

IN THE SUPREME COURT OF SEYCHELLES

**Civil Side: MA 78/2017
(arising in CS11/2016)**

[2017] SCSC 471

BAJRANG BUILDERS (PTY) LTD
Applicant

versus

HARINI & COMPANY (Pty) Ltd
Respondent

Heard: 5th day of April 2017
Counsel: Mr. A. Derjacques for applicant
Mr. S. Rouillon for respondent
Delivered: 9th day of June 2017

RULING ON MOTION

Govinden J

[1] This is a Ruling on a Motion filed by the Applicant dated 10th day of March 2017, seeking that an Order of interim interlocutory injunction be immediately issued ordering the Respondent to cease and desist from all further construction at the premises in this suit, namely the commercial building situated on land parcels V 15933 and V 15978 (as amended) at

Providence Estate, Providence, Mahe; an Order that the Respondent immediately ceases the business of plastic storage and manufacture in the portion allocated to the Applicant and to vacate that portion of the said premises immediately; and an Order to restore the possession of the allocated portion of the building to the Applicant and this (by way of revision to the Order of this Court of the 8th day of April 2016 in MA 44 of 2016.)

- [2] In support of this Application, the Applicant's director and representative Mr. Bhupesh Danji Hirani has filed an Affidavit deponing to the purported grounds in support of the Application. In a gist the main grounds as averred reflect as follows. That by virtue of the interim Order of this Court dated 8th day of April 2016, the Applicant had been ordered, inter alia, to vacate the premises forthwith ***'pending the full and final determination of the main suit on its merits or until further Order of the Court'***. That the Applicant has fully complied with that Order and that the Respondent presently and is continuing to transform the said building in the main action from one structure to another. Particulars of the 'transformation is set out in the Affidavit as to the Respondent's removal of lawful structures, authorized by planning Authority in that said portion allocated for the Applicant's use for 10 years, as per the contract subject matter of the main suit, the Respondent's entry on the said portion allocated to Applicant's use and is utilizing the same to store and process plastic material, the Respondent is extending the said building by a further 200 meters square and transforming it from one structure to another and this will give rise to future, repeated and multiple litigation. That the Respondent must preserve the building as is, until final Judgement of the Court in the main suit so that the object of the main suit not be destroyed.

- [3] It is further averred that the Applicant is suffering great hardship in that it does not have another work site, it must retain its work force and continue its business and hence prays this Court to consider and allow the Applicant to re-enter its allocated portion of the building to continue only lawful activity allowed by the Planning Authorities and the Court.
- [4] As it would transpire from Records of proceedings in Civil Side No. 11 of 2016 (the main suit), by a Plaint dated the 18th day of February 2016 Respondent seeks for the reliefs of rescission of the building lease agreement dated the 24th day of September 2010 between the parties; and ordering of the Applicant to immediately stop operating the workshop inside the leased premises or any activities whatsoever and to vacate the premises forthwith; to remove all the temporary sheds, containers and workers accommodation and personal belongings; to remove all construction materials, debris and machinery immediately; to allow an independent architect to be appointed to finalize the cost of the building and include the defaults cost in his final report; to cover any rents paid by the plaintiffs to third parties namely Fish Leather & Co since January 2012 at S.R. 37,500/- per month for carrying out its own business activities; and to pay the Respondent the sum of S.R. 200,000/- special damages and cost of the action.
- [5] A further Motion was filed arising out of the main suit by the Respondent which Motion sought for an interlocutory injunction to prevent the Defendant from carrying on with the continued illegal occupation and activities in the Plaintiff's premises until the matters mentioned in the Plaint are fully and finally decided by this Honourable Court.
- [6] In furtherance to the above-mentioned Motion, this Court delivered on the 8th day of April 2016 an Order wherein the Court ruled inter alia, that:-

'having carefully scrutinized the Affidavit and supporting submissions and attachments in support of this Motion, I am satisfied as follows: (i) Firstly, on the face of the pleadings, I am satisfied that the Plaintiff appear to have a bona fide claim as against the Defendant in the main suit; I am further satisfied that unless the Court grants the Interlocutory Injunction as sought by the Applicant in this matter, the Plaintiff will suffer substantial and irreparable loss, hardship, inconvenience, prejudices and distress in the event Judgement is given in their favour. Having given careful thought to the entire circumstances of the case and in the interest of justice and in terms of the equitable powers conferred on this Court in pursuance to sections 5 and 6 of the Courts Act (supra), I hereby grant the Motion for an Interlocutory Injunction to the following effect: That the Respondent immediately ceases all unauthorized activities on the leased premises namely on the leasehold of Parcels V15933 and V15978 of Providence, Mahe more particularly operating a carpentry workshop, construction depot and temporary site accommodation for foreign construction workers; immediately demolish the unauthorised dormitories, corrugated iron sheet hoarding and corrugated iron sheet store on the above-said parcels; cart away all debris as resulting from the demolition of all the above-said unauthorized structures and vacate the premises forthwith pending the full and final determination of the main suit on its merits or until further Order of this Court.'

