

IN THE SUPREME COURT OF SEYCHELLES

Andre de Riedmatten of
Sion, Switzerland

Plaintiff

Vs

Gerald Maurel, an Attorney of
Victoria, Mahé

Defendant

Civil Side No: 6 of 2000

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Mr. P. Pardiwalla for the plaintiff
Defendant – Present (In person)

D. Karunakaran, J

RULING

By a plaint dated 13th of January 2000, the plaintiff instituted the present action claiming the sum of Rs.480, 900/- from the defendant based on an alleged breach of contract. The defendant on the other hand, has filed his statement of defence denying the entire claim of the plaintiff, and making a counterclaim against the plaintiff in the sum of Rs. 213, 126/- together with interest and costs.

Having thus filed his statement of defence, the defendant has now applied to the Court by way of a motion dated 29th of July 2004 for an order directing the plaintiff, who is a non-resident, to give security for costs and damages, which may be awarded against the plaintiff pursuant to the counterclaim made by the defendant. The defendant has made this application invoking Article 16 of the Civil Code, which reads thus:

“When one of the parties to a civil action is a non-resident, the Court may, at the request of the other party, and for good reason, make an order requiring such a non-resident to give security for costs and for any damages, which may be warded against him”

It is the contention of the defendant that the plaintiff is a non-resident. He does not own any immovable property in Seychelles. Hence, it is not possible for him to recover the sum, if any awarded against the plaintiff in respect of his counterclaim. In the circumstances, the defendant requests the Court to order the plaintiff to provide security in the sum of Rs. 500,000/- towards damages and costs.

Mr. Pardiwalla, learned counsel for the plaintiff, vehemently objects to any order being made in favour of the defendant for such security. According to the plaintiff, the application of the defendant in this regard is frivolous and vexatious. And it amounts to an abuse of the process of the Court as it is not the first time the defendant is making such an application. A couple of times in the past, the defendant made similar applications and subsequently withdrew them all, for no valid reason. This shows that the instant application is not made bona fide. Besides, Mr. Pardiwalla contended that it is one of the requirements under Article 16 of the Civil Code that the defendant should show “a good reason” why such an order should be made. However, in the present case the defendant has not given any good reason in order for the Court to exercise its discretion in favour of making an order for security. Furthermore, he submitted that the defendant’s counterclaim in this matter is devoid of merits and more so, time barred. In view of all the above, Mr. Pardiwalla urged the Court to dismiss the application.

First of all, it is evident from Article 16 quoted supra, that the Court has a discretion to make an order requiring a party to give security in

deserving cases. However, the Court should exercise that discretion judicially, not arbitrarily and may make an order, provided the following conditions are satisfied:

- (i) The party against whom such an order is sought should be a non-resident;
- (ii) There should be a good reason to the satisfaction of the Court why such an order ought to be made, in the particular case under consideration.

Unquestionably, the case on hand satisfies the condition No.1 above. As regards Condition No. 2, as to the “good reason” I note that the test required to be applied here, is a subjective one and so I do apply the same in this matter. Having gone through the affidavits and the pleadings filed by the parties, I am satisfied *ex facie* that the defendant’s counterclaim is *bona fide*. To my mind, it is wrong to infer frivolity and vexation from the simple fact that the defendant had in the past, filed similar or kindred applications and subsequently withdrew them. Any party to litigation, for that matter, has a statutory right to file any interlocutory applications and make incidental demands and equally has the right to decide whether to proceed with or withdraw such applications. A party might make such moves at different stages of the proceedings for various reasons including tactical ones. Therefore, no adverse inference can be drawn on surmises and conjectures. Be that as it may.

It is not uncommon that the Court may under normal circumstances, order the plaintiff, where he is ordinarily resident abroad, and has no substantial property, real or personal, to give security for costs and damages but the power so to order, is discretionary. See, *Kevorkian V.*

Burney (No. 2) [1937] 4 All. E. R. p468. Before exercising its discretion to order any plaintiff to give security, the Court in my considered view, should have regard to all the circumstances of the case and should make the order if it thinks it just and necessary to do so. The circumstances, which the Court may take into account include: the parties' bona fides, and their prospects of success in their respective claims, whether the parties have admitted liability on the pleadings or elsewhere etc.

Coming back to the present application, having regard to all the circumstances of the case, I am convinced that there are good reasons, which necessitate the Court to order the plaintiff to give security for costs and damages, which may be awarded against him. However, it seems that the amount claimed by the defendant at Rs. 500,000/- for security towards costs and damages, is not based on any intelligible criteria. Obviously, it is unreasonable, exorbitant and does not commensurate with the quantum pleaded by the defendant in his counterclaim. Hence, I reduce the amount to Rs. 220, 000/- , which sum I find, is reasonable and adequate to cover both, the costs and the damages, if any awarded in favour of the defendant.

Accordingly, I allow the motion and I order the plaintiff to deposit the sum of Rs. 220, 000/- at the Registry of the Supreme Court on or before 31st of December 2005, failing which all further proceedings in the instant suit shall be stayed thenceforth.

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D. Karunakaran

Judge

Dated this 6th day of October 2005