

SUPREME COURT OF SEYCHELLES

Reportable

CS87/2021

In the matter between:

PARAMESARAM PILLAY

1st Plaintiff

(rep by Mr Serge Rouillon)

RAJGOPOL PILLAY

2nd Plaintiff

(rep by Mr Serge Rouillon)

SENTHILKUMAR PILLAY

3rd Plaintiff

(rep by Mr Serge Rouillon)

GS PILLAY & COMPANY LIMITED

4th Plaintiff

(rep by Mr Serge Rouillon)

AND

JAYACHANDRAN PILLAY

Defendant

(rep by Ms Alexandra Benoiton)

Neutral Citation: Paramesaram Pillay and Ors V Jayachandran Pillay (CS87/2021)
(18 September 2025)

Before: D. Esparon, J

Summary: Action for breach of contract

Heard: 11th July 2022

Delivered: 18th September 2025

ORDER

Action by way of Plaint whereby the Plaintiffs are claiming from the Defendant the amount owed to them by virtue of a breach of contract plus interest at the commercial rate in the sum of Rs10,205,889- the Court found that the defendant was in breach of the said agreement and ordered the defendant to pay the sum of SCR 9,500,000 to the Plaintiffs with interest at the legal rate of 4 % per annum as from the 25th November 2019. The Court dismissed the Counter-claim and the prayer for set-off.

D. Esparon, J

Introduction

1. This is an action by way of plaint whereby the Plaintiffs are claiming from the Defendant the amount owed to them by virtue of a breach of contract plus interest in the sum of Rs10,205,889.

The pleadings

2. The Plaintiffs averred in their plaint that the Plaintiffs together with the defendant are siblings, equal owners and directors of the 4th Plaintiff and that on the 28th August 2009, the four Plaintiffs including the defendant signed a sharing of moveable assets agreement in respect of the 4th plaintiff of which the terms of the agreement was that the defendant was given 25 % share of the assets for him to leave the 4th Plaintiff company which consisted of business receivables, funds in the bank and bank deposits, stock on the existing business premises in Seychelles, moveable assets including vehicles and other moveables.
3. According the Plaintiffs, on the 10th December 2012 there was an addendum to the said Agreement whereby the same parties expressly agreed that the immoveable property of the 4th Plaintiff be divided as follows;

- a. The defendant was to have the ground floor and second floor of a building at providence comprised in Titles V6796 and V8866, which at the same time was being used by the 4th plaintiff as a warehouse /store of Seybrew products.
 - b. In consideration for this the defendant relinquished and waived his rights and ownership on other remaining immoveable property of the 4th plaintiff in Mont Fleuri and Victoria.
 - c. The parties agreed to maintain the value of the properties V6796 and V8866 as per valuation report dated 5th December 2011 at R24,500,000.
 - d. The total accepted valuation of all the properties of the 4th plaintiff inclusive of the Providence property were accepted as 60,000,000.
 - e. It was agreed that the defendant was only entitled under distribution to R15,000,000 being one fourth of the share of the assets of the 4th Plaintiff.
 - f. As the defendant was the beneficiary of the Providence property the value of which was R 24,500,000 he accepted to pay the Plaintiffs 1 to 3 R 9,500,000 as difference between the value of the Providence property and his legal entitlement as an heir to the succession.
 - g. It was agreed that because Seybrew distribution business being carried on in the Providence property the parties agreed on rental arrangement for two years for the Plaintiffs to pay the defendant a monthly rent of R 40,000 with effect from 12th December 2012.
 - h. That upon vacating the premises by the Plaintiff with or without the agreed notice of 3 months the defendant would pay the Plaintiffs 1 to 3 the extra R 9,500,000/- and if he is unable to do so with interest on the outstanding amount would be charged at commercial rates effective from the date after the Plaintiffs leave the premises.
4. The Plaintiffs further averred in their plaint that after giving formal notice to the defendant on the 27th August 2019 which notice expired on the 25th November 2019 and by the legal letter

dated 23rd February 2021 to settle the said amount, the Plaintiffs received no response and that the defendant is now indebted to the Plaintiff in the total sum of R 10,205,889 as a result of breach of agreement of the parties.

5. The Plaintiffs is now claiming a total sum of R 10,205,885 of which R 9, 500,000 being the outstanding sum as per the agreement and a further R100,000 being special damages for breach of contract. The Plaintiffs are also claiming a sum of R605,889 as interest and cost at a commercial rate.
6. In his statement of defence the defendant has admitted paragraphs 1, 2,3 and 4 save for her averments that the said agreement expressly excluded the total value of properties in India and monies in London and UK and the MPA also excluded properties in Seychelles purchased or acquired prior to 2nd December 2010.
7. The defendant denies that the properties V6796 and V8866 are leasehold properties whereas the others kept by the Plaintiff are freehold and further denied that the rental in paragraph 4(g) was due to be for 2 years and that the plaintiff remained on the property for 7 years being five years more than agreed, with no increase in rent.
8. The defendant denies in his statement of defence as to the plaintiffs' claim and/or damages in the sum of SR 10, 205,889/- or alternatively defendant avers that if it suffered any loss and damages, the plaintiffs' sums claimed are manifestly excessive and grossly exaggerated in the circumstances.
9. The defendant has also counter-claimed and in his counter-claim he avers that the resolution dated 28th August 2009 had an implied term that the following assets would be partitioned between the plaintiffs/counter- defendants and the defendant/counter-claimant in a 75%-25% split: -
 - a. The properties in India
 - b. The bank accounts in London (UK)
 - c. The properties in Seychelles acquired before 2nd December 2010.

10. He further avers that the Plaintiffs have an obligation to the defendant/ counter-claimant to render account of the said assets mentioned in paragraph 9 above of this Judgment so that the claim can be assessed and or set off against the outstanding balance and that in breach of the agreement the defendant has failed, refused or neglected to partition the assets in favour of the Defendant/ Counter-claimant in a reasonable time at all.
11. The Counter-Claimant prays to this Court to order the plaintiffs to give true and accurate account of the assets and their value of the 4th Plaintiff /counter- defendants as at 28th August 2009 and 10th December 2012 and order that any amount owed to be distributed to the defendant/ counter-claimant is disbursed to the defendant/counter-claimant.
12. In their defence to the counter-claim the defendants in the counter-claim have denied the averments in the counter-claim and averred that the said resolution and subsequent documents attached reveal that the defendant unequivocally accepted all terms and conditions of the resolution of the 28th August 2009 without conditions or implied terms by the later registered resolution dated 10th December 2012 and from the resolutions the parties executed and acted without question or discussion (copies of the share transfers, particulars of directors, annual returns showing the status of the 4th Plaintiff.
13. The Plaintiffs further denies in their defence to the counter-claim that it has any assets or bank accounts outside of the Seychelles.

