

**INSTITUTE OF CHARTERED ACCOUNTANTS OF SRI LANKA
v
INSTITUTE OF CHARTERED PUBLIC ACCOUNTANTS AND
OTHERS**

COURT OF APPEAL
WIMALACHANDRA, J.
CALA 388/2005
DC COLOMBO 7262/SPL
JULY 3, 15, 2006
AUGUST 4, 2006

Institute of Chartered Accountants Act incorporated under Act No. 23 of 1959 – section 10, section 22 (as amended) – Institute of Chartered Public Accountants established under the Companies Act No. 17 of 1982 – section 19(2) – Right to use the term “Chartered” – Is State approval required for the use of “Chartered” by any person – Is “Chartered” a restrictive word under the Companies Act – Interim injunction – Prima facie case.

The plaintiff – Institute of Chartered Accountants of Sri Lanka – sought an interim injunction restraining the 1st defendant – Institute of Chartered Public Accountants from wrongfully, unlawfully, and illegally establishing that the 1st defendant company has the right, privilege and authority to confer on its members the right to use the term “Chartered Public Accountants” and its abbreviation “CAA”. The defendant company is an institution established under the Companies Act. The District Court refused the relief sought on the basis that the plaintiff is guilty of laches, that the plaintiff does not have the exclusive right to use the term “Chartered”, that the 1st defendant company has registered the name of “Institute of Chartered Public Accountants under the Companies Act, the word “Public” exclusively belongs to the 1st defendant company.

On leave being sought, with leave being granted,

Held:

- (1) The Institute of Chartered Accountants Act No. 23 of 1959 (ICA Act) established the Institute of Chartered Accountants of Sri Lanka, S22(1) and provides that no person, not being a member of the Institute shall take and use the title “Chartered Accountants”. Chartered Accountant is a title recognised by Parliament as a professional qualification in the profession of practicing accountancy.

- (2) In terms of the ICA Act the plaintiff is the only body that has been established by an Act of Parliament relating to the practice of accountancy in Sri Lanka as "Chartered Accountants", whereas the 1st defendant company is an Institute established under the Companies Act.

Per Wimalachandra, J:

"It can be seen that the use of the title "Chartered Accountant" is not one which can be used arbitrarily and capriciously to the liking of a business or a company exploiting the same for personal gain. The name "Institute of Chartered Public Accountants" is a calculated attempt to show the public that the 1st defendant is an organization that has the state patronage to confer the "Chartered Public Accountants" similar in status to the plaintiff."

APPLICATION for leave to appeal from an order of the District Court of Colombo with leave being granted.

K. Kanag Iswaran, PC with Chanaka de Silva and Aruna Samarajeewa for plaintiff-petitioner.

A.P. Niles with Saman de Silva and Arossha de Silva for 1st defendant-respondent.

Cur.adv.vult

March 16, 2007

WIMALACHANDRA, J.

This is an application for leave to appeal from the Order of the learned District Judge of Colombo dated 19.9.2006. By that Order the learned District Judge refused to grant the interim-injunctions prayed for by the plaintiff-petitioner (Plaintiff) in prayers (j), (k), (l) and (m) of the plaint.

Briefly, the facts are as follows:

The plaintiff is a body corporate established under the Institute of Chartered Accountants Act No. 23 of 1959 (as amended) having the capacity to sue and be sued in its corporate name. The 1st defendant-respondent (1st defendant) is a company incorporated under the Companies Act No. 17 of 1982. The 2nd to 8th defendants-respondents (2nd to 8th defendants) are the directors of the 1st defendant-company.

The main complaint of the plaintiff is that the 1st to 8th defendants by acting in violation of the express provisions in the Institute of

Chartered Accountants of Sri Lanka Act No. 23 of 1959, have attempted wrongfully, unlawfully and illegally to establish, represent and hold that the 1st defendant-company has the right, privilege and authority to confer on its members the right to use the term "Chartered Public Accountant" and its abbreviation "CPA".

The plaintiff instituted this action in the District Court of Colombo against the defendants *inter alia* for the declaratory reliefs and the permanent injunctions prayed for in the plaint.

