

BULRAMAYA V v PANJANADEN M

2011 SCJ 194

RECORD NO. 70880

IN THE SUPREME COURT OF MAURITIUS

In the matter of:

Vassoodayva Bulramaya

Plaintiff

v.

Moonsamy Panjanaden

Defendant

In the presence of:

- 1. The District Council of Moka/Flacq**
- 2. The Permanent Secretary, Ministry of **Environment**
and Quality of Life**
- 3. The Commissioner of Police**

Co-Defendants

JUDGMENT

The above named plaintiff is the owner and occupier of a residential building at Royal Road, Bel Air, Rivière Sèche. The defendant is the owner of a three level building which adjoins plaintiff's property. The plaintiff complained that the defendant had been renting out the second floor of his building as a hall for the holding of parties including wedding parties. These parties would be held every weekend and also on weekdays and would be prolonged until late hours. At these parties, loud music through loudspeakers would be played, causing great inconvenience to and also constituting a health hazard for the plaintiff and his family. According to the plaintiff, the defendant had also caused spotlights to be installed at the hall and the spotlights would light up plaintiff's house all night long, causing great discomfort to plaintiff and his family.

The complaints of plaintiff are denied by the defendant who states that the plaintiff initiated the action out of spite and in bad faith in order to hurt, humiliate and paralyse the defendant as a family and businessman and on several occasions tried to deliberately create problems and harm the defendant.

It is not disputed that following an application by the plaintiff to the Judge in Chambers, an interim order in the nature of an injunction was issued on 19 October 1999. The defendant was restrained and prohibited from making use of loud speakers, microphones or any musical instrument and ordered to stop directing spotlights on plaintiff's house at night. The interim order was discharged on 22 June 2000. On or about 18 November 2002, the plaintiff made a second application before the Judge in Chambers for an order "*restraining and prohibiting the defendant from making abusive use of loud speakers, microphone or any musical instrument in a highly residential area*". The second application was set aside by the Judge in Chambers.

By the time the present matter came for trial, the defendant had ceased the business of renting out his property for parties. There is evidence that Mandabam Hall which defendant operated on his property, ceased business as from 30 June 2007. Plaintiff therefore no longer seeks the perpetual orders restraining and prohibiting the defendant from using loudspeakers and spotlights. There remains to be considered the plaintiff's claim for Rs 600,000 as damages for prejudice caused to him.

The defendant, on the other hand, has entered a counterclaim for Rs 1,273,000 as damages which he suffered as a result of the "*faute*" of the plaintiff in initiating the applications before the Judge in Chambers and in harassing him and threatening him even in the yard of the Supreme Court. In the contention of the defendant, the plaintiff acted out of spite and in bad faith to cause prejudice to him.

On the issue of damages, the plaintiff deponed as to the inconvenience and damage caused to his health as a result of the rental business undertaken by the defendant as from 1999. Plaintiff gave several declarations to the police as he found the noise unbearable and suffered headaches as a result. On one instance, he stated that he even passed out and had to be taken to the hospital.

Following the complaints of the plaintiff, noise surveys were carried out by officers of the Ministry of **Environment** on 29 July 2001, 21 November 2004, 27 March 2005 and 27 August 2005 respectively, on which days parties were being held at Mandabam Hall. The purpose of the surveys was to ascertain whether the noise level coming from the Hall was above the permissible limits set down in the **Environmental** Standards for Noise Regulations 1997 [**Government Notice No. 17 of 1997**]. On each of the four occasions when wedding parties were actually being held at the Hall, the noise level was found to be within the permissible legal limits ranging between 52.1 to 57.2 decibels, 60 decibels being the permissible limit. Nevertheless on 12 May 2005, a notice pursuant to section 70 of the **Environment** Protection Act 2002 was issued by the Ministry of **Environment** and the defendant was required to submit for the approval of the Ministry a written programme of measures which he intended to take to remedy nuisance caused due to noise while there was activity ongoing in the Hall. On 13 October 2006, the Ministry of Health and Quality of Life wrote to the proxy of the defendant and requested the latter to render the Hall soundproof by causing all openings on the rear side of the Hall facing the plaintiff's premises to be fitted with double glazing windows, by providing soundproof doors with suitable insulating materials in the Hall and by filling all the holes in the rear external wall of the building with concrete or other suitable soundproof material.