The Evidence

14. The 1st witness who testified for the Plaintiff is the 3rd Plaintiff himself Senthilkumar Pillay who gave evidence that he is one of the directors and shareholder of GS Pillay Company Limited which is a distributor of Seychelles breweries and a whole sale and retail business and that the defendant was one of the directors and one of the main person who managed the said company until 2009. He further stated that in 2009, the defendant wanted to run his own business, so he left the Company.
15. He gave evidence that the agreement to partition the assets of the company dated the 28th August 2009 was done by the Defendant Jayachadran Pillay and they all accepted and signed. The witness testified that there was a second agreement dated the 6th February 2013 which

was about the providence building of which the valuation of the whole assets of the company was done by a Quantity Surveyor for defendant which came to around 60 million and for the providence property it was valued at 24.5 Million and produced the said mutual partition agreement to the Court of which the court admitted and marked the said document as exhibit P1.

16. He further stated that the defendant's share when he left the company was 25%. The witness also denied that there were any assets belonging to GS Pillay outside Seychelles. He however stated that according to the valuation report conducted, the valuation for the Providence property namely parcel V6796 and V 8866 was 24.5 million but the total valuation of the immoveable assets in Seychelles consisting properties at Mont Fleuri, a shop unit G6 Orion Mall and Providence amounted to SR 60,000,000.
17. According to the witness each were to get SR15,000,000 and since the Providence property was valued at 24.5 million and that the defendant wanted the Providence building and so he agreed to give the Plaintiffs 9.5 Million and he signed it. So according to the witness the defendant owes them 9.5 million The court admitted the said valuation report as an Item and marked it as Item 1. He explained that the said property at providence is not free hold but leasehold property and that the lease is for a period of 60 years of which 13 years have lapsed and hence there is a remainder of 47 years on the lease.
18. According to the witness, GS Pillay the 4th Plaintiff did not move out of the property at Providence immediately, they stayed there for 3 years and then they paid a rent of 40,000 to the defendant every month. He also sated the he also sent a letter to the defendant as notice that he was leaving the premises of which he produced the said document in Court as exhibit of which the Court has admitted and marked the said document as exhibit P2 and also produced a second letter addressed to the defendant of which the Court admitted it and marked it as exhibit P3.
19. As to damages claimed as special damages in the amount of 100,000 which was for the disruption of the business since he had to come down for this case from India and so for his travelling expenses and that the non-payment of the SR 9.5 million not only affected the businesses totally but the family circumstances and everything. According to the witness the

non- payment of the said sum amounted to a breach of their agreement. In total, according to the witness the Plaintiffs are claiming 10 million being the 9.5 million, 100,000 and interest at commercial rate.

20. Under cross-examination by counsel for the defendant, the witness stated that he signed the document that stated that it does not include any properties in India because the defendant prepared it and since he was the older brother, they obeyed. He also stated that even if the 4th Plaintiff moved out 5 years after they should have moved out of the property, this was not a breach of contract in view that the defendant had accepted the 40,000 and that they didn't give them any notice to vacate in accordance to the agreement which was 3 months' notice and that the defendant never told them to leave the premises.
21. During cross-examination the witness also stated that he gave back the keys around 12th March 2020. He also stated as for the distraction of the business the defendant left the company and they had distract from their distributors and had a lot of meeting with the managers of banks and everything was stuck for the moment and hence the 100,000 was because he suddenly decided to leave the company. He also admitted that it was one of his uncle Dharmarajan Pillay who witnessed and signed as a witness for the agreement and he stated that he doesn't know if it was the said uncle who sorted out the terms and conditions of the agreement.
22. As to the question whether there are any assets overseas he denied this during cross-examination and stated further that since the defendant was the only one taking care of the company, he would be the only one who would be knowing and that he must show them. He also denied that he and his brother assisted in taking all the money out of the bank account in England that was for the benefit of GS Pillay and used for their own purposes and that they misappropriated the money after his grandfather passed away. He admitted that the defendant had told them about the assets at the time and that after when he came there he came to know that there is nothing, that hence he must prove to them. He also gave evidence that the defendant has already taken his money from the sale of his 25% share in the company.
23. During re-examination he stated that he never received any notice to vacate the property at Providence and that he has never received any notice from his brother asking where are his

shares and that he had just walked away collecting the rent of 40,000 every month up to 2019 when he gave the eviction notice.

24. The other witness that gave evidence for the Plaintiff was Siva Gothandarana who testified that he knows both the Plaintiffs and the defendant since he was working with the company since 2008 to 2009. He explained that they joined in 2008. In 2009 they had some family partitions which was headed by a family relative, Mr Dharmarajan and that he was the one finalising all these things and he was the one typing all the statement as per the plaintiffs and the defendant. According to him, initially they had a mutual agreement that the property can be divided into 2. One is the moveable property and the other is the immoveable property. For the moveable property they had settled everything with agreement 1 and the immoveable property they had valuation from one side and the defendant had valuation from the other side. According to him both came to an agreement to conclude the partitions and that the mutual partitions were prepared by the defendant, Jayachandran.
25. The said witness gave evidence that they calculated the bank balance, trade balance collected from the data and the stock on the whole premises and the vehicles had been calculated and put a value and then they divided by 4, of which the defendant got 25 percent and in the 1st agreement they had mentioned that the second will be the immoveable property of which the 1st share out was completed and that during his time he never received a request from the defendant that he never got his share.
26. According to him, it was the defendant's valuation which was accepted into the mutual partition agreement. That the total value of the immoveable property was 60,000,000 and that 15,000,000 he thinks had to be given to each director. As for the property at Providence, it was the defendant who insisted that he takes the property which was valued at 24.5 million minus 15 million and that 9.5 million he had to pay with other conditions and he made these conditions. The witness identified exhibit P1 and stated that he was the one who took this document to the registry to register this document.
27. The 2nd agreement according the witness, they had made an agreement to repay the balance payment upon getting the lease transferred to Mr Jayachandran Pillay's name and he agreed to have the lease transferred on his name and that it was transferred after 2 years something and

with time they decided to rent the property to the company for a period of 2 years with Rs 40,000 rent per month. According to him, it was supposed to be rented for 2 years but since the building was not ready, the parties agreed to continue as it is. He stated that there was no document from the defendants' side to vacate.

