

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

In the matter of an application for Contempt of Court under Article 105 of the Constitution of the Democratic Socialist Republic of Sri Lanka read together with Chapter LXV of the Civil Procedure Code (as amended).

Court of Appeal No:
CA/COC/0007/2022

SJ Solar + Storage Pte Ltd
(Formerly known as M/S SJ
(Singapore) Pte Ltd)
8 Boon lay Way,
#06-107 Trade Hub 21 S
Singapore 609966

Petitioner

Vs.

1. Vinseth Engineering (Pvt) Ltd
No.215, Nawala Road,
Nugegoda.
2. Dhammika Bede Cooray
No. 10, Kalaeliya Road,
Kapuwatte, Ja-Ela.
3. Hapuarachchige Don Chaminda
Suresh Kumara Hapuarachchi
N. 1/116, Regland Watta,
Wewa Para, Waduragala,
Kurunegala.

Respondents

BEFORE : **P. Kumararatnam, J.**
R. P. Hettiarachchi, J.

COUNSEL : **Eraj De Silva, P.C with Daminda Wijeratne**
Tharini Ratwatte instructed by Bushra
Hashim for the Petitioner.
Asoka Weerasooriya with Akasha
Weerasooriya instructed by Malan
Rajapaksha for the Respondents.

DECIDED ON : **23/09/2025**

JUDGMENT

P. Kumararatnam, J.

This Contempt of Court application arises out of an order made by the Commercial High Court of Colombo on 12.09.2019.

The Petitioner, a Singaporean Company, had filed an action under Case No. CHC 485/19 MR against the Respondents seeking inter alia judgment and decree in the sum of USD 242,457.60 and £127,192.00 or the equivalent in

Sri Lankan Rupees. The action in the High Court had been filed on 08.07.2019.

On 10.09.2019, the Petitioner had filed an application seeking sequestration of certain machineries set out in the Schedule thereto. Now it is re-produced marked as Schedule I to the Petition.

By order dated 12.09.2019, the learned Commercial High Court Judge of Colombo had granted an Order to seize the properties set out in the Schedule thereto and the machineries were sequestrated and the Fiscal has filed a machinery list dated 12.03.2020.

Although, the 1st Respondent made two attempts by filing motions on 15.10.2019 and 03.03.2020 to set aside the sequestration order, both were dismissed by the learned Commercial High Court Judge of Colombo. However, upon an undertaking given by the 1st Respondent, the matter of sequestration was adjusted.

At that point the Petitioner and the Respondents had arrived at a settlement as follows in the Commercial High Court Case No. CHC.485/2019MR.

1. There has already been a sequestration application dated 10.09.2019 upon which your Honour's court has granted an order of sequestration in respect of the property set out in the schedule to that application. At this juncture the Defendant gives an undertaking that the Defendant will not alienate the said property.
2. If the Defendant intends to alienate the property the Defendant will make an application to court with notice to the Plaintiff and obtain the permission of the court prior to such alienation.
3. In view of that undertaking the Plaintiff will consent to release the sequestration of the property, subject to that undertaking.

In view of that settlement, an order for the sequestration of the property had been released.

However, in breach of the aforesaid undertaking, the Respondents have transferred or alienated the machinery mentioned below, which form a part of items set out in the Schedule to the sequestration application dated 10.09.2019 and the same have been mortgaged by the Respondents in violation of the undertaking as prior permission of Court had not been obtained and notice had not been given to the Petitioner.

The list of alienated property is set out below. This has been marked and produced as Schedule II by the Petitioner.

SCHEDULE II

C Purlin Machine 4*2
Glazed Tile Roofing Plate Machine
Cold Roll Forming Machine
Single Layer Forming Machine
Factory Genie
Hydraulic Ironworker
Seamless Gutter Machine

As this is a clear violation of the undertaking given to the Commercial High Court of Colombo on 10.09.2019, the Petitioner contend that the conduct of the Respondents clearly undermines the authority of the Court and constitutes a Contempt of Court.

