

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: MA 343/2017

(arising in CS 13/2017)

[2018] SCSC 63

ELITE CLUB LIMITED

First Petitioner

DANNY BONTE

Second Petitioner

TITE MORIN

Third Defendant

versus

KHI (SEYCHELLES) LIMITED

Respondent

Heard: 17 January 2018
Counsel: Mr. C. Lucas for petitioners
Mr. S. Roullion for respondent
Delivered: 24 January 2018

ORDER ON PETITION

Vidot J

[1] The Petitioners have filed a Petition in terms with Sections 194, 195 and 197 of the Seychelles Code of Civil Procedure (“the CPC”). As per the Petition, they pray for a Stay of Execution of a judgment by consent in CS 13 of 2017 of 06th January 2004 and to set aside the judgment and order a new hearing. I note that there are some errors in the prayer which do not conform to the body of the petition and the joint affidavit of the 2nd and 3rd Petitioners. I hold reservation regarding such a joint affidavit as the 2nd and 3rd Petitioners at times aver to different matters. The second Petitioner makes averments under clause 1,2,3 and 9 whilst the third Petitioner swears to clauses 1,2, 4, 5, 7,8, and 9. Clause 6 appears to be an averment which suggests should have been made by counsel receiving instructions.

[2] On 28th September 2017 this Court delivered an ex-parte judgment in CS13 of 2017. There never was a judgment by consent.

[3] Section 194 of the CPC reads as follows;

“A new trial may be granted on the application of either party to the suit –

(a) Where fraud or violence has been employed or documents subsequently discovered to be forged have been made use of by the other party;

(b) When new and important matter of evidence which after the exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the hearing of the suit, has since been discovered or become available.”


(c) When it appears to the court to be necessary for the ends of justice.

[4] The Petitioners are relying on Section 194(c) of the CPC to support their Petition. I note that some of the averments of the Petitioners as per their Affidavit are totally incorrect. The 2nd Petitioner claims that he attended court appointments at all times. The record of proceedings of the 01st September 2017 show that the Court requested that the names of the Petitioners are called because they were not present in Court. The court orderly was instructed to check outside court if they were present. They were not. I disagree with averments that the Petitioners were unaware of the date set for ex-parte hearing. At clause

4 of the Affidavit the 2nd Petitioner clearly states that after the mention of 05th July 2017, the court orderly had advised him of the next date and had written on a piece of paper albeit that he did not indicate the purpose for the that date. The 2nd respondent failed to appear before Court of that next date which was the date set for ex-parte hearing.

- [5] I also note that the 3rd Respondent was appropriately served. At clause 8 of the Affidavit he claims that service was effected at an address at Glacis which contrary to belief was not his. I accept as per copies of his passport attached to the affidavit he was not in Seychelles at that time. The return of service of the 28th June 2017 indicates that it was the 2nd Respondent, co-director of the 1st Petitioner who accepted service of his behalf. He also accepted service on behalf of the 1st Petitioner.
- [6] I fail to see how the 2nd and 3rd Petitioners have been in any way prejudiced by the ex-parte judgment since the case against them was dismissed. I see no miscarriage of justice. The Petitioners invokes Section 196(a) of the CPC. I note that that section refers to a defendant whom judgment has been given against in default. Judgement is not against them 2nd and 3rd Petitioners. The Plaint against them was dismissed.
- [7] As regards the 1st Petitioner, it is erroneous to aver that they were unaware of the ex-parte hearing date. The 2nd Petitioner being a Director of the 1st Petitioner accepted service on its behalf. As above stated he came to court and was informed by the orderly of the date. He was duty bound to ascertain the purpose for which the case was being called on 28th September 2017. Ignorance as pleaded in the Petition and averred in the affidavit should not be good reason to entertain such an application.
- [8] The Respondent did not object to the Petition. Be that as it may, the burden remains on the Petitioners to satisfy Court that pursuant to Section 194(c), an injustice has been done. The Petitioners have failed to satisfy Court of the same.
- [9] Therefore, I dismiss the Petition and make no order as to cost.

Signed, dated and delivered at Ile du Port on



M Vidot

Judge of the Supreme Court