

PRINS GUNASEKERA
v.
THE ASSOCIATED NEWSPAPERS OF CEYLON LTD

SUPREME COURT
S. N. SILVA C. J.,
BANDARANAYAKE J, AND
ISMAIL J.
SC (SPL) L. A. NO. 11 /2000
CA NO. 174/94
DC COLOMBO NO. 3583/SPI
21ST MARCH, 2000

Enforcement of judgement - Reciprocal Enforcement of Judgments Ordinance - Judgment of a Superior Court in the United Kingdom - Objection to jurisdiction.

The petitioner obtained an ex-parte judgment against the respondent Company (the respondent) from the High Court of England for damages for the publication of an alleged defamatory statement published in a newspaper printed by the respondent and distributed in England by an English Company. The respondent did not appear or subscribe to the jurisdiction of the High Court of England. The respondent was not ordinarily resident in United Kingdom. Thereafter, the petitioner sought to enforce the judgment in Sri Lanka under the Reciprocal Enforcement of Judgments Ordinance by registering it under Section 3(1) of the Ordinance on an Order of the District Court of Colombo. The respondent objected to the jurisdiction of the Court to register the judgment on the ground that Section 3(2) (b) of the Ordinance prohibits registration inter alia, if the judgment - debtor was neither carrying on business nor ordinarily resident within the jurisdiction of the original Court.

Held :

In view of the denial by the respondent the petitioner should have led evidence to satisfy the Court that the respondent was carrying on business in the United Kingdom. The petitioner had failed to discharge that burden.

Cases referred to :

1. *Sfeir & Co. u. National Insurance Co. of New Zealand (1964) 1 QB 330.*
2. *Vogel u. R. & A Kohnstram Ltd. (1971) 2 All ER 1428.*

APPEAL from the judgment of the Court of Appeal.

R. K. W. Goonesekera with Mrs. Shiranthi Jayatilleke for petitioner.

Faisz Musthapa, P. C., with Sanjeewa Jayawardena for respondent.

Cur. adv. vult.

April 28, 2000.

S. N. SILVA, C. J.

This is an application for Special Leave to appeal from the judgment dated 8.12.1999 of the Court of Appeal.

The Petitioner Appellant being a Sri Lankan resident in the United Kingdom instituted proceedings against the Respondent (as the 2nd Defendant) and another party in the High Court of England and Wales, claiming damages in a sum of 150, 000 sterling pounds in respect of an alleged defamatory statement published in the Daily News on 17.05.1990. It appears that the other party viz: Samco Agencies Ltd., of London, was sued as the 1st Defendant on the basis that the company was the distributor of the Respondents newspapers in that country. Samco Agencies Ltd, was discharged on the application of the Petitioner who elected to proceed ex-party against the Respondent. The Respondent did not appear or subscribe to the jurisdiction of the High Court of England which entered judgment against the Respondent in the full sum of 150,000 sterling pounds claimed by the Petitioner. Thereupon the Petitioner moved for enforcement of the judgment in Sri Lanka by instituting

the proceedings in the District Court of Colombo under the Reciprocal Enforcement of Judgments Ordinance No. 41 of 1921. The District Court made order in favour of the Petitioner which would have resulted in the enforcement of the Judgment against the Respondent. The Court of Appeal by the judgment referred to above reversed that order.

Section 3(1) of the said Ordinance provides for the registration in Sri Lanka of a judgment obtained in a Superior Court in the United Kingdom within 12 months of such

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judgment. According to section 3(2)(b) such a judgment shall not be registered inter alia if the judgment-debtor was neither carrying on business nor ordinarily resident within jurisdiction of the Original Court. Therefore, in order to surmount the bar in this provision to register the said judgment in Sri Lanka for enforcement, the Petitioner must establish either that the Respondent was carrying on business or was ordinarily resident in the United Kingdom. It was agreed by both parties that the Respondent was not resident in the United Kingdom and the only question that arose for consideration was whether the Respondent was carrying on business in the United Kingdom at the relevant time.