Although the Petitioner named eight Respondents in his Petition filed on 11.04.2022, by filing an amended Petition dated 20.06.2022, he has restricted the claim to the Respondents mentioned above.

The charge sheet filed against the Respondents, separately, are as follows:

*You the Respondent above named, having knowledge of the undertaking given by Vinseth Engineering (Pvt) Ltd the Defendant in case No. CHC 485/2019MR on or about 9th June 2020 not to alienate the property set out in the schedule to the sequestration application dated 10th September 2019 made in the said case intentionally and/or deliberately and /or wilfully and/or recklessly and/or acting in collusion on or about 22nd December 2020 or on a date prior mortgaged or caused to be mortgaged the C Purlin Machine 4*2, the Glazed Tile Roofing plate Machine, the Cold Roll Forming Machine, the Sigle Layer Roll Forming Machine, the Factory Genie, the Hydraulic Ironworker, the Seamless Gutter Machine and/or any one or more of the said machinery belonging to Vinseth Engineering (Pvt) the Defendant in the said case and contained in the schedule to the aforesaid sequestration application dated 10th September 2019 in violation of the said undertaking and thereby committed the offence of contempt of Court punishable in terms of Article 105 of the Constitution of the Democratic Socialist Republic of Sri Lanka.*

Having been satisfied of the application, this Court issued summons to the Respondents, and they appeared before this Court only after a warrant was issued, and pleaded not guilty to the charge against them. At the same time the parties agreed to explore a settlement, as the charge preferred was a charge arising out of a commercial dispute.

As no settlement was reached between the parties, the matter was fixed for trial on 17.05.2023. On that date, the Respondents filing their Statement of Objections and Show Cause, admitted the settlement reached in the Commercial High Court of Colombo and raised several preliminary objections which are set out below:

- I. The charge and summons for Contempt of Court against the Respondents relates to an undertaking dated 09th June 2020 given

by the 1st Respondent company in the Commercial High Court of Colombo case No. 485/19/MR not to 'alienate' the machinery set out in the 1st Schedule to the Amended- Petition without permission of the court;

- II. The charge and the summons for Contempt of Court issued in this application relates to the 'mortgage' of the machinery set out in the 1st Schedule.
- III. Admitting without conceding that the Respondents did in fact 'mortgage' the machinery set out in the 1st Schedule to the Amended- Petition, a mortgage is not and cannot be deemed as an 'alienation' of property; and
- IV. As such the charge and the summons for Contempt cannot be maintained and summons should not have been issued in this application as there was no 'alienation'.

After considering the written submissions filed by both parties over the preliminary objections raised by the Respondents, this Court has dismissed the preliminary objections and fixed the matter for trial.

Before commencement of the trial, the parties recorded the following admissions;

1. Both parties agreed that the Complainant in this matter filed under case No. CHC 485/2019 MR before the Commercial High Court of Western Province holden in Colombo against the Company mentioned as the 1st Respondent of this Contempt of Court Application of which the 2nd and 3rd Respondents are the Directors.
2. Parties agreed that there was a sequestration application as a result of which an order was made as set out in the document marked P3 to the Petition dated 12.09.2019.

3. Parties agreed that on 28.11.2019 the order marked P6 was delivered by the learned High Court Judge of the Commercial High Court.
4. Parties agreed that, thereafter, on 09.06.2020 by proceedings marked P9, the Respondent gave an undertaking as set out in the proceedings. Vide page 3 of the Judgment.
5. Parties agreed that property subjected to the undertaking is mentioned in the Schedule of the Petition filed before this Court.
6. Parties agreed to admit the documents filed of record along with this application marked P10 (a), P10 (b), P10 (c) and P10 (d).
7. Parties agreed to admit the documents marked X2 (a), X2 (b), X3 (a) and X3 (b).
8. Parties agreed that the sole shareholder of the Company, ADMO CONSTRUCTION (PVT) LIMITED as set out in X3 (a) and X3 (b) namely, Meriette Niranjala Cooray is the wife of the 2nd Respondent.
9. Parties agreed that the sole shareholder of the Company, ADMO ROOFING (PVT) LIMITED as set out in X2 (a) and X2 (b) namely, Meriette Niranjala Cooray is the wife of the 2nd Respondent.
10. Parties agreed that the 3rd Respondent mentioned in this case is a common Director of the 1st Respondent Company namely, VINSETH ENGINEERING (PVT) LIMITED and ADMO ROOFING(PVT) as set out in X2 (b) and ADMO CONSTRUCTION (PVT) LIMITED as set out in X3.