- [7] As a result of the main suit, Applicant filed a statement of defence wherein it moves for the dismissal of the Plaint and raises a counterclaim for loss and damages suffered as a result of alleged 'unjust enrichment' on the part of the Respondent should they succeed with the Plaint' in the sum of S.R. 6 million.
- [8] The Respondent by way of written submissions of Learned Counsel Mr. S. Rouillon dated the 5th day of April 2017 objects to the Application

submitting in a gist that the statutory authority for grant of injunction is found in section 304 of the Seychelles Code of Civil Procedure; that a prima facie case has to be showed prior to applications for temporary injunctions before the determination of the main suit and that it stands to suffer irreparable loss should the injunction not be granted.

[9] *I wish to state at this juncture that the Respondent through Learned Counsel's written submission in no uncertain terms submits at paragraph 5 of the submission that, "the main reason for the grant of a temporary Injunction is to preserve the status quo and to protect a party from suffering irreparable harm or injury which would not be adequately atoned for by damages. That on the question of irreparable loss, the words of Lord Diplock, in American Cyanamid co v Ethicon Ltd, 1975 (1) ALL ER 504 is repeated.'*

[10] It is further argued by the Respondent that 'in the instant case the applicant in its main suit has prayed only for damages (*in the sum of (S.R. 250,212, 5000.00 and interest at 4% per annum and cost*). There is no prayer for injunctive relief or a permanent injunction. None of the orders sought in the application for a temporary injunction form part of the prayers in the head suit. The interim relief sought on this application has no relationship to the final relief sought in the head suit. The Applicant has therefore failed to clear the first threshold that it has an arguable case for a permanent injunction to restrain the Respondent from continuing breach of the contact or withdrawing certification or accreditation of the applicant.

(Emphasis is mine for not reflected in the pleadings).

[11] It is further submitted by the Respondent that by claiming damages only as it has done in the main suit it is clear that the Applicant's alleged losses can be compensated by an award of damages.

- [12] It is trite that incidental demands may be made by either party to a suit, in the course of the main suit and this should be made by way of an application to the court by way of motion to make an incidental demand and the motion shall be accompanied by an Affidavit of the facts in support thereof and shall be served upon the adverse party. (Sections 121 and 122 of the Seychelles Code of Civil Procedure (Cap 213) (hereinafter referred to as the “Code”) refer).
- [13] It is also trite in furtherance to the above-cited sections of the Code that the powers of the Court to grant ad interim injunctions has as basis the provisions of Section 304 of the Code as read with the equitable powers of the Court by virtue of the provisions of sections 5 and 6 of the Courts Act (Cap 52). The preconditions of substantial and irreparable loss, hardship, inconvenience, prejudices and distress in the event the Judgment is given in Applicant’s favour (in a pending main suit) are also of paramount importance to be considered by the Court in such incidental applications.
- [14] *I should also stress at this stage that all parties should come to Court with clean hands and once an Order of Interim Injunction is granted in favour of one party pending the final determination of the main suit (subject matter of the Interim Order), it is also the duty of the beneficiary of the interim Order to ensure that nothing is done to breach the Interim Court Order and or to change the status quo of the premises pending the final determination of the suit ensuring that justice is not only done but seen to be done to all parties (whichever way the Judgement goes on the merits).*
- [15] In this Application, true it is that the Applicant in its counterclaim has sought for claim for damages and loss arising out of ‘unjust enrichment’ as a result of the actions of the Respondent ‘in breaching the contract’ as contended in the statement of defence namely at paragraphs 3 and 10 thereof and ‘it should be noted that the Plaintiff of the Respondent in the

main suit is sought to be dismissed in terms of the Applicant's prayer in its statement of defence'. Hence the wording of section 304 of the Code is to be given its widest interpretation as read with sections 121 to 125 of the Code and in terms of the continuance of a breach of contract as and when it arises. It is only logical in this case to find, based on the pleadings for the purpose of this Application, that the breach and continuance of breach of agreement in terms of modification and alteration of the premises started only after the issuing of the interim Order of this very Court of the 8th April 2016 hence could not have been foreseen at the stage of the filing of the statement of defence and the counterclaim of the Applicant and in any event, the Respondent is not contesting the alleged breaches and continuance of breach of the agreement in terms of the particulars of the Application by the Applicant as averred at paragraphs a, b and c of the particulars thereof.

