CHEEKHOOREE S. & ORS v CHEEKHOOREE D. & ANOR

2025 SCJ 283

<u>Record No:- SC/LD/CH/310/24</u>

<u>IN THE SUPREME COURT OF MAURITIUS</u>

(Before the Land Division)

(Before the Honourable Judge in Chambers)

In the matter of:-

1. Shemboosingh Cheekhooree

2. Cossila Ruhee (born Cossila Cheekhooree)

3. Hamawantee Ramdin (born Hamawantee Cheekhooree)

4. The Heirs of late Mrs Kamini Cheekhooree

a) Baboo Hemundranuth Singh Gowreesunker

b) Baboo Lesh Singh Gowreesunker

c) Gitesha Gowreesunker

<u>Applicants</u>

v/s

1. Doorajsingh Cheekhooree

2. Shyam Kumar Cheekhooree

<u>Respondents</u>

<u>And in the matter of :</u>

<u>EX PARTE</u>

1. Shemboosingh Cheekhooree

2. Mrs Cossila Ruheee (born Cossila Cheekhooree)

3. Mrs Hamawantee Ramdin (born Hamawantee Cheekhooree)

4. The Heirs of late Mrs Kamini Cheekhooree

a) Baboo Hemundranuth Singh Gowreesunker

b) Baboo Lesh Singh Gowreesunker

c) Gitesha Gowreesunker

<u>Applicants</u>

JUDGMENT

On 09 August 2024 I granted an order in the nature of an interim injunction restraining and prohibiting –

(a) the first respondent and/or his agents and préposés, whether directly or indirectly, from selling, disposing, pledging, or creating any charges and/or encumbrances on the remaining property of the plot No. 24, after compulsory acquisition and excision, as duly described and transcribed in TV. 2035 No. 54; and

(b) the second respondent and/or his agents or préposés, whether directly or indirectly, from selling, disposing, pledging, or creating any charges and/or encumbrances on the remaining property of the plots No. 26 and No. 27, after compulsory acquisition and excision, as duly described and transcribed in TV. 2035 No. 55,

and this pending the determination of two main cases already lodged by the applicants before the Supreme Court bearing SCR No. 125469 (1/29/2024) and SCR No. 125967 (1/154/2024) respectively.

I now have to decide whether I should make that order interlocutory.

The backdrop to this application is a family feud involving valuable immoveable properties (prime land) in the region of Trianon.

The parties are all closely related. The first three applicants and the two respondents are siblings. The other applicants are the heirs of another sibling, late Mrs. Kamini Gowreesunker (born Cheekhooree).

I shall refer to them as the “Cheekhoorees”.

Over the years, the Cheekhoorees had entered into several agreements whereby they had agreed to bring into a kind of hotchpot all plots of land belonging to them; they further agreed that the distribution of proceeds resulting out of any transaction involving any of the plots would be shared among them in predetermined ratios.

It appears that everything had been going well and that indeed there had been many transactions, including compulsory acquisition by Government of some of the plots, and the Cheekhoorees had been receiving their shares of the proceeds in accordance with the ratios they had agreed upon.

Proceeds were shared among all siblings irrespective of from whose land the transaction came from.

Things turned sour when a compensation (for injurious affection) of 25 million rupees, arising out a compulsory acquisition of part of Plot No. 24 belonging to the first respondent, was paid to the latter and was not shared with the applicants.

Before going further into the merits of this application, I need to address a point raised by both respondents.

It is the contention of the respondents that the order I granted is a *Mareva* order.

This point appears to have been raised following the manner in which the applicants have chosen to pitch their case in their first affidavit. Paragraphs 37 and 38 of that affidavit read as follows –

> "37. The Applicants verily believe that in view of the disputes between the parties and pending the determination of the two main cases [...] the Respondents <u>intend to dispose of the remaining property</u> of Plots No.24, 26 and 27.
>
> 38. [...] the Applicants have <u>a serious arguable case</u> in as much as all four Agreements agreed upon by the Cheekhooree Family clearly stipulate the terms and conditions agreed upon by the Cheekhooree Family inter alia that all proceeds arising from the Plots be distributed in accordance with the ratio of distribution."

