

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: MA 260/2015

(arising in CS295/2006)

[2016] SCSC90

Allied Builders Seychelles Limited

Applicant

versus

Resort Development Limited

Respondent

Heard: 15th January 2016

Counsel: France Bonté for applicant

Frank Ally for respondent

Delivered: 12th February 2016.

ORDER ON MOTION

M. TWOMEY, CJ

[1] This is a motion by the Plaintiff grounded on an affidavit by its Managing Director, Pravin Darad for the Court to clarify a judgement delivered by the Supreme Court on 28th March 2012.

[2] It is noted that the said decision was the subject of an appeal by the Respondent which was dismissed on 14th August 2014.

- [3] This application of the Plaintiff brought over one year after the proceedings in the Appeal Court and nearly three years after the Supreme Court proceedings is to the effect that the judgment issued by the Supreme Court needs to be clarified.
- [4] It is noted that the Plaintiff also commenced proceedings before this Court upon a Commandment being served on the Defendant under section 2 of the Immovable Property (Judicial Sales) Act in which a sale by levy was sought on Parcel H657 belonging to the Defendant.
- [5] In view of procedural irregularities in the Commandment, the Court annulled the proceedings in the Commandment Notice but stated that the Plaintiff was free to take necessary steps to clarify the disputed issue in CS 295/2006 as regards the judgment debt. It is on the heels of this decision that the present application for clarification is made.
- [6] Clarification is sought in relation to the following excerpt of the decision delivered by Gaswaga J after awarding the sum SR2,908,094 :
- “Following the practice adopted herein before, the above sum shall be paid in United States Dollars (USD) at the prevailing market rate.”
- [7] Mr. Bonté for the Plaintiff has submitted that the Court is empowered to make clarifications of its judgments by virtue of its equitable powers under Sections 5 and 6 of the Courts Act.
- [8] Mr. Ally has taken issue with the application and has submitted that the clarification sought in this case would, if acceded to by the Court, amount to an amendment of the decision given in 2012 by Gaswaga.
- [9] A legal remedy is available under section 147 in the Seychelles Civil Procedure Code for the correction of clerical mistakes or errors arising from accidental slips or omissions a by the court at any time.
- [10] A legal remedy is also available for the amendment of decisions and is contained in Section 150 of the Seychelles Code of Civil Procedure. It provides:

“The court may, after hearing both parties, alter, vary or suspend its judgment or order, during the sitting of the court at which such judgment or order has been given.”

The limitations of the provision are obvious. The amendment to a judgment can only be made while the court is sitting, otherwise it is *functus officio* in respect thereof. However, typographical mistakes can also be corrected at a later stage.

[11] In *Revera v Dinan* (1983-1987) 3 SCAR (Vol II) 225 the Appellant argued that a decision of the Supreme Court should be amended to (1) correct a clerical mistake therein and (2) for a consequential amendment of the decision given so as to reflect an award for loss of rent instead of no award being made. The first mistake was amended by the trial judge, Seaton CJ, as it was a stenographic error which had amended a figure of SR5000 to SR500 but he declined to make the second amendment stating that this was ultimately a point that should be argued by an appeal.

[12] In upholding the Chief Justice’s decision the Court of Appeal (Sauzier JA) stated:

“The ‘slip rule’ may be used where there is no new adjudication to be made. Here the award of damages was certainly affected by the material error in the record which found its way into the judgment. But such award was not the result only of a calculation which went wrong because of the error. The award depended also on an adjudication based on other factors. This can only be impugned by way of appeal.”

[13] It is abundantly clear that Section 147 of the Seychelles Code of Civil Procedure would not permit amendments sought in terms of anything touching on substantive issues that have to be relitigated. This was further emphasised in the case of *Chetty v Chetty*, [2014] SCCA 12. There, the clarification of a judgment was sought under Rule 13(2) of the

Seychelles Court of Appeal Rules 2005 which is more generous than both sections 147 and 150 of the Seychelles Code of Civil Procedure and provides:

“The Court may of its own motion or on application correct any slip or accidental error arising in its proceedings, so as to give effect to the manifest intention of the Court, notwithstanding that the proceedings have terminated and the Court is otherwise functus officio in respect thereof.(my emphasis)

[14] Domah JA in *Chetty* (supra) stated:

“The clarification and or correction of any slip or accidental error, if at all, has to be apparent from the record of an operative paragraph and not depend upon a construction given by the parties to any particular paragraph which is not the operative paragraph of a judgment. The applicants, in this case, are not seeking any clarification or correction for that matter. They are seeking prayers or an order so that their own interpretation of a paragraph in the judgment be given effect to so that the final orders by this Court made be negated.”

[15] It is clear from the submissions of Mr. Bonté and the way in which the motion and the averments of the Affidavit are couched that the Applicant seeks a re-examination of the award granted by the trial judge in the light of a particular interpretation of the decision. What is being sought in this case is for a Court to breathe new life into a decision at the point of its execution. The application if granted would result in the court revisiting issues that were litigated and adjudicated upon.

[16] As I have pointed out there was a legal remedy available in this case and it was not availed of. Another bite of the cherry was presented to the Applicant when the Respondent appealed Gaswaga J’s decision to the Court of Appeal. The Applicant could have cross appealed on the issue he seeks clarification of. This it again failed to do. There is no question of the court’s equitable powers being exercised in such circumstances. Equitable powers are exercised when there is no legal remedy and not when one falls foul of the legal remedy.

[17] For these reasons the application is refused with costs.

Signed, dated and delivered at Ile du Port on 12th February 2016.

M. TWOMEY

Chief Justice