

LALWANI
v.
INDIAN OVERSEAS BANK

COURT OF APPEAL
ISMAIL, J. ((P/CA)
TILAKAWARDENE, J.
C.A.L.A. 73/98
D.C. COLOMBO NO. 3110/SPL

Reciprocal Enforcement of Foreign Judgments – Judgment of the Supreme Court of Hongkong – Hongkong ceased to be a part of Her Majesty's Dominions with effect from 1.7.97 – Could the judgment be registered

The learned District Judge answered the issue of Registration of the Hongkong Judgment in favour of the petitioner-respondent. It was contended in appeal that there has been a severance of reciprocity and consequently registration proceedings would have to be terminated, as Hongkong is now no longer any part of 'Her Majesty's realms and Territories outside the United Kingdom.

Held:

- (1) In terms of S. 3 (3) of the Reciprocal Enforcement of Foreign Judgments Ordinance the effect of registration of the said judgments is that they had ceased to be foreign judgments from that date (31.5.96) and further proceedings are taken thereon as if they were judgments originally obtained or entered upon in the District Court of Colombo.
- (2) The Rights of the parties must be determined as at the date of the action.
- (3) Since the requirement of reciprocity must only be established when the initial order is made, its disappearance by the repeal of the reciprocal legislation in a particular jurisdiction will not affect the validity of the extension order in favour of that jurisdiction.

Leave to **APPEAL** from the Order of the District Court of Colombo.

Cases referred to:

1. *Silva v. Fernando* 15 NLR 499.
2. *Kader Mohideen & Co. Ltd., v. Gany* 60 NLR 19.
3. *Hettiaratchi v. Motha* CA 1329/92 with CALA 141/82. CAM 5.12.86.
4. *Carolus v. Piyadasa* CALA 82/90 CAM 16.7.83.

S. Mahenthiran for respondent-petitioner.

K. Kanag-Iswaran P.C. with Ariam Britto – Muthunayagam for petitioner-respondent.

Cur. adv. vult.

November 4, 1998.

ISMAIL, J.

The petitioner-respondent filed an application in the District Court on 25.05.90 in terms of the Reciprocal Enforcement of Foreign Judgments Ordinance (Cap 94) praying that the judgments of the Supreme Court of HongKong dated 10th June, 1989, and 9th March, 1990, be registered. *The said judgments were ordered to be registered by an Order made on 31.5.90 and the respondent-petitioner became entitled to apply to set aside the said registration. Accordingly, the respondent-petitioner applied on 20.7.90 to set aside the registration of the said judgments.*

When the inquiry commenced on 2.8.95 the parties suggested in all 21 issues. Thereafter, on 28.10.97 two further issues that were agreed to be tried as preliminary issues were raised. They were in regard to questions as to whether the petitioner-respondent Bank could maintain this application and whether the registration of the judgments should be set aside and/or whether the execution of the said judgments should be suspended, as Hong Kong had ceased to be a part of Her Majesty's Dominions with effect from 1.7.97.

The District Judge by his order dated 13.3.98 answered the said issues in favour of the petitioner-respondent Bank. The respondent-petitioner now seeks leave to appeal from the said order.

Section 6 (1) of the Reciprocal Enforcement of Foreign Judgments Ordinance provides that if the Minister is satisfied that reciprocal provisions have been made by the Legislature of any part of "Her Majesty's realms and Territories outside the United Kingdom" for the

enforcement of judgments obtained in this country, he is empowered to declare by an order published in the Gazette that this Ordinance shall extend to judgments of a Superior Court of that territory. Accordingly an order was published in the Gazette on 23.01.1925 in terms of section 6 (1) that the said Ordinance be extended to Hong Kong. It is the contention of the respondent-petitioner that as Hong Kong is now no longer "any part of Her Majesty's realms and Territories outside the United Kingdom" and in the absence of any further agreement, there has been a severance of reciprocity and consequently that these proceedings would now have to be terminated. It was contended in reply that there is no requirement that reciprocity has to continue to exist throughout the proceedings and that, in any event, in terms of section 6 (1) of the Ordinance, the requirement of reciprocity is a matter to be considered by the Minister.

K. W. Patchett in *Recognition of Commercial Judgments and Awards in the Commonwealth* (1984), at page 93, states that ". . .the determination as to whether the legislation or the treatment accords reciprocity is that of the Executive and not the Courts. Moreover, since the requirement of reciprocity must only be established when the initial order is made, its disappearance, as for example by the repeal of the reciprocal legislation in a particular jurisdiction, will not affect the validity of the extension order in favour of that jurisdiction. That is a circumstance in which the Executive would be justified in revoking the order".

Again, at page 96, in dealing with the effect of changes in constitutional status upon extension orders, it is stated as follows: "An extension order validly made at its creation will normally continue to have effect notwithstanding the change in the constitutional status of the enacting jurisdiction and/or that of the jurisdiction to which the order relates".

It was pointed out by Counsel for the petitioner-respondent that in terms of section 3(3) of the Reciprocal Enforcement of Foreign Judgments Ordinance, the effect of the registration of the said judg-

ments on 31.5.90 is that they had ceased to be foreign judgments from that date and further proceedings are taken thereon as if they were judgments originally obtained or entered upon in the District Court of Colombo.

Section 3(3) (a) is as follows:

"Where a judgment is registered under this section:

(a) the judgment shall, as from the date of the registration, be of the same force and effect, and proceedings may be taken thereon, as if it had been a judgment originally obtained or entered upon the date of registration in the registering court".

Section 3(3) (b) provides further that the registering court shall have the same control and jurisdiction over the judgment as it has over similar judgments given by itself, but in so far only as relates to execution under this section.

The submission of the petitioner-respondent is that as at 25th May 1990, when the order for registering the said judgment was made, the District Court was vested with statutory jurisdiction to make the order and that subsequent events and changes cannot take away rights of the parties as at the date of the action. The petitioner-respondent relied on the principle that the rights of the parties must be determined as at the date of the action. It was so held in *Silva v. Fernando*⁽¹⁾ and was referred to with approval in *Kader Mohideen & Co., Ltd. v. Gany*⁽²⁾.

The respondent-petitioner, however, relied on upon two judgments of the Court of Appeal in *Hettiaratchi v. Motha*⁽³⁾ and in *Carolis v. Piyadasa*⁽⁴⁾. These two judgments relate to cases whether there has been a frustration of the subject matter of the dispute by state intervention by acquisition or a vesting in terms of a statute subsequently enacted. These judgments are not relevant and do not affect the principle relating to the rights of the parties as at the date of the

action and to a matter which, in this instance, is governed entirely by a separate statute.

We accept the submissions tendered on behalf of the petitioner-respondent and we take the view that the learned District Judge was justified in holding that, notwithstanding the change of the status of Hong Kong, the petitioner-respondent is entitled to proceed with this application to enforce the said judgments. He has accordingly answered the preliminary issues correctly. We therefore refuse leave to appeal from the order made on 13.3.98.

The application for leave is dismissed with costs fixed at Rs. 2,100.

TILAKAWARDANE, J. – I agree.

Application dismissed.