28. He also said that they filed annual returns for the company and they did not find anything related as to GS Pillay Pty Limited as to assets in India. He also stated that the defendant never made any efforts to pay the said sum of 9.5 Million until 2019 that was until his tenure. He also mentioned that it was the defendant who recruited him since he was in charge of the company at the time.
29. During cross- examination by counsel for the defendant, he admitted that it was Dharmarajan Pillay his uncle that told him to type the said document. He testified that the said Dharmarajan Pillay was selected because he was close to all. He stated that the said uncle had asked him to collect all the information from the bank, from trade since he was managing the business and so he collected all and had given to him and he calculated and circulated it to the directors and they came up with what is the value of which they agreed and asked him to type whatever documents and that they made 4-5 copies of which each had a copy of the said document.
30. After showing the witness the said document by counsel for the defendant, he stated that this is only the front page and that the document comprised of around 30 pages for the first agreement. He mentioned that the said property in India was not related to GS Pillay Pty Limited and that he doesn't know about the properties in India since he was managing the Seychelles property only.
31. However the witness admitted that it was not on the company's side but it was from GS Pillay personal account money which was deposited and that was long way back, not during his tenure. In fact, he stated that when they were going back and forth they were not sure what was there and he is not aware if any investigation was done to see whether or not these assets were confirmed.
32. The witness also admitted that they were supposed to move out of the Providence property in 2014 but it happened long after that since the plaintiff was not ready with the building which

required planning permission which was delayed and the defendant was not ready with the money, so it was continued. He also admitted that there was no distraction or turmoil in the company after the defendant had left the company since he was able to manage the company and it went smoothly.

33. The 1st witness who testified for the defence was Mr Jayachandran Pillay, the defendant in the matter who gave evidence that the 1st, 2nd and 3rd Plaintiff are directors of GS Pillay company and are also his brothers. According to the witness from 1978 to 2009 he was working at GS Pillay and at the time he was in charge of everything there as a director.
34. The witness testified that during the year 2009 he had an issue with his brother because he bought a piece of land in Chennai. Because of his argument with his father and also in view of the same, he gave his father one months' notice and asked him to pay him whatever he owed him since he was just working and earning a salary of SCR 3000 monthly. His father sent someone to Seychelles namely Dharmarajan Pillay his uncle and he started sharing everything. According to him the person came to Seychelles and did everything, however he was getting so many issues and therefore he did not continue to work at GS Pillay and left. According to him in India nothing has been done yet. They have a lot of properties in India.
35. He further testified that his uncle Dhamarajan Pillay was in Seychelles for six weeks. When his uncle finalised everything he received 25% and everybody received 25%. He stated that there was 4.5 Million rupees transferred to him from the Seychelles bank account. That he was also given 2 cars, 2 pickups and 25% of the stock.
36. He gave evidence that the agreement was signed by 3 directors. He mentioned there is only 1 page in the said document and the original is probably with his father who has passed away since 2014 in Chennai and according to him the document was made by Dharmarajan Pillay and he also identified his signature on the said document and produced it as exhibit of which the Court admitted and marked the said document as exhibit D1 which is a document addressing the change in the company in consideration of 25% of the assets.
37. According to him, all four parties agreed that there were properties in India that were not part of the 25% that he had received and that reference to a bank balance in the agreement in foreign

account in London, during the discussion before the signing of the agreement they spoke about the properties in India and that in Seychelles. That his brothers did not object in putting the properties in India in the agreement. Furthermore, he stated that during the discussion he also talked about money in the account in London prior to signing the agreement.

38. The witness identified exhibit P1 and stated that this one is concerning the lands and according to him up to now nothing has been settled and that it was Mr Rajasundaram the lawyer who drafted the said document. Seybrew advised them since they were the distributor for Seybrew and so he rented them the Providence property and thus he gave them more time and they have still not built the building. According to him they vacated the said property at providence in 2019 since they did not vacate in 2014 and then he gave him the keys one or 2 months after they had vacated the premises. Hence, they were in the premises for 5 years longer than what was stated in the agreement but they still paid rent.
39. He stated that his brothers never contacted him about the properties in India and the money in UK and that he says he doesn't know anything. He admitted that he was supposed to pay 9.5 million for the property at Providence and that was after they had left the premises. He produced a letter purportedly addressed to Mr Rouillon which the Court marked the said letter as exhibit D2. In the said letter according to him he was prepared to settle the 9.5 Million share of the Seychelles property and the remaining assets that the matter can finally be closed.
40. According to the witness, before his father died, he spoke to him about it that there were 4 accounts in the UK and his mother showed him on a card with a value of 11.4 Million Rupees which amounted to 2.5 Seychelles Rupees of which the Court allowed this evidence to the extent that it was said not as the truth of its content. According to the witness, he can pay the 9.5 Million right now provided they settle the amount from Uk and India. The witness further stated that he was in charge GS Pillay for 32 years and for the 32 years he has had knowledge of the accounts in England and in India to purchase properties and that he has sent money to India and England since his father told him to send the money and when he left the company, he left all the documents with the company.

