

**SUPREME COURT OF SEYCHELLES**

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Not Reportable  
[2019] SCSC 106  
MA 37/2019  
(Arising in CS23/2019)

In the ex parte matter of:

**EASTERN EUROPEAN ENGINEERING LIMITED**  
*(rep. by Elvis Chetty)*

Petitioner

and

**VIJAY CONSTRUCTION (PROPRIETARY) LIMITED**  
*(rep. by Bernard Georges)*

Respondent

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**Neutral Citation:** *Eastern European Engineering Ltd v Vijay Construction (Pty) Ltd*  
(MA37/2019) [2019] SCSC 106 (14 February 2019).

**Before:** E. Carolus J

**Summary:** Petition for Provisional Seizure and Attachment - Sections 280 & 281 of the  
Seychelles Code of Civil Procedure.

**Heard:** 11 February 2019

**Delivered:** 14 February 2019

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**ORDER**

The Petition for Provisional Seizure and Attachment is dismissed with costs.

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**RULING**

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**CAROLUS J**

- [1] The Petitioner, Eastern European Engineering (“EEEL”) has filed a plaint against the Defendant Vijay Construction (Proprietary) Ltd (“Vijay”), seeking to register and render executory two Orders of the English High Court of England and Wales pursuant to the Reciprocal Enforcement of British Judgments Act.

[2] EEEL has now filed this ex-parte Petition which although infelicitously drafted, I understand to be for the provisional attachment of money belonging to Vijay held in six bank accounts with three banks in Seychelles, and the provisional seizure of 87 vehicles also belonging to Vijay.

[3] The Petition is supported by an Affidavit sworn by Vadim Zaslouov who avers that he is a director of EEEL. The Affidavit rehearses what is stated in the Petition.

[4] In his Affidavit, Mr. Zaslouov avers that both EEEL and Vijay are companies registered under the laws of Seychelles and that Vijay is involved in the business of civil engineering and construction.

[5] He avers that in 2011 EEEL Petitioner engaged Vijay to carry out construction of a hotel known as the Savoy Resort and Spa at Beau-Vallon, Mahe, Seychelles, pursuant to 6 agreements which are listed in Plaint C.S No. 13 of 2015, and which provided for several components of construction works necessary for completion of the project.

[6] Mr. Zaslouov then goes on to aver that –

*to date, the Respondent has not honoured the settlement of the award and costs and have failed, refused and neglected to pay the same or any part whatsoever, and this despite the decision of the High Court of British and Wales.*

[7] It is not apparent on the face of the Petition and Affidavit what award and costs and what decision of the High Court of British (sic) and Wales are being referred to.

[8] A reading of the Plaint in the head suit reveals following disputes between EEEL and Vijay the 6 agreements referred to at paragraph 5 above were terminated by EEEL. The disputes were referred to arbitration in Paris and an arbitral award made on 14<sup>th</sup> November 2014. Vijay applied for the award to be set aside by the French Courts which application was dismissed by both the Cour D'Appel and Cour de Cassation. EEEL's application to the High Court of England and Wales for permission to enforce the award and judgment of the French courts in terms of the award, was granted by Order dated 18 August 2015 of Mr. Justice Cooke. Vijay applied for the said Order to be set aside and his application was dismissed by Order of Mrs. Justice Cockerill of 11 October 2018 in terms of which Vijay

was also ordered to pay costs for the set-aside proceedings and to make an interim payment of costs by 25<sup>th</sup> October 2018.

[9] I therefore take it that the award and costs and decision of the High Court of British (sic) and Wales referred to are the arbitral award, and the Order of Mrs. Justice Cockerill of 11 October 2018 confirming the Order of Mr. Justice Cooke of 18 August 2015, and awarding costs to EEEL. Suffice it to say that a properly drafted affidavit should contain all the facts relied on in the Petition. The Court should, upon a reading of the Petition and the attached Affidavit be able to ascertain the relevant facts of the matter before it.

[10] Mr. Zaslonov also avers that Vijay has the following bank accounts in Seychelles namely:

- a) Barclays Bank Account Number: [REDACTED] (EURO)
- b) Nouvobanq Account Number: [REDACTED] (EURO)
- c) Nouvobanq Account Number: [REDACTED] (USD)
- d) Nouvobanq Account Number: [REDACTED] 6 (SCR)
- e) Bank of Baroda Account Number: [REDACTED] (SCR)
- f) Bank of Baroda Account Number: [REDACTED] (SCR)

[11] He further avers that Vijay has vehicles a list of which is attached to the Affidavit. The list issued by the Seychelles licensing Authority shows 87 vehicles of which Vijay is the licensee, 57 of which are registered as commercial vehicles and the remaining 30 as private vehicles.

[12] Mr. Zaslonov avers that that there is serious question to be tried and disclosed in the Plaint and there is a concern that Vijay will dispose of the funds in the said bank accounts in order to prevent EEEL from realizing the fruit of any Judgment that may be given against Vijay; that there is a bona fide claim against Vijay and the case filed is not frivolous and vexatious; that it is therefore necessary and in the interest of justice for the Court to hear and determine the matter as one of extreme urgency in order to protect the interest of EEEL; and that it is reasonable and just for the Court to make the orders prayed for.