The Respondent in his application made by way of summary procedure to set aside the registration that was ordered initially by the District Court clearly objected to the jurisdiction, of the court to register the judgment on the grounds set out in Section 3(2)(b) of the Ordinance. The provision is similar with regard to the matter at issue to Section 9(2)(b) of the Administration of Justice Act 1920 of England.

The Court of Appeal has come to a finding on the law with reference to two cases decided in England *Sfeir & Co. v. National Insurance Co, of New Zealand*⁽¹⁾ and *Vogel v. R & A Kohnstram Ltd.*,⁽²⁾ that the burden of proving that the Respondent carried on business within the jurisdiction of the High Court of England was on the Petitioner. Learned Counsel for the Petitioner did not seek to challenge this finding which is a correct statement of the applicable law.

Learned Counsel for the Petitioner however contended that the Court of Appeal applied the law incorrectly when it observed that it was "not enough" to establish that the Respondent was carrying on "some business in the. United Kingdom," and that, Petitioner had to establish that the Respondent carried on the business which the Petitioner alleged, which was the sale of the newspaper, "Daily News". In

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this instance the Court of Appeal appears to have pitched the proposition too high. There is no requirement in Section 3(2)(b) that Petitioner should prove the precise form of the business carried on to the extent of showing that it coincides with the cause of action. But, except for the single statement referred to above, in the rest of the judgment which runs into several pages, the Court has stated the proposition correctly. In the final paragraph of the Judgment the Court has observed that in the light of the denial by the Respondent, the Petitioner should have led evidence to satisfy the court that the Respondent carried on "business in the United Kingdom". And, concluded that the Petitioner has not been able to place before Court evidence that the Respondent has been carrying on business in the United Kingdom. Thus in the light of the finding that there is no evidence of any business being carried on by the Respondent in the United Kingdom, the statement in the judgment, referred to by learned Counsel for the Petitioner, is devoid of significance.

Learned Counsel for the Petitioner further submitted that the finding as to the absence of evidence on this issue is untenable. He relied on three matters to establish a finding in his favour -

(i) The objects clause 3(b) of the Memorandum of Association of the Respondent Company which states as one of its objects "to carry on in Great Britain and in the Island of Ceylon and in any part of the world the business of Newspaper ... Publishers . . ."

(ii) The Agreement with Samco Agencies Ltd., (X2)

(iii) Certain newspapers that refer to one Reggie Fernando as the correspondent in London for the Respondent.

As regards the matter referred to in (i) above, it has to be noted that the objects clause in the Memorandum is only an empowerment of the Company to do business in Great Britain or in any part of the world. What is in issue is not a question

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of empowerment but whether in fact the Respondent carried on business within the jurisdiction of the High Court of England.

Item (ii) is an item of evidence adduced by the Respondent to negative the claim of the Petitioner that Samco Agencies Ltd., carried on business of the Respondent in London. The Agreement refers only to purchase of the Respondent's newspapers in Sri Lanka by an agent of Samco Agencies Ltd., and makes no mention of their sale in England. Learned Counsel seeks to

construe this agreement in the light of an affidavit said to have been produced in the High Court of England. Section 91 of the Evidence Ordinance clearly precludes such an exercise. In any event the affidavit has not been properly adduced as evidence before the District Court.

Item (iii) relates to certain publications that are said to form part of the proceedings in the High Court of England. It is noted that when these documents were sought to be produced in the District Court, Counsel for the Respondent objected to it on the basis that it would be hearsay and Counsel for the Petitioner has not pursued the matter thereafter (vide proceedings of 26.10.93).

It is thus seen that the finding of the Court of Appeal as to the absence of evidence to establish that the Respondent was carrying on business within the jurisdiction of the High Court of England, is correct.

The application for Special Leave to Appeal is accordingly dismissed. No costs.

BANDARANAYAKE, J. - I agree.

ISMAIL, J. - I agree.

Special Leave to Appeal refused.