(underlining is mine)

Mrs. Boolell SC (with whom Mr. Sibartie concurs) hence submits that, given that we are dealing with a *Mareva* order, the applicants have failed to satisfy the test laid down for the grant of such an order.

According to them, the applicants have failed to show that –

(a) they have a good arguable case against the respondents;

(b) there is a real risk that any judgment which may eventually be delivered in favour of the applicants, would go unsatisfied by reason of the imminent and anticipated disposal by the respondents of plot No. 24 and plots No. 26 and No.27, unless the respondents are restrained by a court order from effecting such disposal;

(c) they each, individually and collectively, have a clear legal right to exercise over the plots No. 24, No. 26 and No. 27; and

(d) it would be just and convenient in all the circumstances of the case to grant the relief sought of.

They also contend that, although nowhere in the application or in the order I made the term *Mareva* is used, the interim order has, nonetheless, all the characteristics of a *Mareva* order, more particularly, its "freezing" character.

It is common ground that, according to a constant jurisprudence spanning over some 25 years, the *"good arguable case"* test required a claim to be *"more than barely capable of serious argument but not necessarily one which the judge considers would have a better than 50 percent chance of success"* (the ***"Niedersachsen"*** test – from the case of **Ninemia Maritime Corp v Trave Schiffahrtsgesellschaft GmbH [1983] 2 Llyod's Rep 600 at 605**). In 2017, Lord Sumption summarised the test thus: which party "*had the better of the argument"* (see **Brownlie v Four Seasons Holdings Inc [2017] UKSC 80**).

However, in the recent case of **Dos Santos v Unitel SA [2024] EWCA *Civ* 1109**, the Court of Appeal clarified the criteria for granting freezing injunctions in English law, particularly concerning the *"good arguable case"* threshold. It reaffirmed that the appropriate test aligns with the *"serious issue to be tried"* standard used for other interim injunctions.

The Court of Appeal has thus harmonised the criteria for freezing injunctions with those of other interim orders, thus ensuring they are accessible without imposing unduly high thresholds.

I have given due consideration to the point raised by the respondents and I must say that I have not been convinced that my order of 09 August 2024 is a *Mareva* order.

I take the view that an order of a Judge in Chambers that restrains and prohibits a person from disposing in any way of a portion of land, whilst similar to a *Mareva* injunction in some respects, is not exactly the same.

A *Mareva* injunction (more frequently referred to as a freezing order) is typically an order that prohibits and restrains a person from <u>dissipating</u> or dealing with his assets in a way that could <u>frustrate a potential judgment</u> in favour of a plaintiff. This type of order is generally aimed at preventing a defendant from <u>hiding</u> or transferring assets <u>outside jurisdiction</u> to avoid enforcement of a future judgment.

The order I made in the present case is more specific in nature and is targeted at specific assets of the respondents rather than all their assets.

In my mind, a *Mareva* injunction generally applies to freezing assets <u>broadly</u> to prevent their <u>dissipation</u> or <u>hiding</u>.

It is to be noted that the local cases, cited in support of the contention of the respondents, focus mainly on granting a *Mareva* order where there is a risk of removing, or causing or permitting to be removed, assets out of the Mauritian jurisdiction: see **Air Mauritius Ltd v Tirvengadum Sir H.K. & Ors** **[2002 SCJ 325]**, **Koon Sun Pat G.K.F. & Ors v Thomson C.F. & Ors** **[2021 SCJ 126]**, **OCII – Ocean Indien Immobilier Ltd v Aury F.D.R.** **[2013 SCJ 478]**, **Barclays Bank Mauritius Ltd v Karamuth O & Ors** **[2017 SCJ 313]**, **Koon Sun Pat G.K.F. & Ors v Thomson C F & Ors** **[2019 SCJ 5]**, **Doba S B I v Moossajee I S & Ors** **[2016 SCJ 92]** and **Appavoo L C & Ors v Buttie W & Ors** **[2016 SCJ 118]**.

All things said, I will decide this application on the basis of the well-established **American Cyanamid** principles applicable to injunctions generally. In any event, it is now established, since

Dos Santos (supra), that the *"good arguable case"* test is the same as the *"serious issue to tried"* test.

