

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application in terms of Article 105(5) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**CA Application No. CA/COC/02/19
DC Tangalle Case No. L/3080/16**

D.B. International (Private) Limited
No. 216, De Seram Place,
Colombo 10.

Plaintiff

Vs.

Hennadi Gamage Manoj Priyantha
No. 94, Belivinnagoda,
Rekawa-Western, Netolpitiya

Defendant

And Now Between

D.B. International (Private) Limited
No. 216, De Seram Place,
Colombo 10.

Plaintiff-Complainant-Petitioner

Vs.

Hennadi Gamage Manoj Priyantha
No. 94, Belivinnagoda,
Rekawa-Western, Netolpitiya

Defendant-Accused-Respondant

Before: N. Bandula Karunarathna J.

&

R. Gurusinghe J.

Counsel: Rohan Sahabandu, PC with L. Silva AAL for the Petitioner

**Bandara Senerath AAL with Shyamali Liyanage AAL for the
Defendant-Accused-Respondent**

Supported on : 03.10.2022

Decided on : 21.10.2022.

N. Bandula Karunarathna J.

Learned President's Counsel for the Petitioner supported this application in Open Courts.

The petitioner states that the Plaintiff-Complainant-Petitioner (hereinafter referred to as "the petitioner") is a company incorporated under the provisions of the Companies Act No. 07 of 2007, with its registered office situated at No. 216, De Seram Place, Colombo 10. On or around 2003, the Petitioner Company was incorporated as a BOI Company under the Board of Investment Act (BOI) to engage in the business of Tourism in Sri Lanka. The Chairman and Chief Executive Officer of the petitioner is a British National named Peter Duncan Barker.

The petitioner instituted an action in the District Court of Tangalle by Plaint dated 06.02.2016, against the Defendant-Accused-Respondent (hereinafter referred to as "the respondent") complaining that the said respondent has entered into the land in suit by force and has cut down trees and made certain constructions on the land. In the Plaint, the petitioner prayed inter-alia for a Permanent Injunction, Interim Injunction and an Enjoining Order.

The petitioner supported its claim for an Interim Injunction on 19.02.2016 before the learned District Judge of Tangalle and the said District Judge was pleased to make an Order granting an Enjoining Order and issuing notice of Injunction on the respondent. The said Enjoining Order inter-alia enjoined the respondent from cutting trees, changing the character of the corpus and putting up permanent buildings on the corpus.

The respondent appeared before the District Court of Tangalle on 14.05.2016 and obtained a date to file his objection. Accordingly, the objections were filed and thereafter, parties were given a date to file Written-Submissions. The petitioner and the respondent tendered their respective Written-Submissions on 12.07.2016 and thereafter, the matter was fixed for the Order for 26.07.2016. When the matter was called on 26.07.2016, the respondent informed the court that he had no objections to the issuance of an Interim Injunction and gave his consent to the said Order. The learned District Judge made an Order granting an Interim Injunction restraining the respondent from, cutting trees and removing them, constructing permanent buildings on the land and changing the nature of the corpus.

The learned District Judge further made an Order that the construction already in place would not be affected by the said Interim Injunction, but specifically made an Order that the extent of the existing building should not be increased. The Court directed the respondent to sign the case record and accordingly the respondent signed the record and gave his consent to the said terms of the Order. It is also important to note that the respondent was represented by a Counsel in Court on the said date.

Thereafter, the matter was fixed for trial on 31.10.2016. On 31.10.2016, Admissions and Issues were recorded. After recording the Admissions and Issues, Counsel for the petitioner raised an objection in respect of Issue No. 17; nonetheless, court made an Order accepting the said Issue. Thereafter, Counsel for the respondent took an Objection regarding the maintainability of the action in the absence of the physical presence of the Chief Executive Officer and the Chairman who is a foreigner and a representative of the Petitioner Company.

Court then reserved the Order for 22.11.2016. On that date, court was pleased to reject the said Objection of the respondent and the matter was re-fixed for 3.01.2017. On that day the case was taken up for trial and the Notary G.E Munasinghe who attested the petitioner's title Deed bearing No. 2166 dated 12.11.2003 gave evidence, and the case was re-fixed for further trial on 12.06.2017. The evidence of the Notary G.E Munasinghe was concluded on 12.06.2017 and the matter was re-fixed for 23.10.2017.