The plaintiff also sought an interim-injunction restraining the 1st defendant, its directors, servants, agents and all those acting under and/or through them and/or from and on its behalf from doing any of the matters referred to in the aforesaid declarations and also sought an enjoining-order pending the determination of the interim-injunctions prayed for by the plaintiff.

The 1st to 8th defendants filed objections to the application for the interim-injunctions. When the application for the aforesaid interim-injunctions were taken up for inquiry, the parties agreed to tender written-submissions and invited the Court to decide the matter on the written-submissions filed by the parties. Thereafter, the learned Judge reserved his Order for 15.9.2005 and subsequently delivered the Order on 19.9.2005 refusing the grant of the interim-injunctions prayed for by the plaintiff on the basis that the plaintiff is guilty of laches, the plaintiff does not have the exclusive right to use the term "Chartered", the 1st defendant-company has registered the name "Institute of Chartered Public Accountants" under the Companies Act, the names of the plaintiff and the 1st defendant-company are distinct in that the word "Public" exclusively belongs to the 1st defendant-company and there are well qualified personnel in the field of accountancy in the Board of Directors of the 1st defendant-company. The learned District Judge also held that the plaintiff has failed to establish a *prime-facie* case in its favour.

When this matter was taken up before this Court on 13.10.2005, leave to appeal against the said Order of the District Judge was granted by consent of the parties. The Counsel for the defendants consenting to the grant of leave to appeal against the order of the District Judge itself shows that there is a serious matter to be looked into in this Application.

The main issue in this application is whether the 1st to 8th defendants are acting in violation of the provisions of the Institute of Chartered Accountants of Sri Lanka Act No. 23 of 1959 and whether the 1st

defendant has the right to use the term "Chartered" as the 1st defendant-company was registered as the Institute of Chartered Public Accountants and its abbreviation "CPA", under the Companies Act.

The question now arises as to whether State approval is required for the use of the word "Chartered" by any person. As pointed out by the learned President's Counsel, this does not require factual evidence. Hence, this is a question of law that has to be determined by the Court. The learned Counsel directed the question, "does the law relating to Corporations in Sri Lanka, permit the use of the word "Chartered" as part of the name of the 1st defendant without the specific sanction for the use of that word being granted by the Parliament."

The Institute of Chartered Accountants Act No. 23 of 1959 (ICA Act) established the Institute of Chartered Accountants of Sri Lanka. Section 22(i) of the said Act provides that "No person, not being a member of the Institute shall take or use the title "Chartered Accountants". Thus, it will be seen that 'Chartered Accountants' is the title recognised by the Parliament as a professional qualification in the profession of practicing accountancy. In the circumstances, can the 1st defendant-company use the term 'Chartered' legally without the authority of the Parliament? In terms of the ICA Act, the plaintiff is the only body that has been established by an Act of Parliament relating to the practice of accountancy in Sri Lanka as "Chartered Accountants", whereas, the 1st defendant-company is an Institution established under the Companies Act.

The learned Counsel for the defendants submitted that the Registrar of Companies had ruled that the word 'Chartered' is not a restrictive word under the Companies Act. The learned Counsel submitted that hence, the ICA Act does not confer any exclusive right to the plaintiff to use the word 'Chartered'.

At this stage this Court is not going to decide the plaintiff's action but is only concerned whether the learned District Judge erred in law when he made the Order dated 19.9.2005 refusing to grant the interim injunction prayed for by the plaintiff. In every application for an interim-injunction pending the determination of the action, the Court must be satisfied that the party seeking the interim-injunction has a *prima facie* case. He must satisfy Court that there is a serious question to be tried at the hearing and there is a probability that he is entitled to the relief claimed by him.

Kerr on injunctions, 6th Edition at page 2 states thus:

"It is enough if he can show that he has a fair question to raise as to the existence of the right he alleges".

The plaintiff has been established by an Act of Parliament to engage in the practice of accountancy as Chartered Accountants. In terms of section 22 (1) of the said Act, no person not being a member of the Institute shall take or use the title "Chartered Accountants". The plaintiff seeking an interim-injunction is not required to establish his case. All he has to show is that he has a legal right and that there is an invasion of that right. At this stage the Court is not required to resolve the disputed question of law or question of fact which will have to be decided at the trial. It is to be noted that the *status quo* which is sought to be protected is what existed at the beginning of the controversy.

