

IN THE SUPREME COURT OF SEYCHELLES

**Civil Side: MA 06/2017
(arising in CS104/2014)**

SCSC [2017]

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- 1. BARRINGTON DEVELOPMENT LIMITED**
 - 2. GIRISH DAHYABHAI PATEL**
PLAINTIFFS/RESPONDENT

versus

- 1. OCRA (SEYCHELLES) LIMITED**
- 2. YASHWANT DABYABHAI PATEL**
DEFENDANTS/APPLICANTS

Heard: 23rd and the 26th day of June 2017
Counsel: Mr. B. Georges for the Second Defendant/Applicant.
Mr. F. Ally/Hoareau for Plaintiffs/Respondents

Delivered: 26th day of June 2017

**RULING ON SECOND VIVA VOCE APPLICATION FOR AN 'INTERIM
ORDER OF INJUNCTION' PENDING THE FINAL RULING IN MA 06/2017**

Govinden J

- [1] This Ruling arises out of a viva voce Motion made by Learned Counsel Mr. B. Georges for the Second Defendant/Applicant in this matter of the 23rd day of June 2017 “as a matter of urgency”, in Open Court, pending the final Ruling in MA 06 of 2017 (which Ruling was pending upon Applicant’s motion in view of an awaited Malaysian Court Order with respect to the dividends held by Aumkar Plantations Sdn BHD (Company NO. 04220-K), MPT 46-6, 3rd Floor, Lots 15-16 Block B Bandaran Baru, Jalan Baru, 91000 Tawau, Malaysia (hereinafter referred to as Aumkar”) in favour of the First Plaintiff/Respondent.
- [2] Learned Counsel for the Second Defendant/Applicant has informed this Court that an Order of the Malaysian Court has already lifted the injunction as against the Plaintiffs hence rendering the disbursement of the Amkar dividend to the first Plaintiff imminent hence utmost for an urgent interim injunctive relief so as to hold the ring and prevent the second Plaintiff and or the First Plaintiff from dealing with or disbursing the Aumkar dividend (except with the agreement of the second Defendant/Applicant and/or Court Order.
- [3] In a gist, only for the purpose of this Ruling, the pending Motion in the above-mentioned captioned matter namely MA 06/2017 filed by the Second Defendant/Applicant on the 14th day of January 2017 is seeking for an interlocutory prohibitory Order preventing the second Plaintiff/Respondent personally or on behalf of the First Plaintiff/Respondent until the trial or further Order from transferring, disposing of or in any other way dealing with the dividend declared by Aumkar on the 6th August 2014 in the sum of RM 9,150,000.00 (“hereinafter referred to the “Aumkar dividend”), except strictly pursuant to the terms of a draft escrow Agreement in the form (or substantially in the same form) attached to the Affidavit of the Second Defendant/Applicant and filed before Court or on such other terms as the Court deems just; and the Parties shall take all steps necessary to

bring such terms into effect prior to the Interim dividend being paid to the First Plaintiff by Aumkar.

- [4] Learned Counsel Mr. B. Georges was required to produce at least a certified copy of the said Order of the Malaysian Court for the purpose of this Motion as proof of the lifting of the injunction rendering this Motion urgent.
- [5] I note, that in furtherance to the advice of this Court of the 23rd day of June 2017, Learned Counsel has filed an Affidavit in support of the urgency of this Motion of *one Christopher George Felton of Gardner Leader LLP, White Hart House, Market Place, Nebury, Berkshire RG 14 5A being the legal Firm representing the 2nd Defendant/Applicant,urging this Court of the urgent interim relief sought in terms of, "preventing the Plaintiffs from receiving and/or disbursing the Aumkar Dividend and to hold the status and preserve those monies until such time as the principal suit is resolved between the parties."* (Paragraph 2 of the Affidavit refers).
- [6] Further in the Affidavit at paragraphs 6 and 8 thereof, the deponent avers that *"The court may remember that the Motion issued on the 16th January 2017 was (quite sensibly) put on hold because in the Malaysian Court: Suit No. TWU-22NCvC-9/3-2016 (Yashwant Dahyabhai Patel v Aumkar Plantations Sdn Bhd & Barrington Development Limited) a stay of proceedings pending Yashwant's appeal to the Court of Appeal ensured the ring was being held in relation to the Aumkar Dividend thus preserving the status quo. I refer to the ruling of this honourable court on the 24th February 2017 (Appendix 3) when it was held that as matters were stayed in Malaysia this operated to effectively hold the ring)." At paragraph 8 thereof, it is further averred that, "Matters now drastically changed in that yesterday (meaning the 21st day of June 2017), in Suit No. TWU-22CvC-9/3-2016 the Malaysian*

