

RESTRICTED PUBLICATION:

[Names of parties/witnesses/places etc] in this [order/ruling] not to be published in any form without prior written authorisation of the Court

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: MA 140/2018

(arising in CS 19/2018)

[2018] SCSC 933

HOUSING FINANCE COMPANY LTD

Petitioner

versus

MARCEL SANTACHE

Respondent

Heard: 5th September and 3rd October 2018

Counsel: S. Rajasundaram for petitioner

Edit Wong for respondent

Delivered: 17th October 2018

ORDER ON MOTION

L. Pillay, J

- [1] The Petitioner applied by way of motion dated 4th June 2018 for the Court to set aside and vacate the ex parte judgment dated 18th May 2018 and to accept the defence to be filed.

- [2] The Respondent did not object to the motion but brought to the attention of the Petitioner's counsel that the case was not on the list he referred to in his email.
- [3] It is necessary to look at the order made in CS19/2018 in order to gauge what is the correct course of action to be taken on this motion.
- [4] On 18th May 2018 the Defendant failed to appear. There was no defence on file. Noting that Mr. Raja had been out of jurisdiction since the 18th May 2018 but that service had been effected on the Defendant since 24th February 2018 along with CV1 which contains a direction that failure to file a defence in accordance with the direction may result in judgment being given against the party, judgment was entered in favour of the Plaintiff.
- [5] The terms were dictated and judgment recorded.
- [6] I note that CV1, dated 21st February 2018, was sent out to the parties and the case was listed for 18th May 2018 for preliminary hearing.
- [7] I note that there are very clear instructions and notes to the parties on CV1. At 1.2 the Defendant is required to file a statement of defence to the suit. The note at the bottom of the directions for the Defendants it clearly states that on "failure to file a defence in accordance with this direction may result in judgment being given against you."
- [8] In fact that is the rule under section 128 of the Seychelles Code of Civil Procedure which reads thus:
- "On the date to which the suit has been adjourned under the last preceding section, the parties shall appear and the court shall then adjourn the suit to a date to be fixed by the court for the hearing. If the defendant has neglected to file his statement of defence within the time ordered by the court, the court may either give judgment for the plaintiff on his claim or grant further time, subject to such order as to costs, as to the court may seem fit."
- [9] This is quite different from a situation where the Court gives a judgment following an ex parte hearing under section 65 of the Seychelles Code of Civil Procedure. In such instances

under section 69 of the Seychelles Code of Civil Procedure, the Defendant can move for the court to set aside the judgment given ex parte.

[10] According to the case of Cedric Petit v/s Marguerita Bonte CA 9/99 referring to the case of Bianchardi v/s Electronic Alarm SA (1975) SLR 193 an application under section 69 is limited only to non-appearance of a party on the day fixed in the summons served after a plaint is filed. It cannot be made when the Defendant initially appeared in answer to the summons and was granted time to file a defence.

[11] To my mind when judgment is given in default as per section 128 of the Seychelles Code of Civil Procedure, the proper course of action for an aggrieved Defendant is to file an appeal.

[12] In the circumstances the motion is dismissed.

Signed, dated and delivered at Ile du Port on

17th October 2018



L. Pillay, J
Judge of the Supreme Court