In the instant case, the plaintiff is not required to prove his case but he must only show that he has a fair question to raise as to the existence of the legal right. He must show that the interim-injunction sought by him is necessary to preserve the rights claimed by the plaintiff.

Moreover, the 9th defendant, the Registrar of Companies in his answer dated 27.6.2005 has admitted paragraphs 39, and 40 of the plaint. Paragraph 39 of the plaint states thus:

"The plaintiff states that the 1st defendant, not having been incorporated by the State and not having any relationship or patronage of the State, has no legal right and/or privilege and/or entitlement to use the term 'Chartered' in its name. The plaintiff further states that the 1st defendant is wrongfully and unlawfully using the term 'Chartered' in its name and is wrongfully and unlawfully using the name Institute of Chartered Public Accountants."

Besides, the Registrar of Companies, the 9th defendant has admitted paragraph 41(ii) of the plaint, thereby, admitting that the 1st defendant has not received the consent of the Minister to use the term 'Chartered' and/or to use the name "Institute of Chartered Public Accountants" and accordingly, it violates the provisions of section 19(2) of the Companies Act No. 17 of 1982.

The learned District Judge has failed to address his mind to the aforesaid admissions made by the Registrar of Companies in his

answer. The learned Judge has failed to consider the specific provisions of section 22(i) of the Institute of Chartered Accountants Act No. 23 of 1959 which states that 'No person, not being a member of the Institute (the Plaintiff) shall take the title "Chartered Accountant". The learned Judge has misdirected himself in coming to the conclusion that the plaintiff and the 1st defendant-company are two distinct entities as the word 'Public' appears in the name of the 1st defendant. The learned Judge has also failed to understand that the plaintiff's case is not based on the confusion of names but on illegality, as the name of the 1st defendant violates the provisions of section 22(i) of the ICA Act. This fact has been admitted by the 9th defendant in his answer (vide paragraph 3 of the answer). The learned District Judge was mainly concerned with the question whether the plaintiff has the exclusive right to use the term 'Chartered'. The learned District judge has not considered and looked closely at the effect of section 22(i) of the ICA Act. Section 22(i) provides that, no person, not being a member of the Institute (plaintiff) shall take or use the title "Chartered Accountant" or any addition mentioned in section 6 of the ICA Act. Hence, it can be seen that the use of the title "Chartered Accountant" is not one which can be used arbitrarily and capriciously to the liking of a businessman or a company exploiting the same for personal gain. In my view, using the term 'Public' in between the term "Chartered Accountants" by the 1st defendant who confers the title Chartered Public Accountants to practice as "Chartered Accountants" appears contrary to the section 22(i) of the ICA Act. The name "Institute of Chartered Public Accountants" is a calculated attempt to show the public that the 1st defendant is an organisation that has the State patronage to confer the title "Chartered Public Accountants" similar in status to the plaintiff.

In deciding whether the plaintiff has a *prima facie* case, all that the Court has to see is, that on the face of it whether the plaintiff has a case which needs consideration and which is not bound to fail by some apparent defect. In order to decide whether the plaintiff has a *prima facie* case, the Court is not required to come to a conclusion that the plaintiff is entitled to relief by examining closely the plaintiff's case on its merits.

The facts and circumstances of this case show that there is an existence of a legal right in favour of the plaintiff. The plaintiff has shown a *prima facie* case, in that in all probability obtaining relief in favour of the plaintiff on the material placed before Court. In this case there is no dispute as to the legal right of the plaintiff. When the plaintiff's legal right

is not being disputed and the fact of its violation is denied, the best course for the Court is to grant the injunction. However, before granting the injunction, the Court must consider in whose favour the balance of convenience lies.

The burden lies upon the plaintiff, as the person applying for the injunction, of showing that his inconvenience exceeds that of the defendants.

Section 9(2) of the ICA Act states the duties conferred upon the plaintiff. It appears that the plaintiff has a bounden duty to maintain a very high professional and accounting standard in the field of accountancy.

The defendants in their statement of objections have claimed that the 1st defendant is a non-profit organisation (Paragraph 18 of the statement of objections). Hence, no loss of profit can arise to the 1st defendant from the grant of an injunction.