It cannot be gainsaid that the threshold for granting an interim order is not the same as that for granting an interlocutory order.

At the interim stage, which is *ex parte*, the relief is more flexible as the Judge is in presence of only one side of the story.

At the interlocutory stage, however, the Judge is now in presence of the version of the other side; the merits of the case are considered to a greater extent than at the interim stage.

Nonetheless, I am also aware that it is not the function of the Judge at the interlocutory stage –

> *"to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend, nor to decide difficult questions of law which call for detailed argument"* (per Lord Diplock in **American Cyanamid**)

With this in mind, I will now consider the merits of this application.

<u>**Serious issue to be tried**</u>

<u>*The agreements:*</u>

Having gone through the agreements reached between the Cheekhoorees, I am satisfied that although the objects of the agreements changed over the years, the central theme, with respect to distribution of proceeds among all the Cheekhoorees in accordance with the agreed ratios, had been kept intact.

<u>*The two main cases:*</u>

In the first case **(SCR No. 125469 (1/29/2024))**, the applicants are suing the first respondent over his failure to share the 25 million rupees' compensation with them; the second respondent is a co-defendant in this case. In a gist, they are praying for orders directing the first respondent to share the 25 million rupees with them. There is also a claim for damages in the sum of 10 million rupees.

The second case **(SCR No. 125967 (1/154/2024))** appears to have been entered in support of an application before another Judge in Chambers (Beekarry-Sunassee J) and where an interim order has been granted restraining and prohibiting the Ministry of Housing and Land Use Planning ("the Ministry") from paying out any compensation in relation to the compulsory acquisition of parts of the two portions of land belonging to the second respondent (plots No. 26 and No. 27) for the purpose of an access road from Tulipes Road (B127) to the Trianon Metro Station (**SN 474/2024**).

In that case the applicants are praying for an order directing the Ministry to pay to them the compensation in relation to the compulsory acquisition of parts of plots No. 26 and No. 27 so that same may be distributed among all the Cheekhoorees in line with the agreed ratios of distribution. The two respondents in the present application are co-defendants in that case.

There is also an alternative prayer that the co-defendants distribute the compensation among all the Cheekhoorees, should the Ministry have already compensated the co-defendants.

Having perused the two cases, I am satisfied that they raise serious issues to be tried with respect to the distribution of compensation, arising from compulsory acquisition by Government of parts of plots No. 24, No. 26 and No. 27, among all the Cheekhoorees according to the agreements reached between them.

Balance of convenience and adequacy of damages

I find that the contentions of the applicants are somewhat paradoxical: on the one hand they want the specific assets of the two respondents to be frozen so that they cannot be disposed of; on the other hand, they want their share of the proceeds from those assets, which can only materialise if those assets are disposed of.

I further find that, since the claims of the applicants in the two main cases are all quantifiable in monetary terms, damages would be an adequate remedy in the present matter –

> *"If damages in the measure recoverable at common law would be an adequate remedy and the defendant would be in a financial position to pay them, no injunction should normally be granted"* (per Lord Diplock in **American Cyanamid**)

There is nothing on record which suggests that the two respondents would not be in a financial position to pay should the applicants win in the two pending cases.

The balance of convenience also clearly tilts in favour of the right of the two respondents to freely enjoy their properties (a right guaranteed by section 8 of our Constitution) as more prejudice would be caused to them if an interlocutory injunction was to be granted.

<u>Conclusion</u>

In the light of the above, I discharge the interim order I granted on 09 August 2024 and set aside this application.

In view of the circumstances of this application, I make no order as to costs.

M.S. Manrakhan
Judge

04 July 2025

For Applicants	: **Mr. J.J. Robert, Attorney-at-Law** **Mr. M. Sauzier, Senior Counsel together with Ms. C. Bellouard, of Counsel**
For Respondent No.1	: **Mr. J. Lukeeram, Attorney-at-Law** **Mrs. U. Boolell, Senior Counsel together with Mr. F. Soreefan, of Counsel**
For Respondent No.2	: **Mr. S. Murday, Attorney-at-Law** **Mr. D. Sibartie, of Counsel**