IN THE SUPREME COURT OF SEYCHELLES

Civil Side: MC 53/2016

[2017] SCSC 472

P.S. ENTERPRISES (PTY) LTD
Plaintiff

versus

PALANIVELAYUTHAM SUBRAMANIYAN PILLAY
Respondent

Heard: 1at day of February 2017

Counsel: Mr C. Lucas for Plaintiff

              Ms. K. Domingue Defendant

Delivered: 9th day of June 2017

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ORDER ON SPECIAL WRIT

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Govinden J

[1]   This matter arises out of writ under section 295 of the Seychelles Code of Civil Procedure (Cap 213) (hereinafter referred to as "the Code") filed by the Plaintiff dated the 16th day of May 2016 and which writ encloses as endorsement the claim of the Plaintiff in the sum of Seychelles rupees One Hundred and Fifty Eight Thousand

(S.R.158,000) plus interest thereon at commercial bank rate, due to the Plaintiff as the payee of a cheque unpaid and return market 'stop payment'.

[2]   The Defendant by way of the writ is further given notice that should leave not be obtained from a Judge of the Supreme Court within 12 days after having been served with the writ, inclusive of the day of such service to appear thereto, and do not within such time cause an appearance to be entered for the Defendant's in Court out of which this writ issue, the Plaintiff will be at liberty at any time after the expiration of such 12 days to sign final judgement for any sum not exceeding the sum claimed in the sum of Seychelles rupees One Hundred and Fifty Eight Thousand (S.R. 158,000) with interest and S.R. 10,000 for costs and issue execution for the same.

[3]   The Defendant by way of Affidavit of the 14th day of July 2016 '*more precisely one month and twenty eight days after the filing of the writ*', seeks for leave to appear under section 296 of the Code and to defend the action on the main ground that the unpaid cheque subject matter of the claim being dubious and has several issues which renders it null and void and lacking in form and substance for the purposes of the Plaintiff's claim.

[4]   In view of the absence on the dates fixed for stance of Learned Counsel for the Defendant and Defendant's appearance before the Court namely the 26th day of October and the 1st day of February 2017 (which dates were within the knowledge of the Defendant and Learned Counsel), the Court proceeded to fix a Judgement date based on pleadings filed thus far.

[5]   Now, the law governing 'summary procedure on Bills of Exchange' by way of 'special writs' are clearly set out inter alia, at sections 295 and 296 of the Code as follows:-

Section 295: All actions upon bills of exchange or promissory notes commenced within six months after the same shall have become due and payable may be by writ of summons in the special form contained in Schedule D, and endorsed as therein mentioned, and it shall be lawful for the Plaintiff, on due proof of personal service of such writ within the Jurisdiction of the Court, or an Order for leave to proceed, and a copy of the writ of summons and the indorsements thereon, in case the Defendant shall not have obtained leave to appear and have not appeared to such a writ according to the exigency thereof, at once to sign final Judgement in the form contained in Schedule E, for any sum not exceeding the sum indorsed on the writ, together with the interest at the rate specified (if not exceeding the legal rate of interest) or if now be specified, the rate of interest allowed by law in such cases to the date of the Judgement, and a sum for costs to be fixed by the Court, unless the Plaintiff claim more that such fixed sum, in which case the costs shall be taxed in the ordinary way, and the Plaintiff may, upon such Judgement, issue execution forthwith.

Section 296:-The Court shall, upon Application within the period of twelve days from such service, give leave to appear to such writ, and to defend the action, on the Defendant paying into Court the sum indorsed on the writ, or upon Affidavits satisfactory to the Judge, which disclose a legal or equitable Defence, or such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Judge may deem sufficient to support the Application, and on such terms as to security or otherwise as to the Judge may seem fit."

[6]   The general procedure as laid out at section 295 clearly provides for specific time standards for the filing on an Application for leave to appear before a Court upon initiation of a special writ under section 295 of the Code and that is within twelve days from service of the writ. As it would transpire on the Records of proceedings in this case, the Defendant was duly served with the writ on the 1st day of June 2016 and hence ought to have filed his Application for leave to defend the writ and or filed his Affidavit satisfactory to the Judge to support the Application and this in terms of section 296 of the Code.

[7]   It is clear that the Application filed by the Defendant in this matter by way of Affidavit of the 14th day of July 2016 is outside the statutory time limit of section 296 of the Code and both Learned Counsel and Defendant have failed to appear before the Court for purpose of the 'incompetent Application for leave' hence leave is refused accordingly on the basis that of same being filed outside the statutory time limit and also the Court being unsatisfied of any disclosure of a legal or equitable defence.

[8]   It follows therefore based on the decline, to grant leave to appear to the Defendant on the afore-mentioned reasons and in terms of section 295 of the Code that this Court hereby orders the Plaintiff to at once sign Judgement in the form contained in Schedule E and endorse on the writ for the sum as claimed of Seychelles rupees One Hundred and Fifty Eight Thousand (S.R. 158,000) with interest at commercial bank rate and costs of S.R. 10,000 and thereafter the Plaintiff shall be entitled to issue execution forthwith.

[9]   Judgement is delivered in terms of the above-referred analysis and conditions and the Registry is ordered to give effect to this Judgement in terms of section 295 of the Code forthwith.

Signed, dated and delivered at Ile du Port on 9th day of June 2017.

Govinden-J
Judge of the Supreme Court