[13] In terms of the Petition the Petitioner prays for the provisional seizure of the vehicles specified at paragraph 11 above and attachment of the money in the bank accounts held with the banks as specified at paragraph 10 above He further prays for Orders -

- (i) Prohibiting the aforementioned banks from paying money held by them in the aforementioned accounts to the Respondent pending the further order of the Court;*
- (ii) Prohibiting the Seychelles Licensing Authority from making any legal actions with the vehicles of the Respondent in order to prevent the disposal of the vehicles;*
- (iii) for Vijay not to do anything in respect of the bank accounts that will deplete or affect monies therein and in respect of the vehicles;*
- (iv) for Vijay not to enter into any contracts that may eventually lead to disposal of its assets or diminishing its financial status;*
- (v) To serve copy of the Order on the said Banks and Seychelles Licensing Authority without delay;*
- (vi) for Vijay to pay the costs of this Petition; and*
- (vii) Any other and further orders the Court sees fit in the circumstances of this case.*

[14] Orders for provisional seizure and/or attachment are provided for by sections 280 and 281 of the Seychelles Code of Civil Procedure (“SCCP”) which are reproduced below -

*280. At any time after a suit has been commenced, the plaintiff may apply to the court to seize provisionally any movable property in the possession of the defendant in the suit or to attach provisionally any money or movable property due to or belonging to the defendant in the suit, which is in the hands of any third person. The Petition shall be by petition supported by an affidavit of the facts and shall be signed by the plaintiff or his attorney, if any, and shall state the title and number of the suit.*

*281. If the court is satisfied that the plaintiff has a bona fide claim, the court shall direct a warrant to be issued to one of the ushers to seize provisionally such property, or shall make an order prohibiting the third person in whose hands such money or other movable property is from paying such money or delivering such property to any other person pending the further order of the court. The order shall be served on the third party by an usher of the court. The court, before any such warrant or order is issued, may require the Petitioner to find such security as the court may think fit.*

[15] In addition to the requirements laid out in the above provisions for a Court to make an order for provisional seizure and/or attachment, namely that a suit has been commenced, and that the Plaintiff in the head suit has a bona fide claim, these sections have been interpreted by

our Courts to include an additional requirement namely that these provisions can only be invoked in cases where the provisional measure is necessary to protect the respondent's assets from the risk of disappearance or diminution in value.

[16] In *Eastern European Engineering v Vijay Construction* (MA275/2012) [2013] SCSC24 (25 March 2013) Egonda Ntende then Chief Justice, after observing that traditional jurisprudence supports the approach that all that is required for a Court to order the attachment of a respondent's bank accounts is the institution of a suit and a claim that it is bona fide, stated –

[13] *... The time has come for a review of this approach and to restrict such orders to defendants acting in such a way as to defeat the possibility of a successful plaintiff from recovering the fruits of his or her judgment. A plaintiff or a party ought to show that a defendant has acted in a manner that is putting at risk the possibility of recovering the fruits of his judgment should he or she succeed in the head suit.*

[17] The Learned Chief Justice went on to state –

[14] *The raison d'être for provisional attachment of a defendant's moveable properties is to ensure that should the Plaintiff succeed in the main suit the Plaintiff would be able to enjoy the fruits of its judgment. However at this stage no trial has taken place. No 'judgment' as such has been ordered against a defendant. Judgment may well be two or more years away. In this Court it is not uncommon to have cases last for five years without completion. It appears to me quite wasteful in economic terms, both to the owner and the nation that an order of the Court can sequester assets of the defendant for such a period, locking such assets out of economic or commercial activity to the benefit of the owner when the owner has done nothing wrong at that stage. All there is, is a suit filed against him. In my view there must be more.*

[15] *The order for provisional attachment ought to be invoked only in cases where its raison d'etre is at stake and not otherwise. The defendant should be acting in such a manner that puts at risk the plaintiff's ability to recover the fruits of his judgment. For instance if he is disposing of his assets with a view to avoiding satisfying any judgment that may be passed against him or he plans to relocate himself or his assets outside this jurisdiction again with the object of not satisfying a possible judgment being passed against him.*

Emphasis is mine.

- [18] The reasoning of the learned Chief Justice in the abovementioned case was approved by the Court of Appeal in *Eastern European Engineering v Vijay Construction* SCA13/2015 (931 August 2018).
- [19] In the present application, all that the Court has to go on is the averment in Mr. Zaslonov's affidavit that there is a concern that Vijay will dispose of the funds in the bank accounts sought to be attached in order to prevent EEEL from realizing the fruit of any Judgment that may be given against Vijay. EEEL has not shown the basis for such concern.
- [20] Although EEEL has filed a Complaint and may on the face of the pleadings have a bona fide claim against Vijay, it has not shown any act of the latter that puts in jeopardy the realisation of the fruit of any Judgment that may be given against Vijay in the head suit.
- [21] I therefore dismiss the Petition with costs.

Signed, dated and delivered at Ile du Port on 14<sup>th</sup> February 2019



E. Carolus J