

GUJADHUR GHANESHWAR & ORS v GUJADHUR GUNESS & ANOR

2004 SCJ 81

CHAMBERS
CH 415/04

IN THE SUPREME COURT OF MAURITIUS

In the matter of:

- 1. Ghaneshwar Gujadhur**
- 2. Lajpati Gujadhur**
- 3. Rajkumar Gujadhur**
- 4. Sheoshankar Gujadhur**
- 5. Dimeshwar Gujadhur**

Applicants

v.

- 1. Guness Gujadhur**
- 2. Sewpeearee Singh**

Respondents

In the presence of:

- 1. Luxmi & Ganesh Ltd**
- 2. The Registrar of Companies**

Co-Respondents

Ex Parte:

Ghaneshwar Gujadhur & Ors

Applicants

JUDGMENT

Following my judgment delivered on 11 March 2004, the applicants are now praying for a stay of execution pending the outcome of the appeal which they intend to lodge. It is settled law that in the absence of an order made either by the Judge or by the Appellate Court, suspending its operation, an interlocutory injunction remains binding on a party notwithstanding the lodging by him of an appeal against the decision of the

Judge in Chambers – vide **Maurilait Ltée v. Laiterie de Curepipe & Anor** [\[1982 MR 111\]](#).

The application rests mainly on the claim of the applicants that as the alleged owners of 46% of the shares of the company Luxmi & Ganesh Ltd (LGL), which owns substantial assets, their rights in LGL run the risk of being rendered nugatory if the execution of the judgment is not stayed. It is claimed that the risk is further compounded by the avowed intention of the respondent no. 1 to dispose of assets of LGL to buy race horses.

The respondents have given an undertaking not to dispose of a list of LGL's assets which they claim represent more than 80% worth of LGL's total assets until the disposal of the appeal. While the applicants have denied the percentage worth given by the respondents of the listed assets they have singularly failed to even state what would, in their reckoning, be the worth of those assets.

Considering that the respondents are the undisputed owners of at least 54% of the assets of the company it is clear that there is adequate and ample provision to meet any claim which may be contemplated by the applicants in the eventuality that the appeal which they intend to lodge is allowed.

While a stay of execution is an exercise which must be carried out judiciously and a stay will be granted or refused depending on the circumstances of the case, the essential criterion which must be considered is that of risk of injustice to one or other or both parties if stay of execution is granted or refused.

I consider that:

- (1) a litigant is entitled to enjoy the full effects of a judgment pronounced in his favour unless there are valid reasons to the contrary. A stay of execution will defeat the very purpose for which the interlocutory remedy has been granted, and which rests to a large extent on the urgency of the remedy prayed for;
- (2) the undertaking of the respondents not to dispose of the listed assets worth some 80% of the total assets of LGL, which percentage has not been seriously questioned, represents ample security for any eventual claim for compensation;
- (3) the balance of convenience calls for the immediate execution of my judgment of 11 March 2004.

The application for a stay of execution is accordingly refused. With costs.

Y.K.J. Yeung Sik Yuen
Senior Puisne Judge

26 March, 2004

For Applicants: **Mr R. D’Unienville, Q.C. together with**
 Mr A. Domingue, of Counsel
 Mr F. Hardy, Attorney

For Respondents: **Mr R. Pursem, of Counsel**
 Mr A. Robert, Jr, Attorney

For Respondent No. 1: **Mr T.M. Gujadhur, of Counsel**

Mr Georgy Ng Wong Hing, Attorney