Court has dismissed Yashwant's application for a stay pending the disposal of appeal to the Court of Appeal. A copy of the Order is attached at Appendix 4. Whilst the Order is in draft I am instructed it is agreed between the parties and is awaiting the Court's seal. The upshot of this is that the Aumkar Dividend can be demanded by Barrington which under Girish's (disputed) control is at risk of dissipation unless retrained/regularised."

- [7] I note that in terms of the Affidavits filed for and against the main Motion, firstly, it is not disputed and or objected to in principle, for the interim Order being sought; secondly, that Aumkar dividend is due and payable to the First Plaintiff and this further supported by the contents of Appendix 5 of the Deponent's Affidavit (being a Notice of demand for payment of the said dividend from The First Plaintiff to Aumkar of the 16th day of February, 2017 (under threat of a Petition for winding up in the event of failure of payment).
- [8] It is neither disputed that as a growing concern the First Plaintiff has to pay its debts and liabilities as an entity and this is also supported by way of contents of the Second Plaintiff's Affidavit in support of his contentions in the main pending Motion (failure of which winding up may be considered). The latter option is obviously not in the interest of any of the parties involved in the main pending suit.
- [9] Having considered the Motion and Affidavit in support as aforementioned and also being guided by the principles for similar reliefs as set out in our local case law namely, (**Exp Giovanni Rose (CS 199 of 2016 SCSC 93)**), (**The Government of Seychelles v Shivkrishnasingh Ramrushaya (2003)**), (**France Bonte v Innovative Publications (Pty) Ltd (C.S.No. 200 of 1993)**) and (**The Attorney general v Deltel (1954) SLR 277**)), being all Authorities as to the circumstances and conditions to be taken into

account by the Court in applications for same and/ or similar interlocutory injunctions, in the Court's exercise of its equitable powers under Section 6 of the Courts Act (Cap 52), I find that the Affidavit as filed by the Firm in this matter on behalf of the second Defendant/Applicant establishes a serious concern as to the manner in which and the purpose for which the Aumkar dividends could be dealt with by the First and Second Plaintiff noting fully well that there is a pending contentious main suit in CS 104/2014 before this Court as to the "beneficial ownership in the shares of the First Plaintiff and this as per the Amended Plaint (pending official filing in furtherance to Order of this Court of the 23rd day of June 2017.)

[10] I find thus, in exercising this Court's discretion, to grant this urgent Oral Motion, for I find that the balance of convenience pending the main Ruling weighs heavily against the second Defendant/Respondent **(See: American Cynamid v Ethicon Ltd [1975] AC 396)**, and moreover should the Aumkar dividends be disbursed pending the main Ruling in MA 06/2017, the 2nd Defendant/Respondent is likely to suffer greater hardship and/or irreparable damage in terms of recourse in the event of improper use of the Aumkar dividends by the Plaintiffs/Respondents.

[11] Being satisfied of the urgency of this Motion and its raison d'être, being mainly to safeguard the interest of all the parties and preservation of the Aumkar Dividend pending the outcome of the main Ruling which proximity will cause no prejudice whatsoever to the Plaintiffs/ Respondents, I hereby Order that the Second Plaintiff/Respondent, Girish Dahyabhai Patel, to preserve the status quo vis-à-vis the Aumkar Dividends in that payment of the said dividends to the First Plaintiff shall be kept on hold in the hands of Aumkar in the interim (pending the main Ruling). It hence follows as a direct consequence that no withdrawal of funds and or expenses is to be paid on the First Plaintiff's

behalf pending the final Ruling in MA 06 of 2017 wherein the Court will consider other issues as raised in the main Motion.

[12] I so order.

Signed, dated and delivered at Ile du Port on 26th day of June 2017.

Govinden J
Judge of the Supreme Court