Dr. Dawood Mahomed Hansrod, an ENT specialist, deponed to the effect that the plaintiff followed treatment for deafness with him since 2000. Dr. Hansrod pointed out that the plaintiff was not made deaf by the noise coming from the Hall but had developed a condition known as perceptive deafness for having worked many years in a sugar factory in the days when ear protection was unknown. A person suffering from perceptive deafness hears noises louder than a normal person and noise of 60 decibels would sound like 80 decibels to him. Dr. Hansrod also was of the view that 45 to 50 decibels would constitute the upper limit of tolerance for the human ears.

The defendant was represented in Court by his proxy, Mr. Rassangum Panjanaden. The building where Mandabam Hall was, is owned by the defendant. However, the licence to operate the Hall was in the name of Mr. Rassangum Panjanaden, the defendant's brother. Mr. Rassangum Panjanaden explained that although he was never found to have contravened any **environmental** law or any law, for that matter, yet the plaintiff harassed him whenever there were activities held at the Hall. He had taken all measures to abate any noise which might cause inconvenience to the plaintiff and yet the

latter continued to harass him. Finally when he was required to undertake further sound proofing, he abandoned the rental business altogether.

The granting of the interim order in the nature of an injunction on 19 October 1999 caused great loss to his business. As a result as the interim order, Mr. Rassangum Panjanaden had to refund some Rs 725,000 to Rs 735,000 to customers who had booked the Hall but who had to look for other venues. He also claims Rs 500,000 as moral damages.

On account of the perceptive deafness of the plaintiff, as deponed to by Dr. Hansrod, it may be argued that the persistent complaints of the plaintiff were subjective. However, in view of Dr. Hansrod's expert opinion that 40 to 50 decibels constitute the upper limit of tolerance for the human ears, there was, in my view, substance in the persistent complaints of the plaintiff. Indeed, according to the environmental noise standards set down in the Environment Protection (Environmental Standards for Noise) Regulations 1997, neighbourhood noise at one metre from the source of the noise and at 1.5 metres above the ground or floor level should not be more than 60 decibels from 7.00 to 18 hours, 55 decibels from 18.00 to 21.00 hours and 50 decibels from 21.00 to 7.00 hours. Now although the defendant's proxy stated that he was never contravened for breach of any environmental law, yet it appears that on Sunday 25 March 2005 when the officer of the Ministry of Environment carried out a check on the premises, it was found that the noise level at 20.15 hours was 56.4 decibels which was above the permissible limit of 55 decibels set down in the 1997 Regulations.

Plaintiff's case was also that the noise persisted beyond permissible hours and that spotlights were placed in such manner as to disturb him and his family. On these complaints, there is no independent evidence although several declarations were given to the police and the police, it appeared, called on the spot. In fact, according to the defendant's proxy, the police only found two fluorescent tubes which lighted a parking at the rear of defendant's building. The plaintiff's complaints on this score are therefore on a balance of probabilities not proved.

In the result, on the evidence adduced I find that the complaints of the plaintiff that he was inconvenienced by noise from Mandabam Hall which was run by defendant's proxy are well founded. However, the officers of the Ministry of Environment went on the

spot on four occasions and on one only occasion, they found that the noise level was above the permissible limit and this by 1.6 decibel. When the legislator has deemed it fit to legislate and prescribe **environmental** noise standards and the defendant has been shown to have observed the prescribed standards on three out of four occasions, it cannot be said that the defendant has committed a "*faute*".

Furthermore, in the light of the evidence adduced, it has not been proved that the plaintiff acted out of bad faith in denouncing the defendant's activities. On the contrary, there is evidence that plaintiff was inconvenienced by noise which bordered the permissible limit of noise level.

For the reasons given above, I find that the claims for damages by both plaintiff and defendant have not been made out. The present plaint and counterclaim are dismissed. I make no order as to costs.

A. F. Chui Yew Cheong
Judge

21 June 2011

For Plaintiff:

Mr. Attorney T. M. Ponambalum
Mr. J. Beeharry, of Counsel

For Defendant:

Mr. M. Mardemootoo, S.A.
Mr. N. Pillay, of Counsel

For Co-Defendants Nos. 2 & 3:

Chief State Attorney
Mrs. C. Green-Jokhoo, Principal State Counsel