Article 103 (3) of the Constitution of the Democratic Socialist Republic of Sri Lanka states:

“The Supreme Court of the Republic of Sri Lanka and the Court of Appeal of the Republic of Sri Lanka shall each be a superior court of record and shall have all the powers of such court including the power to punish for contempt of itself, whether committed in the court itself or elsewhere, with imprisonment or fine or both as the court may deem fit. The power of the Court of Appeal shall include the power to punish for contempt of

any other court, tribunal or institution referred to in paragraph (1)(c) of this Article, whether committed in the presence of such court or elsewhere:

Provided that the preceding provisions of this Article shall not prejudice or affect the rights now or hereafter vested by any law in such other court, tribunal or institution to punish for contempt of itself”.

The Court of Appeal in **Croos and Another v Dabrera** [1999] 1 SLR 205 at 209-210, observed that:

“The charge of contempt of court, was classically defined in the case of Regina v. Kopito, by Goodman, J. as "the scandalizing of the court, in that the words or the acts are likely to bring the court and Judges into disrepute.

The action taken with regard to acts of contempt is based on the premises that a well-regulated law of a civilized community cannot be sustained without sanctions being imposed for such conduct. It is therefore thought important to maintain the respect and dignity of the court and its officers, whose task it is to uphold and enforce the law, because without such respect, public faith in the Administration of Justice would be undermined and the law itself would fall into disrepute.”

The Court further held that;

“Even if contempt is not always a crime, it bears a criminal character and therefore, it must be satisfactorily proved. Lord Denning, M. R in Re Bramblewale ([1969] 3 ALL ER 1012) stated that "a contempt of court must be satisfactorily proven. To use the all-time honoured phrase, it must be proven beyond reasonable doubt”

In **Perkier Foods Ltd v Halo & Mr Tague** [2019] EWHC 3462 (QB) in describing the mens rea required to establish contempt of court cited with approval the following observation in **Masri v Consolidated Contractors Ltd** [2011] EWHC 1024 (Comm): SC/Contempt/02/2023 and SC/Contempt/03/2023 11

“In order to establish that someone is in contempt it is necessary to show that (i) that he knew of the terms of the order; (ii) that he acted (or failed to act) in a manner which involved a breach of the order; and (iii) that he knew of the facts which made his conduct a breach...”

Furthermore, the court accepted that it was not necessary to show any direct intention to disobey the order. However, the court cited with approval the views of the Court in **Sectorguard plc v Dienne plc** [2009] EWHC 2693 (Ch), that:

“...failure to perform an impossible undertaking is not a contempt. The mental element required of a contemnor is not that he either intends to breach or knows that he is breaching the court order or undertaking, but only that he intended the act or omission in question, and knew the facts which made it a breach of the order”.

In **Croos and Another v Dabrera** [Supra] Tilakawardena, J. held that:

"Action taken with regard to acts of contempt is based on the premises that a well-regulated law of a civilised community cannot be sustained without sanctions being imposed for such conduct. It is important to maintain the respect and dignity of the court and its officers, whose task it is to uphold and enforce the law because without such respect, public faith in the administration of justice would be undermined and the law itself would fall into disrepute."

(1) The offence of contempt of court under our law is a criminal charge and the burden of proof is that of proof beyond reasonable doubt.

