

IN THE FIJI COURT OF APPEAL
CIVIL JURISDICTION

CIVIL APPEAL NO. 12 OF 1989

BETWEEN:

SURESH SUSHIL CHANDRA CHARAN
& ANURADHA CHARAN

(Appellants)

- and -

SUVA CITY COUNCIL

(Respondent)

Mr Suresh Charan in person
No appearance by second Appellant
Mr V Parmandandam for the Respondent

Date of Hearing - 17 August, 1989
Delivery of Judgment - 27 October, 1989

JUDGMENT

The Respondent brought an action against the Appellants seeking vacant possession of certain premises. The appellants were represented by Dr Sahu Khan. Rooney J dismissed the action with costs to the appellants.

Dr Sahu Khan rendered his Bill of Costs to the appellants for \$1200 plus a disbursement of \$130 for travelling expenses from Ba to Suva and return.

In their Bill of Costs for taxation the appellants included (inter alia) claims for the \$130 and the \$1,200.

The Chief Registrar disallowed the \$130 considering it a solicitor and client disbursement but allowed \$850 of the \$1,200 claim.

Both the appellants and the Respondent sought a Review of the Chief Registrar's taxation of costs. Jesuratnam, J. confirmed the disallowance of the \$130 and the allowance of \$850. He rejected the objections from both parties and allowed neither party costs of their review.

The appellants subsequently applied for an order granting them interest on the \$130 and \$850. Jesuratnam, J. considered the issues and dismissed the application.

The appellants then appealed to this court against:-

- 1) The Chief Registrar's disallowance of the claim for the \$130;
- 2) Failure of the learned Judge to allow them costs of the review; and
- 3) Failure to grant them interest on the \$130 and \$850 from the date of judgment.

We can readily dispose of the complaint about the learned judge's failure to grant the appellants costs. He had a discretion whether or not to allow costs. Both parties had failed to establish their objections at the review and they had to meet their own costs. This was a proper exercise of the learned judge's discretion. The appellant's appeal on this issue is without any merit and is dismissed.

One of the problems in this matter is the fact that some of the time the Appellants were represented by solicitor and Counsel and some of the time they acted in person taking advice from Solicitors and Counsel. The bill of costs was dealt with in that light. At the time the expense of \$130 was incurred by Dr Sahu Khan the appellants were obviously not acting in person. It was not an expense they could claim from the Respondents on a party-party taxation.

Order 62 Rule 27 can have no application. Sub-rule (1) gives a litigant in person who does work himself the costs that would have been incurred if Counsel or Solicitor had done the work. But the Counsel did do the work, not the Appellants.

Jesuratnam, J. was right in rejecting this item in his review. The Appellant's appeal in respect of that item is also dismissed.

Turning now to the question of interest, as to the \$130

that does not rise in any event, since we have dismissed the claim to that sum.

As to the \$850, the assessment of that sum by the Chief Registrar, which has been upheld by Jesuratnam, J. has not been challenged by the Respondent by appeal to this Court. We therefore have not been called upon to consider whether or not the allowance of that sum is correct in the circumstances of this case. We are not to be taken from what follows to be expressing any view as to that. We proceed to deal with the question of interest on the basis that the Appellants have an order for costs which have been assessed by the proper officer in a total sum which includes the \$850.00.

The Imperial Judgments Act 1838 (S.17), which is in force in Fiji by virtue of Section 22 of the Supreme Court Act, Cap 13 provides for interest to be paid on a judgment debt. In Hunt v. R.M. Douglas (Roofing) Ltd. 1988 3AER 823 that Act was considered by the House of Lords. Lord Ackner on p. 825 recites the fact that until the 1838 Act interest on costs could not be recovered. Section 17 of that Act provides that every judgment debt carries interest at the statutory rate from the time of entering up judgment. The statutory rate was 4% p.a. Subsequent revisions of that rate have no application to Fiji.

It was also settled in that case that interest on costs also runs from date of judgment. Lord Ackner on p. 833 (f) said:-

"..... a judgment for costs to be taxed is to be treated in the same way as a judgment for damages to be assessed, where the amount ultimately ascertained is treated as if it was mentioned in the judgment, no further order being required. A judgment debt can therefore in my judgment be construed for the purpose of S. 17 as covering an order for costs to be taxed."

By virtue of that Act a judgment debt carries interest at 4% p.a. There has been no change of that rate by statutory instrument in Fiji. Mr Parmanandam purported to concede on behalf of the Respondent that the appellants were entitled to 5% but neither he nor the appellants have been able to refer us to any statutory authority to support granting of interest on judgment at a higher rate than 4%.

We think we should follow the decision of the House of Lords in the Hunt case (ibid) whereby an order for costs is treated as a judgment debt. Accordingly we hold that the Appellants are entitled to interest on the \$850 at the rate of 4% p.a. from the date of judgment until satisfaction.

The Appellants also claim interest on interest. There is no authority, statutory or otherwise, for granting this.

For the foregoing reasons we set aside the judgment of Jesuratnam, J. of 10.3.89 to the extent that the learned Judge dismissed the claim for interest on \$850.

The Court declares that the Appellants are entitled to interest at the rate of 4% per annum on \$850 from the date of the judgment of Rooney, J. until satisfaction.

In all other respects the appeal is dismissed. We make no order as to costs.

R. Kermode
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Sir Ronald Kermode
JUSTICE OF APPEAL

Moti Tikaram
.....
Sir Moti Tikaram
JUSTICE OF APPEAL

H. D. Palmer
.....
H.D. Palmer
JUSTICE OF APPEAL