

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS 27/2008

[2017] SCSC 238

1. MARCEL LABICHE
2. MS. JULIE CONSTANCE
Plaintiffs

versus

IXORA CONSTRUCTION & CIVIL ENGINEERING COMPANY LTD

Defendant

Heard: 16th of March 2017
Counsel: Mr. Joel Camille for plaintiffs
Mr. France Bonte for defendant

Delivered: 16th of March 2017

JUDGMENT

Nunkoo J

- [1]** The plaintiffs are claiming refund of the sum of Rs. 26800.00, being sum paid in excess for work performed by the defendants, building contractor, and damages in the sum of Rs. 100,000 for delay in the performance of the contract of construction.
- [2]** The plaintiffs entered into an agreement with the defendants for the construction of a house on their plot of land. The works were to start in October 2006 and to be completed in March 2007.

- [3] However, after signature of the agreement it was amended verbally and it was agreed that work for the value of Rs. 250,000/- only would be carried out by the Defendants and therefore certain words were to be omitted.
- [4] It is averred by the plaintiffs that they paid Rs. 42,500/- and Rs. 75,000/- on 5th of October 2006 and 9th of March 2007 respectively.
- [5] It is further alleged that the defendants left the site in April 2007 and works to the value of Rs. 90,700/- only had been carried out.
- [6] At the very outset of the hearing the defendants agreed to pay the sum of Rs. 26,800/- to the plaintiffs.
- [7] The only issue that remains to be determined is the quantum of damages to be awarded for the 'additional expense and inconvenience in having to rent accommodation since March 2007 and in not having possession of their house in time'.
- [8] The defendants have denied this claim. From the record of the tortuous history of the case before the Court it appears that a sum of Rs. 30,000/- was offered to the plaintiffs in full and final settlement. The plaintiffs would not accept this and insisted for a sum of Rs. 75,000/-.
- [9] The case was postponed several times with a view to allow parties to come to a settlement; the lawyers have on several occasions obtained adjournment with the promise to the Court that the matter would be settled.
- [10] Unfortunately no settlement was ever reached.
- [11] Now therefore we come to the claim of Rs. 100,000/- as damages.
- [12] It must be pointed out that damages are not just for the asking. It must be substantiated. There is nothing on record to show that rent was really paid in respect of accommodation that the plaintiffs claim they rented. There is only the oral evidence of the plaintiff and it is noted that no figure or computation of the rent paid has ever been given.

[13] It will be difficult for the Court to award any damages in respect of rent in such circumstances.

[14] As for moral damages resulting from the fact that the defendants left the site in April 2007 without completing the work, the defendants have explained that money to complete the work was not made available. The plaintiffs are saying that about Rs. 26,800/- was in their possession to complete the work. But it must be noted that the figure of Rs. 26,800/- has been computed as being an excess payment made to the defendants.

[15] On the issue of moral damages the Court does appreciate that delay was caused by the defendants for which they are entitled to damages. .However, the claim for Rs. 100,000/- as damages cannot be entertained by the Court. I am of the view that a minimal sum of Rs. 10,000/- would be reasonable in the particular circumstances.

[16] I therefore give judgment in favour of the plaintiffs as follows:

The defendants to pay the sum of Rs. 26,800/- being refund of excess payment and Rs. 10,000/- as damages.

[17] Defendants to pay the costs in this matter.

Signed, dated and delivered at Ile du Port on **16th of March 2017**.

S Nunkoo
Judge of the Supreme Court