

CC 30/2012 SUPREME COURT OF SEYCHELLES

Reportable

[2022] SCSC

MA247/2021

(Arising in CC 30/2012)

In the matter between:

EASTERN EUROPEAN ENGINEERING LIMITED

(rep. by Serge Rouillon)

Applicant

and

VIJAY CONSTRUCTION (PTY) LIMITED

(rep. by Bernard Georges)

Respondent

Neutral Citation: *Eastern European Engineering Limited v Vijay Construction (Pty) Limited*
(MA 247/2021 arising in CC 30/2012) [2022] SCSC (21st March 2022)

Before: Burhan J

Summary: Execution of judgment – interest; compounded or simple interest

Heard: Written submissions

Delivered: 21st March 2022

RULING

BURHAN J

[1] The Applicant, Judgment Creditor, is Eastern European Engineering Limited (“EEEL”) who filed a Motion for final Execution of Judgment and payment of balance due under the judgment. The Respondent, Judgement Debtor, is Vijay Construction (Pty) Ltd (“Vijay”).

[2] The main dispute between the parties before the Supreme Court was regarding purchase and delivery of cement batching plant and block making machine. The Supreme Court has ordered Vijay to pay EEEL USD112,899.00 together with interest at the commercial

rate of 10% per annum thereon from 10 October 2018, the date of the Supreme Court Judgement.

- [3] Subsequently, the Judgment Debtor, Vijay applied to the Supreme Court for the stay of execution pending appeal. The Application was dismissed by the Ruling dated 11 February 2019 (MA 310 of 2018 arising in CC 30 of 2012). Thereafter, the Respondent filed an application for stay of execution to the Court of Appeal as well as notice of motion to the Supreme Court that the process of execution be stayed pending the determination by the Court of Appeal of an application that the execution be stayed dated 25 March 2019 (MA 106 of 2019).
- [4] Afterwards, according to both EEEL and Vijay, the Judgement Debtor had to deposit security with the Court Registry as a condition for a stay of execution.
- [5] On the 13th of August 2021 the Seychelles Court of Appeal gave final judgment in SCA 65 of 2018 dismissing the appeal and confirming the Judgment of the Supreme Court dated 10 October 2018.
- [6] With regard to the payments of security by Vijay to the Court Registry, according to the email letter from the Registrar dated 1st September 2021, the amount which covered the entire debt including interest (total of SCR1,640,655.20) was paid by Vijay to the Registry on 22nd March 2019 with exchange rate used SCR13.80 to a dollar. Bank Guarantee for the sum of USD112,899.00 dated 10th September 2019 was deposited by Vijay to the Seychelles Court of Appeal on 6th July 2020. After the Appeal was dismissed on the 13th of August 2021, the Registrar informed the parties that, “*since the debt was already paid in full, then the balance remaining for interest*” was USD27,250.40 (total of sums for periods from 16th March 2019 to 31st December 2019; 1st January 2020 to 31st December 2020; and 1st January 2021 to 13th August 2021 the date of the Seychelles Court of Appeal Judgment)

SUBMISSIONS

- [7] The Applicant submits that to date, SCR1,558,622.44 has been recovered from the Judgment Debtor (paragraph 3 of the Submissions dated 12th January 2022). It is

submitted at paragraph 5 that the amount was received on the 30th August 2021 and conversion from SCR to USD had been done based on the rate of SCR15,86 as per the Seychelles Commercial Bank rate valid on 19th August 2021, date of signing Application for Execution.

- [8] It is submitted at paragraph 8 that the securities deposited with the court were not communicated to the Judgment Creditor who only received funds upon the conclusion of the case by the Court of Appeal. It is further submitted that the fact the Judgment Creditor could have found out about the securities, as argued by the Judgment Debtor, was not the obligation of the Judgment Creditor and that it is a trite law that the burden is on the Judgment Debtor to alert the Judgment Creditor of the state of affairs of how it will settle a judgment debt (paragraphs 8-9).
- [9] At paragraph 10 of the Submissions, the Applicant states that the Judgment Debtor's reply does not specify why the simple interest should be used as opposed to compound interest and it is averred that the compound interest is more economically and commercially viable between two merchants under the Commercial Code.
- [10] The Applicant states that on the 12th January 2022 the amount to be paid was USD 47,599.95 as per the Affidavit in support (paragraph 11 of the Submissions). The Judgment Creditor asks the Court for an order to Registrar that the process server executes the Judgment by way of a "Saisie execution" on the Judgment Debtor's assets in amount of USD 47,599.95 since the accounts of the Judgment Debtor are frozen pending decisions of the highest courts and the Judgment Creditor requires its debt to be paid without further delays.
- [11] The Respondent submits that there are two issues for the court's determination: should interest on the judgment debt have stopped running from the moment the Judgment Debtor paid it in Rupees into the Court Registry; and should interest be compounded or calculated as simple interest (Submissions dated 16th January 2022).
- [12] With regard to the first issue, the Respondent submits that as a condition for a stay of execution of the judgment of the Supreme Court pending appeal, the Court ordered

security to be deposited with the Registry. The amount of SCR1,640,655.20 was paid to the Registry on 22nd March 2019 and bank guarantee in the sum awarded was also provided on 10th September 2019. It is further submitted that upon the bank guarantee being put up, the Registry did not return the SCR deposit to the Judgment Debtor nor did the Judgment Debtor collect it.

