

IN THE SEYCHELLES COURT OF APPEAL

[Coram: F. MacGregor (PCA) , S. Domah (J.A) ,M. Twomey (J.A) .]

Civil Appeal SCA MA 4/2016

(arising out of CC 29/2014

Fregate Island Private Limited

Applicant

and

DF Project Properties

Respondent

Heard: 13 April 2017

Counsel: Mr. Divino Sabino for Applicant

Mr. Basil Hoareau of Respondent

Delivered: 21 April 2017

ORDER ON MOTION

M. Twomey (J.A)

- [1] The Respondent filed a plaint in the Supreme Court in which it seeks a declaration that certain orders of the Regional High Court of Düsseldorf, Germany enforcing an arbitral award in Germany against the Applicant is enforceable and executory in Seychelles.
- [2] Subsequent to the filing of this suit in Seychelles, the Respondent applied for and was granted an order for provisional seizure and attachment of the Applicant's movable assets namely attachment of funds belonging to the Applicant in bank accounts at Barclays Bank, Seychelles Ltd, Seychelles International Mercantile Banking Corporation and the Mauritian Commercial Bank and other movable assets including sea vessels on 6 November 2015.

[3] The case before the Supreme Court of Seychelles awaits completion with closing submissions of the parties due in June 2017.

[4] This matter being interlocutory, the Applicant sought leave from the learned trial judge, Robinson J, to appeal against the said decision which application was refused.

[5] The Applicant by virtue of the provisions of section 12 of the Courts Act now applies to this Court for leave to appeal against the interlocutory ruling given by Robinson J.

[6] Section 12 provides in relevant part:

...

2. (1) Subject as otherwise provided in this Act or in any other law, the Court of Appeal shall, in civil matters, have jurisdiction to hear and determine appeals from any judgement or order of the Supreme Court given or made in its original or appellate jurisdiction.

(2) (a) In civil matters no appeal shall lie as of right-

(i) from any interlocutory judgment or order of the Supreme Court

(b) In any such cases as aforesaid the Supreme Court may, in its discretion, grant leave to appeal if, in its opinion, the question involved in the appeal is one which ought to be the subject matter of an appeal.

(c) Should the Supreme Court refuse to grant leave to appeal under the preceding paragraph, the Court of Appeal may grant special leave to appeal.

[7] The leading authority on special leave to appeal before the Court of Appeal is the case of *EME Management Services Ltd v Islands Development Co Ltd* (2008-2009) SCAR 183, in which it was decided that before special leave to appeal was granted, the Court had to be satisfied that the interlocutory judgment disposed so substantially of all the matters in issue as to leave only subordinate or ancillary matters for decision; and there were grounds for treating the case as an exceptional one. The Court also added that to treat a case as

exceptional, the applicant had to show that the interlocutory order was manifestly wrong and irreparable loss would be caused to it if the case proper were to proceed without the interlocutory order being corrected.

- [8] Further, in *Gangadoo v Cable and Wireless* (2013) SLR 317, this Court after a survey of cases involving applications for special leave to appeal interlocutory orders and stated ::

“the words “special leave” have been used with a purpose, namely in this situation the Court of Appeal is being called upon to exercise its jurisdiction in a matter where no appeal lies as of right but also interferes with the exercise of discretion by the Supreme Court in refusing to grant leave to appeal...“special leave” should therefore be granted only where there are exceptional reasons for doing so, or in view of reasons which may not have been in the knowledge of the applicant at the time leave to appeal was sought from the Supreme Court or for reasons that supervened after the refusal to grant leave by the Supreme Court. The reasons before the Court should be such that the non-granting of “special leave” by this Court is likely to offend the principle of fair hearing enunciated in the Constitution. In this regard it is to be noted that an appeal against an interlocutory judgment or order has a tendency to delay the main action and contravene the rights of a person to a fair hearing within a reasonable time as stipulated by art 19(7) of the Constitution.”

- [9] It is clear that for this Court to exercise its discretion the applicant must show exceptional reason leaves should be granted. The Appellant has supported his application with an affidavit and attached draft grounds of appeal. In his averments he depones that the learned judge erred in both law and fact and believes that the intended appeal discloses important issues relating inter alia to the law concerning provisional seizures in which the court would be invited to consider the draconian effects of such orders and pronounce on them to the advantage of the public.

- [10] The draft grounds of appeal disclose the said draconian measures referred to, namely the fact that the attachment of all the Applicant’s movable assets hamper the Applicant’s hotel operation and could lead to its closure.

- [11] In the course of the hearing of the application we expressed the view that the effects of the order did indeed seem harsh and we indicated that it might be proper to impose other means of security for the Respondent. The Respondent stated that it would accept a banker's guarantee. The Applicant indicated that this would not be acceptable. That is regrettable as it may at this juncture have concluded matters on this issue.

- [12] We have also indicated that were we to grant leave, this matter would still not be expeditiously concluded given the fact that the appeal was still not before the court and that the next session for hearings before this court would be next August after the judge had disposed of the entire case.

- [13] We note with further dismay that, despite a Practice Direction by the Chief Justice indicating that commercial cases should be completed within six months, this matter begun on 26 September 2014 is still not completed while all the Applicant's movable assets including all its accounts have been seized, no doubt crippling its operations.

- [14] Given all the above circumstances and the authorities on special leave, we exceptionally grant special leave to appeal the decision of the learned judge regarding provisional seizure.

M. Twomey (J.A)

I concur: F. MacGregor (PCA)

I concur: S. Domah (J.A)

Signed, dated and delivered at Palais de Justice, Ile du Port on 21 April 2017