41. He stated that prior to him paying the SR 9,500,000, that now he is asking the company to render accounts of the monies in England and the assets in India. That once the account of these assets are provided then he will pay whatever balance left.
42. Under cross- examination by counsel for the Plaintiff he stated that after he received the letter that the plaintiff is vacating the property he spoke to his brother to settle his account and he will pay him off and that he started organising a bank loan for 10 million. He further stated that if they had given him the money, he would have paid them off. He further gave evidence that all the money in India is on GS Pillay Company Pty Ltd.
43. He further admitted during cross – examination by counsel for the Plaintiff that there was going to be a short fall that he would owe the heirs 9.5 million in view of the valuation of the said property being 24 million. He denied having sold any shares in the company when questioned by the Court.
44. The last witness which testified for the defendant is Mr Rajagopal Damarajan Pillay who gave evidence to the fact that he knows the 3 Plaintiffs and the defendant in the matter since they are all his nephews and they are his sister's sons. That their father GS Pillay has passed away.
45. He stated that he took part in the agreements for the settlement of the company whereby he was in Seychelles at the time and that the amount which was in the shop was distributed between 4 persons, the plaintiffs and the defendant.
46. The witness identified exhibit P1 and his signature on the said document and stated that he prepared the document in Seychelles. He gave evidence that in order to divide the assets that is money in the shop, materials and stocks were distributed between the 4 persons and that he had consulted the four persons and they have agreed. He stated that when he wrote in the document that the above partition does not include immoveable properties and the buildings at Mont Fleuri and Orion Mall Building properties and in India and bank balance in London, he stated that in the meeting with the parties they have spoken about everything and then they had finalised and made it up like this and they have put their signatures in this agreement and that they thought that there were properties in India and bank balance in London, and they have done the partition as to the Seychelles properties only.

47. He further gave evidence that at the time the properties in India and bank account in London was there, all approved at the time they have prepared the document. He stated that at the time there was 40 Million Indian Rupees in the account in London. There were more than 10, 14 or short than 15 Million. There was in Nella South Street in Nagapattinam, a building. That none of them stated that there was no money in London and properties in India since they have all agreed and signed. The witness testified that he knows that the properties in India have not yet been settled.
49. Under cross- examination by counsel for the Plaintiff, he stated that Mr GS Pillay sent him to Seychelles to participate with the four persons since he had worked in that company in Seychelles. He maintained that the assets are still now in India.

Submissions of counsels

50. Learned counsel for the Plaintiffs submitted that the 2012 Mutual Partition Agreement (MPA) was concluded by the four brothers in their personal capacities as part of a comprehensive settlement of their respective shares in the family company, the 4th Plaintiff. The MPA expressly provided that the Defendant would be allocated the Providence property, valued at SCR 24.5 million, in exchange for his obligation to pay the Plaintiffs SCR 9.5 million so as to equalise his 25% entitlement.
51. It is argued that the obligation was clear and unconditional. The clause of the MPA provides that upon the Plaintiffs vacating the Providence property, the Defendant “shall pay the Plaintiffs 1 to 3 the sum of SCR 9,500,000, and if unable to do so, interest shall accrue at the commercial rate from the day after the Plaintiffs leave.” Counsel stresses that the contractual text identifies the Defendant as a debtor and the Plaintiffs as creditors in their personal names, not the company.
52. With respect to the rent clause, Plaintiffs note that although the MPA fixed a two-year occupation period at SCR 40,000 per month, in fact they remained in occupation until 2019, with the Defendant’s full knowledge and consent, and rent continued to be paid and accepted. By operation of article 1738 of the Civil Code (tacite reconduction), the tenancy was lawfully

extended until the Plaintiffs gave notice on 27 August 2019 and vacated on 25 November 2019. It is at that moment that the Defendant's obligation to pay crystallised.

53. Counsel for the Plaintiffs contended that the cause of action accrued only upon vacation in November 2019, not in 2012 when the MPA was signed. The plaint filed in October 2021 is therefore within time. They rely on *Vijay v Ailee Recreations* (1983 SLR) and the French principle under Article 2224 of the Civil Code that prescription runs from the date the creditor knows the debt is due.
54. Counsel for the Plaintiffs submitted that clause 7(c) expressly provides for interest at the commercial rate from the day after vacation. He argued that the Defendant cannot benefit from his own default by claiming that the rate is unproven. Even if the precise figure requires proof, the principle of commercial interest was agreed, and the Court should enforce it.
55. On special damages, the Plaintiffs claims SCR 100,000 for expenses and disruption caused by the Defendant's breach.
56. On the counter-claim, Counsel for the Plaintiffs argued that the Defendant is raising a belated and fabricated defence. Counsel maintained that there are no overseas assets belonging to the 4th Plaintiff; that no such assets appeared in the company records; and that the Defendant has offered no particulars or proof. Counsel invoked the doctrine of laches and prescription, citing **IDC v LCP Developments (2018)**, **Gill v Film Ansalt (2013)** and **Mussard v Laurencine (2010)** to argue that equity bars stale claims.
57. Counsel for the Plaintiffs concluded by praying for judgment in the sum of SCR 9,500,000 with interest at the commercial rate from 26 November 2019, together with special damages and costs, and for the counter-claim to be dismissed.
58. Learned counsel for the Defendant submitted that the plaint is defective in form and substance. First, Plaintiffs 1–3 sued in their personal names, but the agreements were in fact concluded in relation to the 4th Plaintiff company assets. Under section 73 of the Code of Civil Procedure, representative capacity must be stated in the plaint title; since it is not, the action is misconceived.

59. Secondly, counsel contended that the Providence property was a company asset, the rent was paid in respect of the company's business premises, and any balancing sum could only have been due to the company, not to individuals. To order payment to the Plaintiffs personally would be to grant relief ultra petita, beyond the scope of the plaint.
60. On the issue of 'mise en demeure', counsel for the Defendant argues that no proper formal demand was served on the Plaintiffs' own behalf. According to counsel, the absence of such demand, interest cannot run from 2019; at most, legal interest runs only from the date of filing of the plaint in October 2021.
61. Counsel for the Defendant submitted that "commercial rate of interest" was never proved. The Court cannot speculate as to what the parties intended. In the absence of evidence, only the statutory legal rate may be awarded.
62. On special damages, counsel for the Defendant laid emphasis that there is a settled rule that any such damages must be strictly proved. According to counsel, the Plaintiffs had adduced no documentary evidence of any SCR 100,000 loss. Hence Counsel submitted that this head of claim must therefore fail.
63. On the issue of prescription, counsel for the Defendant submitted that the agreements dates back to 2012, and any claim arising from such was prescribed.
64. Finally, on the counter-claim, Counsel for the Defendant maintained that the 2009 framework contemplated a global settlement of family assets, including Indian properties, UK bank accounts and certain Seychelles properties acquired before December 2010. He seeks an accounting, partition of those assets in accordance with his 25% entitlement, and a set-off against any sum found due to the Plaintiffs.
65. Counsel for the Defendant therefore prays that the plaint be dismissed or, in the alternative, that only the company be held entitled, with interest limited to the legal rate from the date of the filing of the plaint and that special damages be refused, and the counterclaim upheld.

