

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: MA 54/2018**

**(arising in CS 37/2018)**

[2018] SCSC 106

---

**SAMINCANNOU CAILACHAME**

Petitioner

versus

**GEORGES DANIEL LOW HONG**

Respondent

---

Heard:	18 <sup>th</sup> July 2018
Counsel:	Mrs. Madeleine for the Applicant Mr. Camille for the Respondent
Delivered:	18 <sup>th</sup> July 2018

---

**JUDGMENT**

---

**R. Govinden, J**

[1] On the 30<sup>th</sup> of January 2018 at 2 pm the Court convened in order to hear an application on behalf of the Applicant Mr. Samincannou Cailachame. This application was one in which the applicant was moving this Court to treat the Respondent for contempt, for allegedly breaking in the demise premises, the subject matter of an Order before the Rent Board, pending the hearing of an appeal that he had filed against this Order before this Court.

- [2] The respondent had filed an objection dated the 21<sup>st</sup> of January 2018 denying the allegation of contempt. The Respondent was being represented by Mr. Joel Camille whilst the Applicant appeared on his own behalf. When the case was called for hearing of the application, the applicant made default in his appearance and he was not represented. Counsel for the Respondent therefore moved this Court to dismiss the application for want of prosecution. The Court after satisfying itself that there was no reason put forward to justify the non-appearance, and the fact that the Applicant was aware of the date of hearing, went on to dismiss the application.
- [3] The Applicant has now filed an application for re-instatement of the said application. In his affidavit in support of this motion he aver that on the 30<sup>th</sup> of January 2018 he was taken ill and had to visit a doctor. He has attached a medical attendance certificate to his affidavit as proof of this averment. The Applicant also aver that he had sent an SMS message to the Orderly of this Court, about the fact that he was indisposed as a result of ill-health.
- [4] On the other hand the Respondent has objected to the application for reinstatement of the dismissed proceedings. The Respondent in his affidavit in reply aver that the applicant knew of the date for hearing and that despite of this he defaulted appearance. At any rate the respondent argued that if the Applicant had been to a medical clinic he should have informed this Court personally or through a representative well ahead of the set date fixed for hearing.
- [5] During the course of this hearing the Applicant was represented by Mrs. Alexandra Madeleine, and both parties substantially rehearsed their pleadings filed before this Court. I have carefully listened to the Counsels of both parties and scrutinized the application for re-instatement of the contempt proceedings and the affidavit in reply. I find that the proceedings of the Rent Board had reveal that the applicant was directed to vacate and surrender the demise premises on or before the 20<sup>th</sup> of December 2017. Therefore to the extent that the Respondent took possession of the demise premises on or before that date there could have been no contempt of the said Rent Board Order. The Applicant had at any rate not applied for a stay of proceedings of the Rent Board at the time that he alleged trespass to the demise premises by the Respondent to place. Hence there was at that time

no breach of the said Court Order. Moreover, I am of the view that if the applicant was not to appear on the date of the hearing for medical reason, he ought to have sent somebody to at least inform the Court of his predicament, so that he would have been given an opportunity to be heard, and this he has failed to do.

- [6] I find that sending of text message by a litigant to a Court Staff member is totally inappropriate. At any rate it appear that this message did not reach this Court in this case. Accordingly I will dismiss this motion for reinstatement of the contempt proceedings by the Applicant in this matter. I will award cost arising out of this application in favor of Respondent.

Signed, dated and delivered at Ile du Port on 18<sup>th</sup> July 2018

R. Govinden, J  
**Judge of the Supreme Court**

