what was the nature and relevancy of the reason given by the party for the delay.

[4] In this matter, it appears that the plaintiff has been very negligent and has been ignoring the process of this Court in this matter. Moreover I note, having started making the payments of this judgment-debt for the past more than 134 months now he suddenly intends to appeal against the judgment. What prevented the Plaintiff to file an appeal the first month itself when he started making payment? The conduct of the plaintiff clearly shows that he did not take up this judgement seriously, even though now he complains about it.

[5] In the circumstance, the reasons given by the plaintiff for the delay are in my view insufficient and unacceptable. The Court accordingly declines to grant leave to appeal in this matter.

Signed, dated and delivered at Ile du Port on

D Karunakaran
Judge of the Supreme Court