Analysis and determination

Capacity of Parties & Signatories –Plaintiffs 1-3

66. **Articles 1108** of the Civil Code of Seychelles sets out the four essential conditions for the validity of an agreement, as follows:

“Four conditions are essential for the validity of an agreement –

- *The consent of the party who binds himself,*
- *His capacity to enter into a contract,*
- *A definite object which forms the subject-matter of the undertaking,*
- *That it should not be against the law or against public policy.”*

67. This Court shall treat the capacity of parties and capacity of signatories as one because of the interaction between the two.

68. Counsel for the Defendant’s argument on corporate form tries to collapse the two by stating that the assets were technically in the company’s name, invalidating the siblings to sign the agreement and bring the case in their personal capacities.

69. In other words, The Defendant’s primary defence is that Plaintiffs 1–3 sued in their personal capacities when, he says, the agreements were concluded on behalf of the 4th Plaintiff company. That Plaintiffs 1-3 sued in the wrong capacity; that any rights and obligations under the arrangement belonged to or had to be asserted by the company (the 4th plaintiff). Counsel relied on section 73 of the Seychelles Code of Civil Procedure, requiring the title of a plaint to show representative capacity where a plaintiff sues on behalf of another.

70. It is clear from both the wording and the circumstance of the agreements that they were not corporate acts but family arrangements entered into personally.

71. In terms of the wording of the agreements, the 2009 Agreement though it appeared on the letterhead of the 4th Plaintiff, the text shows the siblings individually dividing the moveable assets. The wording lacked a corporate focus instead it dealt with the allocation of shares of property amongst the **shareholders**. As for the 2012 Mutual Partition Agreement (MPA) duly

stamped and registered on 6 February 2013, the wording is unequivocal. The opening clause names the siblings personally: “Parameswaram PILLAY, Rajagopal PILLAY, Senthilkumar PILLAY all jointly and severally hereinafter referred to as second party.” It then provides that the Defendant shall vacate the premises of the Providence property and accept it as his allocation in partition. Further clause 7 (b) –(c) stipulated that, “*upon vacating the premises, the Defendant shall pay the Plaintiffs 1 to 3 the sum of SCR 9,500,000 ...*” The language shows that the parties were binding themselves personally. Finally, clause 7 (g) on rent of 40,000 SCR per month was framed as an arrangement imposing reciprocal obligations between the siblings, not between the company and its director.

72. In terms of the surrounding circumstances of the Agreements, it is to be noted that the clear purpose of the agreements was to divide their late fathers’ patrimony among the shareholders. The defendant was allocated his 25% share of moveables in 2009 and accepted the Providence property in 2013. He then personally collected rent of SCR 40,000 from 2012 to 2019. These benefits were not enjoyed by the company but by him directly in his personal capacity. It is worth mentioning that there was an absence of corporate procedure if indeed these were corporate acts, as one would expect compliance with the Companies Act. Instead, documents were negotiated and executed as family arrangements.

73. Finally, even the two notices dated 27th August 2019 and 19th June 2020, though written on the company’s head as stated above and signed by its directors, were in fact issued on instructions of the Plaintiffs to enforce the Defendant’s personal obligation under MPA. This is not inconsistent with personal liability as held in **Freslon v Patel (SCA 20 of 2018) [2020] SCCA 43** which stated that the Court must interpret contracts not solely by their form or literal sense of words, but by reference to the common intention of the parties. Applying the principle of Article 1156 and the guided reasoning in *Freslon (supra)*, this Court finds that the common intention of parties was to divide the patrimony of their late father among themselves not to bind the 4th Plaintiff as a corporate entity.

74. As a result of the above, this Court shall distinguish the present case with the case of **Re Tottenham [1896] 1Ch. 628** cited by learned counsel for the Defendant which held that ‘if any party sues, or is sued , in a representative capacity character (e.g trustee in bankruptcy or

as executor of a will) this fact ought to be stated in the title or heading of the statement of claim, as well as on the writ since in the present case the facts and circumstances are different in view that the 1st, 2nd and 3rd plaintiffs are suing in their personal name or capacity and is also suing the defendant in his personal name or capacity.

75. Accordingly, this Court holds that the agreement is valid and enforceable between them personally. Hence, the pleas of lack of capacity to sue and capacity of signatories fails.

Condition of payment - CONSTRUCTION OF MPA, TACIT RECONDUCTION AND COMMON INTENTION

76. The central question for determination concerns the true construction of the Mutual Partition Agreement (“MPA”) executed by the parties on 10 December 2012 and registered on 6 February 2013.
77. This agreement formed the basis upon which the Defendant was allocated the Providence property, subject to an obligation to pay a balancing sum of SCR 9,500,000 to the Plaintiffs. The Defendant contends that this obligation was conditional, uncertain, and that subsequent conduct of the parties either extinguished or modified it. The Plaintiffs, on the other hand, maintain that the MPA imposed a clear, unconditional duty upon the Defendant to pay once they vacated the premises, and that their continued rental occupation did not diminish that obligation.
78. This Court notes that Article 1134 of the Civil Code provides that contracts lawfully entered into have the force of law between the parties and must be performed in good faith. Article 1156 further directs the Court to seek the common intention of the parties rather than adhere solely to the literal meaning of the words used. When the MPA is examined as a whole, the intention is manifest: the Defendant was to retain ownership of the Providence property but only on condition that he compensates the other siblings by way of a balancing sum. The reference in the text to payment “upon vacation” establishes the moment at which the obligation became exigible. The words do not render the debt conditional in the sense of

depending on uncertain future events; rather, they indicate a deferred obligation triggered by an agreed and inevitable event—the Plaintiffs’ departure from the premises.