The 1st defendant by claiming to confer a professional qualification of the "Chartered Public Accountant" is attempting to represent wrongfully to the public that it provides a professional qualification equivalent to the professional qualifications of "Chartered Accountant" granted by the plaintiff. The 1st defendant also by claiming to confer the abbreviation 'CPA' is attempting to portray and represent to the public and to the world at large that it provides professional qualifications equivalent to or in par with the Certified Public Accountants (CPA) qualification granted by the United States of America.

In these circumstances, it appears that continuance of the business of the defendant tends to violate the provisions of section 19(2) of the Companies Act and the provisions of section 22(i) of the ICA Act. Where the plaintiff has established that he has a right which has been infringed and further infringement is threatened, the plaintiff is entitled to an interim-injunction.

In my view an interim-injunction will not inflict a greater injury on the 1st defendant as the 1st defendant has admitted that it is not a profit making body.

Kerr on injunctions, 6th Edition at pp. 25 states thus:

"If on the other hand, it appears that greater damage would arise to the plaintiff by withholding the injunction, in the event of the legal right proving to be in his favour, than to the

defendant by granting the injunction, in the event of the injunction proving afterwards to have been wrongly granted, the injunction will issue."

In the instant case, the Registrar of Companies who had granted permission to register the 1st defendant is clearly of the view that the 1st defendant is in violation of the provisions of section 19(2) of the Companies Act as previously stated. The material issues relevant to this application are whether the 1st defendant is entitled to use the name "Institute of Chartered Public Accountants" and confer the title "Chartered Public Accountant" and its abbreviation "CPA". In view of the provisions of section 19(2) of the Companies Act and section 22(i) of the ICA Act, it appears that the defendants are acting unlawfully in using the term 'Chartered'. The learned Judge has not considered the loss and harm that will be caused to the plaintiff and there will be an erosion in the standards of accounting in Sri Lanka. The learned District Judge has not addressed his mind to the dangerous precedent which the 1st defendant is trying to establish.

The learned District Judge also held that the application for interim-injunction had been made by the plaintiff after the lapse of a considerable period of time. The learned District Judge has stated that the 1st defendant made the application to register its name in May 2003 and the plaintiff has filed this action on 17.3.2005 and there was a delay of nearly two years and held it is fatal to the plaintiff's application for an interim-injunction. The learned Judge has not considered the explanation given by the plaintiff. The plaintiff's position is that it had come to know about the 1st defendant on a newspaper advertisement which appeared on 11.2.2005, by which the 1st defendant advertised that it is offering an educational programme on accountancy and successful candidates will be awarded the title "Chartered Public Accountant" with its abbreviation "CPA". After making inquiries about the said advertisement, the plaintiff for the first time had come to know about the activities of the 1st defendant. It is only thereafter the plaintiff had instituted this action in the District Court of Colombo on 17.3.2005. Even though the plaintiff has explained the delay, the learned District Judge has not addressed his mind to the explanation given by the plaintiff.

On the question of delay, Kerr on injunction (6th edition) P.43 observes:

"Mere delay will not be fatal to the application if no mischief is caused thereby to the defendant."

It lies upon the defendant to show that as a result of the delay on the part of the plaintiff, a right has been lost or his right has been affected. Where the delay has not prejudiced the defendant, the Court should not on account of mere delay of the plaintiff, hold against the plaintiff. In the instant case, the plaintiff, in my view, has given a plausible explanation for the delay. In any event, it appears that the 1st defendant has violated section 22(i) of the ICA Act and section 19(2) of the Companies Act, hence, even if there is any delay on the part of the plaintiff, the act committed by the 1st defendant remains illegal and in such situation delay in detecting such illegal acts shall not prevent the plaintiff from taking legal action against the defendant. If a wrongful act is a continuing one, the person wronged is normally entitled to an injunction against the person who causes harm to him, even if there is delay in filing action.

For the reasons stated above, I set aside the Order of the learned District Judge of Colombo dated 19.9.2005 and I make order granting the interim-injunctions prayed for in paragraph (i), (j) and (k) of the prayer to the plaint (English copy of the plaint). Accordingly the Appeal is allowed, with costs.

Appeal allowed.