

The application before the court is to set aside the decree and the court has to consider whether the Defendants/Respondents were served or not and secondly whether there is any merit in the case in order to proceed ahead.

The court has looked at the Affidavit of service which was filed by the court Process server who gave a very detailed explanation of what happened particularly explaining that he was referred to one Isaac, supposed to be the Manager of BDS Limited at Hannington road and that he would not sign the documents but nevertheless accepted the documents pointing out that he would seek advise from his Lawyers before he signs anything.

The court is satisfied that the service of documents at the Company's place of business or registered address is conclusive. As far as the merits are concerned, the Defendants allege that the Plaintiffs have not shown any consideration and that the Plaintiffs were informed that they had to serve any proceedings on their Lawyers.

The claim was brought on the dishonored cheques and the plaintiffs did not have to show any consideration and if the cheque was dishonored the defendants did not write back to the Plaintiff explaining why the cheque had been dishonored or any other proposals to make sure that the cheque was met in due course.

In those circumstances, the court is satisfied that this is not a case where the Application should be allowed but nevertheless in view of the large sums of monies claimed or in issue, the court will grant a conditional leave to defend and set aside the orders already made subject to the Defendant's/Applicant's paying the sum of 225,000 dollars into the court within two (2) weeks. If the Defendants/Applicants have any problem in making payment into the court because their client is out of the country, then they should re-apply to the court for extension of time or communicate with the other side informing them of their problems so that the extension of time may be given by mutual consent rather than coming back to the court. If at the end of two weeks the sum of 225,000 dollars is not paid to the court then the conditional leave will be discharged, the previous orders will be revived and the Plaintiffs will be free to go ahead with the respective execution of their judgment/order.

Cost of this Application to be paid by the Defendants to the Plaintiff.

Anup Singh Choudry

Judge

21/10/2008