79. This Court rejects the submissions that the extended occupation of the premises and continuation of rent payments altered or extinguished the Defendant’s obligation. The evidence demonstrates otherwise. The Defendant himself acknowledged in his pleadings and testimony that rental payments continued to be made by the Plaintiffs beyond the initial two-year period stipulated in the MPA. This is corroborated by documentary evidence, including bank records and correspondence adduced at trial, which confirm that rent was in fact paid into the Defendant’s account during this period. Further, the notices exhibited in evidence expressly referred to the continuation of rent until such time as the Plaintiffs vacated. Taken together, this material proves that the rental arrangement subsisted by tacit reconduction until 25 November 2019, when the Plaintiffs finally vacated the Providence premises.
80. Tacit reconduction, as understood in civil law, prolongs the accessory obligations of a contract where the parties continue to behave as though the agreement subsisted, but it does not annul or replace the principal obligation undertaken.
81. Under article 1738 of the Civil Code of Seychelles “If at the expiry of a written hire agreement the tenant is allowed to remain in possession, a new term shall arise the incidents of which shall be subject to the articles which relate to hire without writing.” By law, the tenancy is deemed to continue on the same terms where occupation persists with the lessor’s consent.
82. According to Collart Dutilleul and Delebecque in their book ‘Contrats civils et commerciaux’ (6e ed., Dalloz, 2002) tacit reconduction « *consiste dans la formation d’un nouveau bail à la survenance du terme fixé, sans rupture ni interruption entre les deux contrats successifs, c’est-à-dire sans interruption de jouissance du locataire. Elle suppose donc d’une part l’existence d’un bail écrit venu à expiration à son terme (art. 1738 C. civ.) et d’autre part que le preneur reste et est laissé en possession. En matière de bail, cette reconduction est une présomption de la volonté des parties que le juge peut être amené à apprécier. La tacite reconduction a donc pour effet d’éteindre le bail à durée déterminée tout en formant un nouveau contrat de bail, mais à durée indéterminée cette fois, à moins d’une stipulation contraire des parties. En dehors de la durée, le nouveau contrat se forme aux mêmes conditions que le précédent* (loyer,

destination du bien, droit de céder le bail, etc.). Dès lors que la reconduction s'opère tacitement, le bailleur ne peut l'empêcher qu'en délivrant un « congé » au preneur (art. 1739, C. civ.). Ce congé n'a pas la même nature ni le même but que celui qui permet de mettre fin à un bail à durée indéterminée (v. supra, n° 464). En effet, il n'a pas vocation à mettre fin au contrat puisque celui-ci s'éteint de lui-même par la survenance du terme. Il vise seulement à empêcher la reconduction du contrat. »

83. In this case, the principal obligation of the Defendant to pay the balancing sum remained binding and unaffected. Further, the correspondence and conduct of the parties reinforce this construction. The Defendant accepted rent under the agreement, and notices were later issued demanding payment of the SCR 9,500,000 once the Plaintiffs had vacated. His compliance with the interim terms demonstrates that he recognised the validity of the MPA. It is only after prolonged enjoyment of the benefits that he now seeks to avoid his obligations.
84. As a result this Court therefore finds that the MPA, properly construed, created an unconditional obligation upon the Defendant to pay the Plaintiffs 1 to 3 the sum of SCR 9,500,000 upon their vacation of the Providence premises. In terms of Article 1156, the common intention of the parties was for the Defendant to discharge this payment personally to his siblings as part of the partition of family assets. Tacit reconduction of the rental arrangement did not extinguish this obligation, but rather extended the interim enjoyment of the premises until the balancing payment became exigible. The lawful termination of the tacitly reconducted lease activated the Defendant's obligation to pay the balancing sum of SCR 9.5 million under clause 7(c) of the MPA.
85. At this stage the Court had the opportunity to observe the witnesses for the plaintiff in Court and find that their evidence were credible and cogent in testifying about the alleged breach of contract and proceed to accept their evidence on this issue. This Court also notes that in the defence of defendant and in his evidence, the defendant has not contested that he has not made any payments regarding the SCR 9,500,000 to the Plaintiffs as per the said agreement. As a result of the above, I find that the defendant has breached the said agreement after failing to pay the said sum of SCR 9,500,000 upon the Plaintiffs vacating the premisses as provided for in the said agreement.

Prescription

86. It follows that the next issue for determination concerns the temporal effect of this obligation namely whether the Plaintiff's claim is time-barred. The Defendant argued the cause of action accrued in 2012 and the plaint filed in October 2021 is prescribed.

Article 2271 of the Seychelles Civil Code states that;

(1) All rights of action shall be subject to prescription after a period of five years except as provided in articles 2262.

87. The Defendant has argued that the claim is prescribed, seeking to count time from the execution of the MPA in December 2012. This construction cannot be sustained. To do so would contradict both the clear text of the agreement, which deferred payment until vacation, and the settled jurisprudence that prescription cannot run before the obligation is demandable. Clause 7(c) of the MPA makes payment contingent on the plaintiffs vacating the premises. They vacated on 25 November 2019. Therefore, only from that date — November 2019 — that the obligation became exigible and the Plaintiffs could bring their action. Prior to this, although the agreement had been concluded in 2012, the debt remained suspended until the occurrence of the agreed condition: the Plaintiffs' vacation of the property.

88. Furthermore, the Defendant himself benefitted from continued rental payments of SCR 40,000 per month until November 2019, a course of conduct wholly inconsistent with any claim that the obligation had matured earlier.

89. The Plaintiffs filed their plaint in October 2021, less than two years after the obligation became due. On any construction, the five-year prescriptive period had not expired. The claim has therefore been brought well within time.

90. Hence the plea of prescription is without merit and is dismissed.

Mise en demeure and interest

91. Defendant contends that should the court find that the payment be made to 1st, 2nd and 3rd Plaintiffs in their personal capacity, interest cannot run until the filing of this case as there was no proper *mise en demeure* served by Plaintiffs.
92. It is therefore necessary for this Court to carefully examine whether, on the facts and the applicable law, such a demand was required and, if so, whether it was properly made.
93. The obligation of giving notice of default (*mise en demeure*) does not have an unlimited scope. It does not apply to all obligations. Although no text expressly provides for it, it is accepted that it only applies to obligations capable of being performed. Thus, obligations *not to do*, natural obligations, or certain moral obligations are exempt from the requirement of a notice of default.¹
94. This principle follows a rule of common sense: a notice of default is useless when it cannot have any practical effect. It is therefore not required when performance is manifestly impossible, for example when the debtor has refused to perform or has voluntarily abstained from performing his obligation on the agreed due date. In such a case, the solution is justified in that the creditor may legitimately think that the debtor will not perform. The judge therefore need not require a superfluous notice of default.²
95. Likewise, when performance has become impossible, the creditor is exempt from giving notice of default since he cannot reasonably think that the debtor will still perform his obligation. Finally, notice of default is unnecessary when the creditor has renounced his right.³
96. In Seychelles a *mise en demeure* is made in terms of article 1139 of the Civil Code, which reads thus –

¹ F. Terre, Ph. Simler, Y. Lequette, Droit Civil. Les obligations, 6^e ed., Dalloz, 1996, p. 801, para. 983

² Id., para 983

³ Id., para 983

A debtor is in default when —

(a) required to deliver by a formal summons to that effect, or by a similar legal instrument, or

(b) the contract expressly provides that a formal summons is not required and that the passing of time for delivery suffices.

