

IN THE COURT OF APPEAL, FIJI AT SUVA
ON APPEAL FROM THE HIGH COURT OF FIJI

CIVIL APPEAL NO. ABU0031 OF 2002
(High Court Civil Action No. 349 of 1999)

IN CHAMBERS

BETWEEN: RAJESHWAR PRASAD
 t/a TOKOTOKO SERVICE STATION

Applicant

AND: MAHARAJ BUSES LIMITED

Respondent

Mr G. O'Driscoll for the Applicant
Mr Ritesh Naidu for the Respondent

Date of Hearing: Tuesday, 10th September, 2002
Date of Decision: Wednesday, 11th September, 2002

DECISION

This is an application for leave to appeal out of time from the decision of the High Court (Byrne J.) given on the 24th of October 2000. The learned Judge entered Summary Judgment for the Respondent (Original Plaintiff) against the Applicant (Original Defendant) in the sum of \$19,041.00 together with interest at the rate of 12% per annum from the 1st of July 1999 to the date of judgment - a total of \$21,897.15. He also ordered the Applicant to pay the Respondent costs in the sum of \$350.00.

FIRST APPEAL - ABANDONED

On the 24th of November 2000 the Applicant filed Notice of Appeal from the decision of the High Court. On the 7th of December 2000 Orders on Summons to fix security for costs were made. The Respondent was ordered to pay \$1,000.00 within 28 days, and to lodge record of proceedings for certification within 30 days. He failed to comply with the Orders made; with the result that the appeal was deemed abandoned under Rule 17(2) of the Court of Appeal (Amendment) Rules 1999. Fresh notice of appeal was not filed.

BANKRUPTCY PROCEEDINGS

In default of payment of the judgment debt the Respondent commenced Bankruptcy proceedings. On the 17th of November 2000 Bankruptcy Notice was issued, and the Applicant served on the 21st of November 2000. On the 29th of January 2001 the Respondent's solicitors filed Creditors Petition which was served on the Applicant on the 3rd of February 2001. On the 11th of June 2001, Proof of Debt was filed against the Applicant with the Official Receiver. On the 9th of July 2002 the Applicant filed the application for leave to file his notice of appeal out of time.

LENGTH OF DELAY

In this case the Applicant is seeking to appeal a final Order made on the 24th of October 2000, and entered on the 1st of November 2000. He is out of time by some 18 months. That is inordinate delay. That has to be explained.

REASONS FOR THE DELAY

The Applicant has filed an affidavit in an attempt to explain the delay. He says

he entrusted the case to his solicitor, Mr Bulewa, and expected him to take care of his interest. Mr Bulewa did not keep him informed of developments, and attempts to get information from him proved difficult. He did not pay the \$1,000.00 ordered as security for costs, because he was not informed that he had to do so. His explanation for failing to take any steps after he was served with the Bankruptcy Notice, is that he saw another firm of solicitors, Messrs Khan & Co., they did not realize that the judgment was obtained in the High Court and lodged an application to set aside the judgment in the Magistrates' Court. This despite that fact that the Bankruptcy Notice clearly states that the judgment was entered in the High Court. This error was not discovered for several months, and he was not able to obtain his file from Mr Bulewa until June 2002.

None of the reasons now being put forward for the delay are credible. It is obvious, that the Applicant took little interest in the case, until he was served with the Creditors Petition in January 2001. The onus of providing some acceptable reasons for the delay rests with the Applicant, and he has failed to discharge that onus.

CHANCES OF SUCCESS ON APPEAL

The Respondent's claim was in respect of three dishonoured, Westpac Banking Corporation's cheques, given to the Respondent by the Applicant, and banking charges, totalling \$19,041.00. He also claimed interest. The Applicant filed a defence that was sparse and uninformative. Apart from the bold assertion that the two cheques were "forged" - it is devoid of any particulars. For example, there is no attempt to explain when or how the cheque leafs came into possession of the Respondent. As Byrne J. observed, there was no suggestion that his cheque books were stolen or removed from his possession by any person or persons known to him. It is true that in his affidavit in opposition to the application for Summary Judgment the Applicant deposed that in 1999 he had lodged a complaint with the Police at Navua about the

alleged forgery, and annexed a letter dated 10th of May 2000 from the Station Officer to his affidavit as proof. But the letter does not say that the complaint was about the alleged forgery or any forgery. It merely states that "a report" was lodged by the Applicant, on the 18th of June 1999, and the investigation is not complete. Shiu Maharaj, one of the Respondent's Directors deposed that the Police had never questioned him about the alleged forgery, and that the allegation was "completely false". He deposed as to the circumstances in which the Applicant's son handed him the cheques, in the presence of one Dharendra Prasad.

As opposed to the Applicant's allegation of forgery, without any particulars, Shiu Maharaj deposed that the Applicant purchased fuel from the Respondent from time to time, and paid by cheques. The cheques issued by the Applicant tallied with the invoices issued by the Respondent for purchase of fuel supplies. Byrne J. concluded:-

" The Defendant paid the Plaintiff the sum of \$504.00 by Westpac Bank Cheque No. 918029 dated 2nd June 1999 to the Plaintiff for Invoice Numbers 22662, 22763 and 22786 in respect of fuel sold and delivered by the Plaintiff to the Defendant. The Plaintiff claims that Invoice No. 22662 has the Defendant's own signature and looks exactly the same as the signature on the Defendant's cheque No. 918029. Likewise on Invoice Nos. 18536, 18240 and 22819 the Defendant's signature also appears. The Plaintiff claims that this evidence proves that the Defendant personally signed the invoices and took delivery of some of the fuel. It says the cheque signatures and the invoice signatures are the same.

I say here immediately that I accept the Plaintiff's allegations about these cheques and invoices."

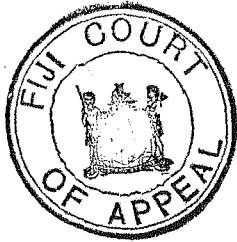
In my view, none of the proposed grounds of appeal have any merit and they are bound to fail.

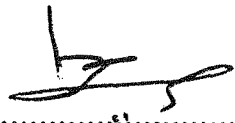
PREJUDICE TO THE RESPONDENT

There is no basis for denying the Respondent the fruits of the judgment entered by Byrne J. Any further delay, will clearly be prejudicial to it.

CONCLUSION

There has been inordinate delay by the Applicant to seek leave to appeal. There are no plausible or acceptable explanations for the delay. The proposed appeal has no merit, it is bound to fail. It would, in my view, be unjust to deny the Respondent fruits of his judgment. Accordingly I dismiss the application and order that the Applicant shall pay the Respondent's costs of this application, which I fix at \$350.00.




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Jai Ram Reddy
President