

IN THE SUPREME COURT OF SEYCHELLES

**Civil Side: MA 197/2017
(arising in CC3/2012)**

[2017] SCSC

BHARTI DHANJEE

Applicant

versus

ZARINE DHANJEE

Respondent

Heard:

Counsel: Miss Poolfor applicant

Mr. Rajasundaramfor respondent

Delivered: 19 July 2017

RULING ON MOTION

Robinson J

[1] The court dismissed MA 197/2017, on 12 July, 2017, on the ground of abuse of process. The court now give reasons.

[2] On 3 July, 2017, Applicant's counsel commenced application by motion accompanied by affidavit asking this court to vacate the *ex parte* judgment delivered on 8 November,

2016. On 12 July, 2017, Applicant's counsel filed a second application by motion with supporting affidavit asking this court to vacate the *ex parte* judgment delivered on 8 November, 2016. It is not clear to the court why there are two applications before the court. Be that as it may, the court considers MA197/2017.

[3] The court considers the form of the affidavit. Miss Pool is Applicant's counsel in MA197/2017. Miss Pool signs the affidavit on behalf of Applicant. Paragraph 11 of the affidavit states —"*As I am currently out of the jurisdiction of Seychelles, I authorise my lawyer Ms. Pool to swear this Affidavit on my behalf*". Clearly, Miss Pool has no authority to do so and represent Applicant. Moreover, the law generally is that counsel must not enter the litigation arena as a witness for his or her client. The court notes with dismay that the affidavit is lacking in many respect. For the reasons stated above, the court finds the affidavit filed in support of the application to be irregular and cannot receive the affidavit and dismisses the application.

[4] For the sake of completeness, the court considers the merits of the application. On 8, November, 2016, the court entered judgment in favour of Plaintiff against Defendant, as follows —

"[54] For the above reasons the court enters judgment for Plaintiff against First Defendant in the principal sum of Seychelles rupees 984, 688.00/-together with costs of this suit and interest fixed by law on the principal sum of Seychelles rupees 984, 688.00/-due from 12 April, 2012, until payment in full.

[55] The court dismisses the claim of Plaintiff against Second Defendant with costs."

[5] *A brief history of the suit.* On 21 July, 2004, the Supreme Court appointed Bharti Dhanjee and the late Rajnikant Dhanjee as joint fiduciaries of the estate and succession of the late Vadilal Dhanjee. Bharti Dhanjee is now the sole fiduciary of the estate and succession of the late Vadilal Dhanjee. Bharti Dhanjee, cited as Second Defendant, in the head suit, appeared before F.M.S Egonda-Ntende CJ., on 19 November, 2012. Bharti Dhanjee lives outside the jurisdiction of the Supreme Court. She instructed Mr. Rouillon. Bharti

Dhanjee and Mr. Rouillon appeared before the court on 2 June, 2015. On that day, Mr. Rouillon withdrew his appearance for her; the record of proceedings, explains why —

"Mr. Rouillon: ... I am withdrawing for 1st defendant and she is here present my lady.

Court: And why is that?

Mr. Rouillon: Well basically just misunderstanding and-

Court: At a very late stage.

Mr. Rouillon: She does not live in Seychelles and we had just been communicated by emails. And also certain requests I have made, I have not been complied with generally for the various cases, such as making an inventory as executor and things like that. I just cannot continue further on this. I would like to move to withdraw your ladyship."

Then the court addressed Bharti Dhanjee —

"Court to 1st Defendant

Q: Is it Bharti Dhanjee, yes Madame?

A. I represent myself, because I do not have any more money. There is no executor account on this ... Can I give it to you, all the reasons.

Q. What is it about?

A. The reasons why I cannot afford another lawyer and I won't let them steal my life anymore."

It would seem that a counsel was appointed, under the legal aid scheme, however, neither counsel nor Bharti Dhanjee appeared before the court in relation to this suit. The affidavit states "[t]hat I was directed to apply for legal aid, which I did and Mr. Joel Camille was appointed. I had to return to UK and once there I sent him emails for update but I did not receive any reply.". It is to be noted that Bharti Dhanjee was in Seychelles in June, 2016. Before leaving Seychelles she spoke to the Registrar. According to the affidavit, she

instructed the Registrar to keep her informed about the case. The court observes that Bharti Dhanjee, who was outside the jurisdiction of the Supreme Court, so she says, had in Seychelles a counsel to represent and defend her in her capacity as the sole fiduciary of the estate and succession of the late Vadilal Dhanjee. Further, the record of proceedings shows that Bharti Dhanjee was informed, by the Registrar of the Supreme Court, about the hearing date (28 April, 2016). She chose not to attend the hearing of the suit.

[6] Bharti Dhanjee appeared before the court on 24 April, 2017. She requested for time to answer MA91/2017 arising in CC3/2012. She informed the court that she has no money to pay the Applicant, Zarine Dhanjee. The court gave her time to seek services of counsel.

[7] It is the considered opinion of the court that Bharti Dhanjee is only concerned with wasting the court's time and preventing Zarine Dhanjee, the executrix of the estate and succession of the late Rajnikant Dhanjee, (her deceased spouse), from obtaining her share of the insurance proceeds in relation to the building destroyed by fire. In sum, Applicant did not satisfy the court that she was prevented by any sufficient cause from appearing for the hearing of the suit.

[8] For the reasons stated above, the court dismisses the application with costs.

Signed, dated and delivered at Ile du Port on 19 July 2017

F Robinson
Judge of the Supreme Court