97. This provision codifies, in simplified terms, the doctrine long developed under French civil law. Under the former French Civil Code Article 1139, as interpreted by authors such as Terré, Simler and Lequette (*Droit civil – Les Obligations*, Dalloz, 6th ed. 1996, p. 802), a debtor may be put in default either:

- by a **formal demand** (*sommation*), or
- by the **mere expiry of the term** where the contract provides that the debtor shall be in default without further act.

98. The French doctrine terms this second scenario a “*clause constitutive de demeure*.” As the learned authors note:

“L’article 1139 indique que, lorsque la convention stipule qu’à l’échéance du terme le débiteur sera en demeure, il n’est pas besoin d’acte ni de mise en demeure.”

Article 1139 provides that, when the contract stipulates that upon the expiry of the term the debtor shall be in default, no act or “mise en demeure” is necessary.

99. Thus both the Seychelles codification and the French jurisprudence agree that the requirement of a formal demand may be dispensed with where the **will of the parties** (*volonté des parties*) is clearly expressed in the contract but also the “*nature de l’obligation*”- such as an obligation to do or not to do. For example if the debtor has committed an act that he was prohibited from doing, then damages are due by the sole fact of the contravention.⁴ If there is

⁴ Article 1145 of the Civil Code of Seychelles: «If the obligation consists of refraining from doing something, the person who violates it is liable for damages by the mere fact of the violation.”

failure to perform an obligation within a certain time that the debtor has ignored, liability is automatically triggered.⁵

100. If we apply it to the present case, the Plaintiffs rely on the Mutual Partition Agreement (“MPA”) executed on 10 December 2012 and duly registered on 6 February 2013. Clause 7(c) of the MPA provided that upon the Plaintiffs vacating the Providence premises, the Defendant would pay the sum of R9,500,000 together with interest at commercial rate should the payment not be made within the stipulated time. The clause further envisaged that such payment was due upon vacation, without any stipulation of an additional demand or notice.

101. The evidence shows that the Plaintiffs vacated the premises by 25 November 2019, in accordance with the notice previously given. At that moment, the contractual obligation to pay crystallised. In line with Article 1139(b) of the Seychelles Civil Code, the Defendant was thereby in default without the necessity of a further *mise en demeure*.

102. This intention is further confirmed by the conduct of the parties. During the years 2012 to 2019, the Defendant benefitted from a personal rent of R40,000 per month under the same agreement. He made no protest that such rent required a prior demand before becoming due. The interpretation urged by the Defendant – that a *mise en demeure* was required before his repayment obligation arose – is inconsistent with the parties’ consistent execution of their contract. The Court of Appeal in **Georges v Benoit & Ors (CS 95/2016) [2018] SCSC 8079** reaffirmed that a formal demand is not always necessary in cases where the contract itself provides for automatic default.

103. In the present case, I find that the parties intended, through the MPA, that the Defendant’s obligation to pay the sum of R9,500,000 would arise **immediately upon the Plaintiffs’ vacating the premises**. By virtue of Article 1139 of the Civil Code, this constituted an automatic default without the necessity of a *mise en demeure*.

⁵ **1146.**(1) Damages are due only when the debtor is under notice to fulfil the obligation, provided that the thing which the debtor had undertaken to give or to do could only be given or done within a period of time which the debtor has let pass.

104. The letters issued by the Plaintiffs' counsel in August 2019 and February 2021 are therefore to be viewed not as constitutive *mise en demeure*, but rather as **reminders of an obligation that had already matured by contract**. Consequently, interest is to be computed from 25 November 2019, the date when the premises were vacated and the debt became due.

Commercial rate of interest

105. The Plaintiffs contended that the Defendant, having failed to pay the balancing sum within the period stipulated in the MPA, is liable for interest at the commercial rate. The Defendant maintains that if interest is to be awarded, it should be confined to the legal rate provided under the Civil Code.

106. Clause 7(c) of the MPA specifies that the Defendant was to pay SCR 9,500,000 within three months of the Plaintiffs' vacation of the Providence property, and that in default he would be liable to pay "interest at the commercial rate." The agreement does not, however, define the percentage of that rate.

107. Where the parties have stipulated for a commercial rate, but have not fixed its percentage, the Court is therefore required to determine which rate is appropriate in the present circumstances.

108. The Interest Act (Chapter 199) of Seychelles states:

"Whenever the rate of interest shall not be fixed by contract, the legal rate of interest shall be four per centum per annum in civil or commercial matter."

109. Article 1907 of the Civil Code of Seychelles further confirms that by stating that;

"(1) Interest is either legal or conventional.

(2) Legal interest is prescribed by legislation.

(3) Conventional interest may exceed the legal interest where that is not prohibited by legislation.

(4) A conventional rate of interest must be agreed on in writing.”

110. In Seychelles law, there is no statutory percentage for commercial rate of interest. So, if a contract merely states “commercial rate” but does not specify the percentage, then as interpreted by the Interest Act, the legal rate applies by default.

SPECIAL DAMAGES

111. Article 1153(4) of the Seychelles Civil Code states the following;

A creditor who sustains special damage caused by a debtor acting in bad faith, and not merely by reason of delay, may obtain damages in addition to those for delayed performance.

112. Special damages have been discussed by Bowen L.J in *Ratcliffe v Evans* [1892] 2Q.B. 523 at page 528 in the following words;

'Lest we should be led astray in such a matter by mere words, it is desirable to recollect that the term "special damage," which is found for centuries in the books, is not always used with reference to similar subject-matter, nor in the same context. At times (both in the law of tort and contract) it is employed to denote that damage arising out of the special circumstances of the case which, if properly pleaded, may be superadded to the general damage which the law implies in every breach of contract and every infringement of an absolute right: see Ashby v White. (1) In all such cases the law presumes that some damage will flow in the ordinary course of things from the mere invasion of the plaintiff's rights and calls it general damages. Special damage in such a context means the particular damage (beyond the general damage), which results from the particular circumstances of the case, and of the plaintiff's claim to be compensated, for which he ought to give warning in his pleadings in order that there may be no surprise at the trial.'