[13] The Respondent submits that as stated by the Registrar's email of 1 September 2021, the entire judgment had been paid in full as at that date, therefore, interest should have stopped running at that point. It is submitted that to hold otherwise will be to visit an injustice on the Judgment Debtor where it would have paid the judgment debt and additionally be penalised by having to pay interest on the sum it had already paid. It is further submitted that situation would have been different if the Judgment Creditor sought to be paid the sum deposited into the Registry and been refused this, but this is not what happened and the Judgment Creditor was aware of what was happening and if it cannot benefit from its own lack of action through receiving interest.

[14] With regard to the second issue, whether interest should be compound or simple, the Respondent states that interest is a compensation for the use or retention of money belonging or owed to another.

[15] It is further submitted that it was not the case involving payment which was unlawfully withheld and even if there had been bad faith, under Article 1153 the Judgment Creditor would have had to claim damages, not calculated with compound interest.

[16] The Respondent further submits that under Article 1154 interest on interest can only be obtained by a party suing for it unless it had previously been agreed by the parties. Finally, the Respondent states that the Judgment Creditor had not sought compound interest and the Supreme Court did not award compound interest.

ANALYSIS

[17] With regard to the first issue, whether interest on the judgment debt should have stopped running from the moment the Judgment Debtor paid the debt amount into the Court Registry as a condition for stay of execution, it should be borne in mind the amount

deposited to the Registry was deposited as security for the stay of execution not as a discharge of the judgment debt (see Registrar's Letter dated 10th May 2019 in MA 106 of 2019 which states that amount was paid and will remain in the possession of the Court until further instructions from the Court). The amount was paid on the 22nd March 2019 and the decision of the Court of Appeal dismissing the appeal was delivered on the 13th August 2021, more than two years after. The Judgment Creditor was therefore deprived from their award for a further two years due to the Judgment Debtor's decision to obtain the stay of execution pending appeal even though they could have discharged the judgment debt at the time they deposited security to the Registrar. The Judgment Debtor chose not to and as the Judgment Creditor was not paid the judgment debt at that time and the amount remained in the possession of the Court until the Court of Appeal decision on the 13th of August 2021, it is the view of this Court that the Judgment Creditor (Applicant) should be entitled to interest from the date of deposit of the said sum in the registry till the time of the full discharge of the judgment debt.

[18] With regard to the second issue, whether interest is calculated as compound or as simple interest the Supreme Court's decision at paragraph [40] states that the award is "*\$112,890.00/- together with interest at the commercial rate of 10 percent per annum thereon from the date hereof with costs*".

[19] The Supreme Court therefore did not expressly state whether interest is a compound or simple one. Consideration of whether interest upon award is compound or simple was given by the Court of Appeal in *Charlemagne Grandcourt and others vs Christopher Gill* (SCA 7 of 2011) [2012] SCCA 31 (07 December 2012). The majority decision held that interest on court judgments is calculated based on simple interest:

"20. The trial judge did order specific performance of the contract but he failed to take into account the fact that R200, 000 due since May 1994 remains unpaid. We find that that sum is due together with interests at the legal rate of 4%. At the hearing of this appeal we asked Counsel to agree the interest due on this outstanding balance and to communicate to us an agreed computation bearing in mind the devaluation of the rupee. This unfortunately has not happened. Mr. Rouillon has submitted a computation based on compound interest. Interest on court judgments are calculated based on simple interest at 4% (Interest Act Cap. 100). Compound interest is exceptionally allowed only where an equitable remedy is granted by the court and there is for example an allegation of breach of trust or fraud by a party (see for example Wallerstein v Moir (No. 2) [1975] Q.B 373). The present case concerns a legal remedy under the Civil Code. We have proceeded on

this basis and to be as fair as possible have accepted the depreciation in currency for each year since 2007 and using as baseline currency the US dollar. We therefore find that the total amount of interest payable is SR176, 784.”

(emphasis added)

[20] The minority decision interpreted the use of the words “per annum” to suggest that interest is compound interest:

“33. The trial judge did order specific performance of the contract but he failed to take into account the fact that R200,000 due since May 1994 remains unpaid. I find that in the circumstances of this case that sum is due together with compound interest. The Interest Act (cap 100) states: “Whenever the rate of interest shall not be fixed by contract, the legal rate of interest shall be four per centum per annum in civil or commercial matters.” In cases where interest has to be calculated over a period of time more than one year, there is a certain ambiguity as to whether the 4% is to be computed as compound interest, by adding the 4% interest to the Rs.2000,000 at the end of each year to form a new principal for the next year or the interest computed for the entire period at 4%, as simple interest. The use of the words “per annum” is suggestive that it is compound interest. I have arrived at the computation of compound interest at Rs.214,302.11.”

[21] Following the majority decision in *Charlemagne Grandcourt and others vs Christopher Gill* the interest therefore should be simple interest.

[22] I therefore make Order as follows:

- a) the Judgment Creditor (Applicant) should be entitled to interest from the date of deposit of the said sum in the registry till the time of the full discharge of the judgment debt.
- b) the interest rate should be calculated at simple interest and NOT at compound interest rate.

c) The Registrar Supreme Court is Ordered to calculate the balance sum owing to the Judgment Creditor (Applicant) accordingly.

Signed, dated and delivered at Ile du Port on 21st March 2022.

M Burhan J