When the case was taken up on 23.10.2017, the Counsel for the respondent, despite the fact that he had previously taken up the Objection and the title deed was marked subject to proof, informed the court that calling the witnesses to the above-said title deed was not required as he would accept the due execution of the said title deed less its contents. Thereafter, the evidence of the Power of Attorney holder of the petitioner, Godakumbure Gedara Shantha Godakumbura was led on 06.02.2017 and 12.06.2017, and the matter was re-fixed for 19.06.2017.

On or about 12.06.2018, the petitioner's officers observed to their bewilderment that the respondent has violated the Interim Injunction issued by the District Court by making substantial and permanent constructions attached to the existing buildings. These constructions specifically violated, the Interim Injunction not to make permanent constructions, the Injunction not to increase the existing square area of the building and the Injunction not to change the nature of the corpus. Accordingly, when the matter was called on 19.06.2017, the learned counsel for the petitioner informed the court that the respondent had violated the Interim Injunction given on his consent. Learned Counsel for the petitioner further informed court that he intends to take steps to institute contempt proceedings against the respondent in this regard in the Court of Appeal.

The aforesaid violations are of grave nature as the Interim Injunction was granted on the consent of the respondent. Therefore, the said violations are not only a violation of the Interim Injunction given by the District Court but also a violation of an undertaking given by the respondent to court.

The manner in which it violates the Interim Injunction can be described in the following manner;

- (a) the portion of the new building jutting out of the original building from the side with a completely new roof is an additional construction made after the Interim Injunction which changes the nature of the corpus,
- (b) this construction is a totally new addition which adds to the square area of the existing building,
- (c) there is also a new addition in front of the building in "K-5" with concrete pillars and a substantial new roof. This is also an addition to the squared area of the building.

The learned President Counsel for the petitioner submits that these violations are blatant, willful and intentional violations of the Interim Injunction by the respondent.

It was clearly shown that the respondent has made entirely new constructions on the said property and that the respondent has the full intention to carry out further constructions. This is in total disregard of the Interim Injunction which was imposed on him on his own consent as well as his undertaking to the District Court. The petitioner has comprehensively pleaded his title to the subject matter of the Injunction starting from a Crown Grant. The due execution of the petitioner's title deed has also been admitted by the respondent at the trial.

The respondent on the other hand has no title to this land other than a self-serving deed of declaration made by him and executed in the year 2015, which makes him a blatant trespasser. The petitioner says that the new constructions of the respondent are in gross violation of the Interim Injunction and constitute an offence under section 663 of the Civil Procedure Code, which may be taken conscience and dealt with by this court under Article 105(3) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

The said violations are also in contempt of an undertaking given by the respondent in abiding by the Interim Injunction. The said undertaking is apparent on the face of the record in view of the consent given to the court in order to grant the Interim Injunction. This petitioner, therefore, requests that the above constitutes acts of contempt against the District Court of Tangalle by the respondent which are wilful and gross violations of the Interim Injunction by the respondent and may be punished as contempt of the District Court of Tangalle. The petitioner further submits and invokes the jurisdiction of this court vested by Article 105(3) of the Democratic Socialist Republic of Sri Lanka in order to charge the respondent with the above-stated offences.

The petitioner believes that the respondent will continue to violate the Interim Injunction and the undertaking given to the court to the detriment of the petitioner who has the legal title to this land.

The plaintiff-complainant petitioner prays that;

- (a) Issue notice on the Defendant-Accused Respondent;
- (b) Issue contempt summons containing the charge sheet for the offence of contempt of the District Court of Tangalle on the Defendant-Accused Respondent;
- (c) Issue contempt summons containing a charge sheet for an offence under section 663 of the Civil Procedure Code on the Defendant-Accused Respondent;
- (d) Hold an inquiry for the offence of contempt of court against the Defendant-Accused Respondent;
- (e) Hold an inquiry into the offence of violating the Interim Injunction issued by the District Court of Tangalle under section 663 of the Civil Procedure Code;
- (f) Punish and impose a relevant sentence on the Defendant-Accused Respondent;
- (g) For costs and such further reliefs that Your Lordships Court shall seem meet.

Thus, the petitioner pleads that he had committed the offence of Contempt of Court punishable under Article 105(3) of the Constitution.

Considering the submissions made by the learned President's Counsel for the petitioner and the documents filed by the petitioner in the present case, we are of the view that this court should issue summons on the accused-respondent as to why he should not be punished for Contempt of Court.

The registrar is directed to issue summons/rules to the respondent to show cause why he should not be punished for Contempt of Court punishable under Article 105(3) of the Constitution.

Summons returnable on 15.11.2022.

Judge of the Court of Appeal

R. Gurusinghe J.

I agree.

Judge of the Court of Appeal