

IN THE FIJI COURT OF APPEAL

CIVIL APPEAL NO. 43 OF 1992  
(Lautoka Action No. 50/85)

BETWEEN:

RANGITIKEI PRODUCE DISTRIBUTORS LIMITED

Appellant/  
Applicant

and

SURENDRA PRAKASH TRADING AS "ROBINA  
TAILORING CENTRE"

Respondent

Mr Subhas Parshotam for the Applicant  
Mr M. Raza for the Respondent

D E C I S I O N

(Application in Chambers for leave to appeal  
and for extension of time to appeal)

This is an application for leave to appeal against an interlocutory order made by Sadal J. and if leave is granted the Applicant (Original Defendant) seeks a further order that the time for bringing the intended appeal be extended.

The Order against which the Applicant is seeking leave to appeal is contained in a ruling given by the Judge at Lautoka High Court on 17th July, 1992. The full text of the ruling is as follows:

"R U L I N G

*On 1st November 1985 judgment was given for the plaintiff for the amount claimed in the writ of summons. The Court had ruled that there was no valid defence. The defendant appealed to the Fiji Court of Appeal from that judgment. That appeal was dismissed on 19th March 1992.*

The defendant has now made an application to this Court for stay of execution pending the determination of his counter-claim. No affidavit has been filed in support of this application.

The main argument for the defendant appears to be that it would be difficult to execute any judgment against the plaintiff company as it is based in New Zealand. This fear may be genuine.

There has been a long delay on the part of the defendant to bring this action to a finality.

After giving full consideration to this application I feel there should be a stay of order but not pending the outcome of the counter-claim but until further order of this Court.

There will be no order as to costs."

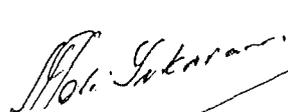
It will be noticed that the interlocutory order was in fact in favour of the Applicant except that the stay was "not pending the outcome of the counter-claim but until further order of the Court".

On 24th August, 1992 Sadal J. refused an application for leave to appeal against his order. He found that no ground was shown for leave.

Having regard to the history of the litigation, the reasons given by the learned Judge and the actual nature of the order itself and bearing in mind the arguments advanced before me, it is patently clear that the proposed appeal is wholly unlikely to succeed. Granting of leave will only have the effect of further unnecessary delay in bringing this litigation to a close.

The application for leave to appeal is refused and it follows that the application for extension of time to appeal falls by the wayside.

Costs to be in the cause.

  
Sir Moti Tikaram  
Resident Justice of Appeal

Suva  
11th December, 1992.