113. Special damages are damages claimed by a party, representing out of pocket expenses or other outgoings incurred by a party on account of injury or loss suffered by reason of the default of a defendant. These damages are not speculative or subjective. They are not general damages which are determined by the court.
114. The Plaintiffs, in addition to the principal claim of SCR 9.5 million, prayed for an award of **SCR 100,000 as special damages**, alleging that they incurred various expenses and losses as a result of the Defendant's refusal to pay them upon vacating the Providence premises in November 2019. The sum was said to cover costs relating to relocation, legal and administrative expenses, and inconvenience caused by the Defendant's conduct.
115. In support of this claim, the 3rd Plaintiff, Mr. Senthilkumar, testified that after they vacated the Providence warehouse on 25 November 2019, they were forced to find alternative accommodation for their business, to engage legal counsel repeatedly, and to incur other financial charges because the Defendant persistently refused to pay the agreed SCR 9.5 million. He added that this refusal strained their finances and disrupted their affairs.
116. Counsel for the Plaintiffs submitted that the Defendant had acted in bad faith, deliberately withholding payment despite having benefitted from the agreements. It was argued that under **Article 1153(4) of the Civil Code**, a creditor may recover damages where the debtor has acted in bad faith. Counsel therefore urged the Court to award the claimed SCR 100,000 as fair compensation.
117. The Court, however, observes that **no documentary evidence was tendered** in support of this claim. There were no receipts showing moving costs, no invoices from lawyers or service providers, no bank statements evidencing actual disbursements, and no written records substantiating the alleged loss. The 3rd Plaintiff's testimony remained at the level of general assertion. In cross-examination, he admitted that no documentary proof of these expenses had been filed.
118. Article 1315 of the Civil Code provides: "*A person who demands the performance of an obligation shall be bound to prove it.*" This applies with equal force to damages. The jurisprudence of this Court has consistently required that special damages be **specifically**

pleaded and strictly proved. In *Royal Imports v Naidu* (2013 SCSC 100), the Court held that unproven assertions cannot ground an award of special damages. In *Hallock v d'Offay* (2001 SLR 144), the Court dismissed a claim where the plaintiff failed to produce receipts for alleged financial loss.

119. In the present case, the Plaintiffs have not met that threshold. Although the Plaintiffs pleaded the sum of SCR 100,000, they produced no supporting proof. This Court cannot speculate or substitute sympathy for evidence. The law requires strict proof because special damages represent actual, quantifiable pecuniary loss. Without documentary corroboration or detailed testimony quantifying specific heads of loss, the claim cannot succeed.
120. It is true that the Defendant's conduct in delaying payment and disputing the clear terms of the MPA reveals bad faith. However, the proper remedy for such bad faith is already available through the award of interest on the principal sum. To additionally grant unproven special damages would be contrary to established principles of law.
121. Accordingly, the Court dismisses the Plaintiffs' claim for **SCR 100,000 as special damages** for want of proof.

Counterclaim for accounting and set-off

122. The Defendant's counter-claim for set-off and accounting rests on the allegation that the Plaintiffs failed to disclose certain overseas assets of the 4th Plaintiff, and that until a full accounting is rendered, his liability of SCR 9.5 million under the MPA cannot be enforced. He further claims that any entitlement he may have to such assets should be set-off against his liability. This argument fails both in law and in fact.
123. First, the Defendant has produced no credible evidence of undisclosed overseas assets. He served as director of the 4th Plaintiff from up to 2009, with full control of its affairs, and yet never raised such a claim during that period. His allegation arises only after proceedings commenced and remains wholly speculative.

124. Secondly, the parties executed two definitive agreements: the 2009 Agreement, which distributed the moveable, and the 2012/2013 MPA, which distributed the immoveable including the Providence property. Both were signed by all siblings, and the MPA was duly stamped and registered. These agreements constitute a final settlement of the patrimony. In the absence of fraud, error, or omission, they cannot be reopened by a demand for fresh accounting. None of those grounds has been established here.

125. Odgers' principles of pleading and practice in civil actions in the High Court of Justice

(Twenty-second edition) states the following at page 201;

'and the demand intended to be set off must have been liquidated and not in a nature of a

Penalty. The debt must have been due from and to the same parties in the same right (vide:

Reeves V .Pope (1914) 2 K.B 284)'.

126. Stuart Sime (A practical approach to Civil Procedure – Twenty- Fifth Edition) states the

following at page 155 paragraph 14.33;

'There is no need for the transaction giving rise to the debts to be connected other than through the parties. They need not be debts, strictly so called, but may sound in damages provided they are capable of being ascertained with precision at the time of the Application (**Morley V Inglis (1837) 4 Bing NC 58**, applied in **Axel Johnson petroleum AB V MG Mineral Group (1992) 1 WLR 270**).

127. The above authors and authorities shows that set-off (compensation légale) under civil law requires reciprocal debts that are certain, liquid, and due. The Defendant's liability of SCR

9.5 million is fixed, liquid, and due under Clause 7(c) of the MPA. By contrast, the alleged overseas assets have not been proven, valued, or shown to create any reciprocal debt. Without such certainty, there can be no set-off in law. In my view even the witness Dharmarajan Pillay being the person who helped in the drafting of the said agreement was highly speculative and at most relied on hearsay evidence in his testimony.

128. Accordingly, the counterclaim for set-off and accounting is dismissed.

129. As a result of the above, this Court shall make the following Orders;

- (i) That the defendant shall pay the sum of SCR 9,500,000 to the Plaintiffs with interest at the legal rate of 4 % per annum as from the 25th November 2019 being the date that the Plaintiffs had vacated the said premises at providence
- (ii) I accordingly dismiss the Counter- Claim.
- (iii) I accordingly award cost in favour of the Plaintiff

130. Both parties have a right of Appeal within 30 days from the date of this judgment.

Dated, signed and delivered at Ile du Port on the 18th September 2025.


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D. Esparon J.

