

SUPREME COURT OF SEYCHELLES

Reportable
[2021] SCSC 358
MA 305/2019
(Arising in CS08/2015)

In the matter between:

EDGAR MOREL
(rep. by Guy Ferley)

Petitioner

and

DAVID ESSACK
(rep. by France Bonte)

Respondent

AND

MA 35/2020
(Arising in CS08/2015)

In the matter of:

DAVID ESSACK
(rep. by France Bonte)

Applicant

and

EDGARD MOREL
(rep. by Guy Ferley)

Respondent

Arising from

EDGAR MOREL
(Rep. by France Bonte)
And

CS 08/2015
Plaintiff

CONVOY (Pty) LTD
(rep by David Essack)
(Rep by Guy Ferley)

Defendant

Neutral Citation: *Morel v Essack (MA 305/2019 and MA 35/2020) SCSC 358* 28th June 2021
Before: Burhan J
Delivered: 28th June 2021

ORDER

BURHAN J

- [1] Judgment was given in favour of the Plaintiff in the main case CC 08 of 2015 Edgar Morel v Convoy (Pty) Ltd (represented by Mr. David Essack) on the 29th of October 2018 ordering that the Defendant pay the Plaintiff a sum of SCR 838,200/- (eight hundred and thirty eight thousand two hundred) with interest at the commercial rate of 10% from the date of filing plaint.
- [2] Thereafter a Miscellaneous Application was filed by the Judgment Creditor (Plaintiff) MA 305 of 2019 on the 30th of September 2019, seeking that summons issue on the Judgment Debtor (Defendant) to appear in Court and show cause why he should not be committed to civil imprisonment in default of payment of the aforementioned judgment debt ordered by Court.
- [3] An objection was taken by the Judgment Debtor that Mr. David Essack who was the director of the defendant company was not personally liable for the said claim. This Court by ruling dated 30th January 2020, ruled that Mr. David Essack was personally liable for the said debt and gave him time to show cause as to why he should not be committed to civil imprisonment for the said debt. The case was fixed for the 26th of March 2020 refer proceedings of 20 January 2020.
- [4] On the 19th of February 2020, another Miscellaneous Application was filed MA 35 of 2020 for a stay of execution of the ruling of 30th January 2020 as an appeal had been lodged in respect of the said ruling. After hearing both parties to the application for stay by way of

ruling dated 17th November 2020, a stay of execution was granted on the basis that a bank guarantee was to be provided by the Judgment Debtor (Defendant) in the case. Meanwhile the case was fixed for the 21st January 2021, for the Judgment Debtor to show cause as to why he should not be committed to prison for failure to pay the judgment debt in the event of him failing to provide the necessary bank guarantee refer proceedings of 17th November 2020 in MA 35/2020. The Judgment Debtor thereafter produced several bank guarantees in case MA 35 of 2020 but as the bank guarantees were not in order they were rejected. Finally on the 7th off April 2021 the Judgment Debtor was given a date the 12th of May 2021 at 10.a.m for him to show cause in respect of the application MA 305/2019.

- [5] Therefore the proceedings from 12th May 2021 should be in respect of the show cause application MA 305/2019 but has been filed in MA 35 of 2020 as this application had been continued to be called inadvertently. The proceedings from 12th May 2021 are relevant to the show cause application MA 305 of 2019 as it is now this application which is being considered as the Judgment Debtor has failed to provide an acceptable bank guarantee as ordered in MA 35/2020. I make order that copies of the proceedings from 12th May 2021 filed in MA 35/2020 be filed in MA 305/2019.
- [6] On the 12th of May 2021 when the case was called for the Judgment Debtor to show cause Mr. Ferley the Attorney at Law for the Judgment debtor informed Court that the Judgment debtor was unwell and tendered a medical certificate. The matter was fixed for inquiry for the Judgment Debtor to show cause as to why he should not be committed to civil imprisonment for failure to pay the judgment debt for the 4th of June 2021. On the 4th of June 2021 the Judgment debtor once again did not appear and Mr. Ferley his lawyer undertook in open court twice to notify his client of the next date the 15th of June 2021. Further it was specifically stated it was for inquiring into the summons to show cause application. However on the said date 15th June 2021 neither Mr. Ferley nor his client were present. His pupil who was present in Court stated she had no audience in Court.
- [7] It is the view this Court that there is no necessity for Court to once again issue summons to show cause again on the Judgment debtor as he has already been served. His lawyer Mr. Ferley should be well aware of this. The Judgment Debtor on his own accord has kept away

from Court and tendered a medical certificate on the 4th of June 2021. His lawyer has undertaken to inform his client of the next date however on the said date 15th June 2021 both the judgment debtor and his lawyer were not present.

[8] Be that as it may, it appears that there has been some confusion in the calling of both Miscellaneous Applications in Court and in the filing of proceedings. In order to sort this issue out, I make order that both MA 305 of 2019 and MA 35 of 2020 be called in open Court for further orders in future. I make further order that for reasons set out in paragraph [5] herein that copies of the proceedings from 12th May 2021 filed in MA 35/2020 be filed in MA 305/2019 as well.

[9] This order to be filed in both MA 305 of 2019 and MA 35 of 2020 applications for the purpose of clarity.

Signed, dated and delivered at Ile du Port on 28th June 2021.



M Burhan J