(2) Under Rule 31, old English Rules, an act of disobedience would become an act of contempt only if it was 'wilful'. Wilful was taken to mean that which, where the terms of an injunction were broken it was not necessary to show that the person was intentionally 206 Sri Lanka Law Reports [1999] 1 Sri LR. contumacious or not he intended to interfere with the administration of justice. Yet where the failure or refusal to obey the order of court was casual or accidental or unintended, it would not be met by the full rigours of the law.

(3) There is a difference between disobedience to injunction and undertakings given to court and disobedience to a declaratory order or a judgment or decree of court. Our law therefore strictly does not need a proof of a wilful mens-rea.

(4) If the act was done after obtaining legal advice, it may be a mitigatory factor and relevant in certain circumstances only to prove bona tides.

In **C. J. F. De Alwis v Rajakarua** 68 NLR 180 the court held that:

“According to the terms of an interim settlement recorded by Court in an action the plaintiff agreed to hand over certain motor vehicles (tractors) and undertook not to make use of them. The plaintiff, however, failed to honour his undertaking.... The plaintiff was guilty of contempt of Court. The failure of a party to honour an undertaking given by him to the Court is a contempt of Court”.

Contempt of Court can simply be defined as acts which tend to undermine or disrupt the administration of justice through the Court System. The offence of Contempt can take many forms. It can be divided into two categories.

- in facie curiae (Contemptuous acts committed within Court)
- ex facie curiae (Contemptuous acts committed outside Court)

A Contemptuous act includes disobeying court orders which would also include non-compliance with orders and processes of court as well as non-compliance with the undertakings given by the court.

In this case it is the argument of the Petitioner, that the Respondents have not complied with the undertaking given by the court.

The witness called by the Petitioner filed his examination in chief by way of an affidavit. In paragraph 7 of the affidavit the witness states,

“I state that the machinery set out in the 2nd Schedule match the description of the ones in the 1st Schedule. The Petitioner verily believes that the said machineries are the same machinery as that are set out in the 1st Schedule which belong to the 1st Respondent Company and is the subject matter of the undertaking”.

The Petitioner’s witness David Zhang on 02.07.2024 stated in evidence which is recorded at page 06 of the proceedings;

Q: So, and you are sure that these machineries are the same machinery?

A: One hundred percent certain because like I said, prior to this event, I consider myself close to My. Bede Cooray, we had many dealings, so I know exactly what sort of business they were doing. Solar business as well as the galvanized manufacturing for rooftops and these machineries are used purely that purpose and they cannot be manufactured local and they can only be brought into the country, highly sophisticated, high valuation, they cannot be repudiated in this country.

Q: So, what you say is this is unique machinery imported into Sri Lanka?

A: Very unique.

In the preliminary objections raised on 21.11.2022, under paragraph 2 (iii) of the objections, the Respondents contended that a mortgage is not and cannot be deemed as an “alienation” of property. After considering the submission of both parties, this Court by its order dated 13.11.2023 has dismissed the said objection. But the court held this could be considered after leading evidence.

According to **BLAKS LAW DICTIONARY (10th Edition)** at page 88 where ‘alienation’ is defined as:

“Conveyance or transfer of property to another”

In the book titled, **MORTGAGE IN SRI LANKA** - By Abeysinghe Wickramanayake at page 11 it is stated that:

“A mortgage is regarded as a mere lien, and not as creating a title”

Considering the authorities cited above, the Respondents argue a right created over property which does not divest or transfer ownership of a property and that a mortgage does not confer title onto another person.

A mortgage is not merely the holding of a property by another person. It contains conditions which need to be fulfilled before the agreed period. If the conditions are not fulfilled in the stipulated time period, the mortgagee is entitled to the property and he may sell the property to recover his dues.