- [16] It follows therefore on the above basis and in line with the provisions of sections 5 and 6 of the Courts Act, I find that this is a fit and proper case whereby this Court ought to intervene to exercise its equitable powers, authority and jurisdiction to administer justice and to do all acts for the due execution of such equitable jurisdiction in all cases where no sufficient legal remedy is provided for by the law of Seychelles.
- [17] In exercising its equitable powers the Court is minded that it should not without any good reason delay a successful "plaintiff" in realizing the fruits of his Judgement from the trial Court and at the same time it cannot also deny an unsuccessful party the fruits of his judgement from the Court of Appeal in the event of his success (if any), in an appeal. In the present case, the hearing of the main suit is pending and the Respondent has sought and been granted interim measures to secure its interests so as to avoid damages and or further damages (if any) as a result of alleged breach of the contract in the main suit by the Applicant.

Likewise, it is only just, that the Applicant who is denying the Plaintiff and seeking its dismissal and raising a counterclaim should not be prejudiced by the actions of the Respondent by alteration and modification of the premises subject matter of the contested contract and arising, commencing and continuing after the issuing of the interim order of the 8th day of April 2016 which purpose was to maintain the original status quo of the premises (prior to alleged illegal activities as averred in the relevant Application leading to the said Interim Order).

[18] The Court thus, hereby finds that the principles governing granting of an interim injunction cannot be restricted to or pigeon hold within the strict and or sole grounds as canvassed by Learned Counsel for the Respondent as per his submissions. To my mind, the relevant and foremost question to be asked is to be determined not on the basis whether the case satisfies any or one of the grounds but primarily on the basis of whether the interim Order is to be granted in terms of the prayers in whole or in part and if it is necessary for the ends of justice in the given set of facts and circumstances. I would thus rather prefer to ask myself the question as to what does justice require, whether to grant or refuse the Application in the case at hand. It is my considered view that the principle is to be discretionary within the equitable powers and jurisdiction of this Court.

[19] Firstly, I am satisfied ex-facie the pleadings in the absence of contest of the alleged alterations and modifications of the premises subject matter of the main suit, that the Applicant has satisfied this Court of valid grounds in support of this Application for the purpose of reliefs sought at paragraphs (i) and (ii) of the Application (Roman letters). Secondly, I am equally satisfied, ex-facie the pleadings, filed in support of the Application and the non-contest as above-referred by the Respondent,

that undue prejudice, inconvenience, loss and hardship shall be suffered by the Applicant by refusal of the reliefs afore-mentioned.

[20] Thus after taking into consideration all the relevant facts and circumstances of the case, the Court finds that the Applicant has valid grounds in raising the objections to the actions of the Respondent vis-à-vis the Respondent with regards to the premises pending the final determination of the main suit. I further, consider the balance of inconvenience, hardship and loss that the parties may suffer in granting or refusing the Application. I find in that latter regard, that the alleged injury the Applicant may suffer due to inconvenience, loss and hardship by refusal of the Application as specified is more than that which the Respondent will suffer by the grant of the Application (for interim measures are already in place to secure the Respondent's interests pending the final determination of the main suit).

[21] Having given careful thought to all the relevant facts and circumstances of this case and in the light of the principles formulated above, I find that an ad Interim Injunction in favour of the Applicant for the ends of justice is required to be granted by this Court in line with the observations at paragraph [19] of this Ruling and subject to the following conditions:

(i) Firstly, following the Order of this Court of the 8th day of April 2016 an Interim Injunction is hereby issued ordering the Respondent to cease and desist from all further construction at the premises in this suit, namely the commercial building situated on land parcel S15933 and V15978 at Providence Estate, Providence, Mahe pending the final adjudication of the main suit;

(ii) Secondly, the Respondent shall immediately cease the business of plastic storage and manufacture in the portion allocated to the

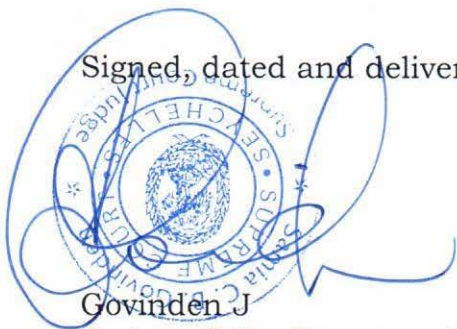
Applicant (which is subject matter of the main suit) and this pending the final adjudication of the main suit;

(iii) Thirdly, in view of the Order of the 8th day of April 2016, the Court finds that there is no substantial reason at this stage of the proceedings which has been proved to the satisfaction of this Court to justify reinstatement and or restoration of the possession of the allocated portion of the building to the Applicant on the Affidavit evidence as filed by the Applicant namely paragraph (d) of the particulars thereof. Hence the status quo of the Applicant in terms of possession of the premises remains as ordered as per the interim Order above-referred.

[22] For the reasons stated hereinbefore, I partially grant the Application for an Interim Injunction as sought by the Applicant subject to conditions above-referred.

[23] The hearing dates as fixed in the main suit remain as is.

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



Govinden J

Judge of the Supreme Court