In the book titled **WILLE’S PRINCIPLES OF SOUTH AFRICA LAW, (Eighth Edition)** at page 334 it is stated that:

“The essence of the right which the mortgage obtained is to retain his hold or security over the property until the obligation is discharged, and if the obligation is not discharged when due, to have the property sold and recover the amount due to him from the proceeds of the sale of property”.

Next, the 2nd Respondent in the affidavit submitted for his evidence in chief at paragraph 20 (ii) and (iii) states:

(ii) By statement of Objections dated 15th October 2019 Vinsith informed the Commercial High Court for First time that the machinery subjected to the sequestration order has already been mortgaged as set out in paragraphs 11 to 17 on such statement of objections (filed along with a supporting affidavit) with proof of borrowing contracts annexed thereto marked as X2 to X9.

(ii) However, the Commercial High Court by its order dated 28th November 2019, rejected the objections of Vinsith dated 15th October 2019 on the premise it was not supported by an affidavit (when it was in fact supported by the affidavit of the 3rd Respondent) and that such application needs to be made by a petition.

Hence, it is quite clear that the Commercial High Court has not taken any cognisance that the machineries were subjected to the sequestration order has already been mortgaged.

As per the undertaking given before the Commercial High Court, Colombo the Defendant agreed as follows:

- a. The defendant gives an undertaking that the Defendant will not alienate the property and that if the Defendant intends to alienate the property, the Defendant will make an application to court with notice to the Plaintiff and obtain the permission of court prior to such alienation.
- b. In view of the undertaking, the Plaintiff consented to release the sequestration of the property to subject to the that undertaking.

But the Respondents have mortgaged six numbers of the machinery which are included in the First Schedule referred to in the undertaking through two Companies namely Admo Roofing and Admo Constrictions. As admitted earlier, the Admo Roofing and Admo Constrictions are wholly owned by

Mariette Niranjala Cooray who is the wife of the 2nd Respondent, and the 3rd Respondent is the common Director of both the companies referred to above. As agreed, no permission of the Commercial High Court was sought to mortgage the six items of machinery referred to in the Schedule II above. This is a clear violation of the undertaking given to the court by the Respondents.

In this case, as the subject matter is the machineries which are under the purview of the Colombo Commercial High Court and the Respondents had given an undertaking not to alienate them and the Respondents should have brought to the notice of the court as well as the Petitioner, they intend to mortgage the machineries before it was mortgaged or while it is being mortgaged. Not informing this fact to the court clearly demonstrates the mala fidei intention of the Respondent.

Further, the Respondents although, had taken up the stance that there were two sets of machinery either imported or purchased, but have failed to satisfy the court by producing any documentary evidence.

When the 2nd Respondent was questioned about the certificate of sale to prove that the 1st Respondent mortgaged property was sold by the bank, he was unable to produce the same in court.

Section 103 of Evidence Ordinance states:

“The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

In **Gunasekara v Latiff** [1999] SLR 369 the court that:

“Section 103 of the Evidence Ordinance which makes provision for burden of proof as to any particular fact stipulates that burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence. It would be clear therefore, while section 101 is concerned with

the duty to prove a case as a whole, namely, the overall burden of proof, section 103 regulates burden of proof as to a particular fact”.

Considering the evidence given by both parties, it is very clear that the Petitioner has established beyond reasonable doubt that the Respondents have wilfully and deliberately violated the undertaking given to the Commercial High Court of Western Province (Exercising Civil Jurisdiction) holden in Colombo on 09.06.2020.

Thereby, this Court finds the Respondents guilty of Contempt of Court as charged and sentence the 2nd and 3rd Respondents to two years rigorous imprisonment suspended for 10 years from today. Further, each Respondent is ordered to pay a fine of Rs.100,000/- with a default sentence of 12 months simple imprisonment. The fine imposed against the 1st Respondent shall be paid by the 1st and 2nd Respondents.

JUDGE OF THE COURT OF APPEAL

R. P. Hettiarachchi, J.

I agree.

JUDGE OF THE COURT OF APPEAL