





- a. That the Applicant be given enlargement of time for leave to appeal and serve the appeal.
- b. That the order granted on 16<sup>th</sup> June 2016 by Master Robinson be set aside and the Plaintiff be allowed to reinstate his action.
- c. Such further or other...'

[3] The Master had ordered costs against the Plaintiff on two occasions for non-compliance of the directions, on 27<sup>th</sup> April.2016 and also on 25<sup>th</sup> May, 2016

[4] On 2<sup>nd</sup> June 2016 in exercising his discretion, for case management purposes following orders were made.

'Unless the Plaintiff pays his cost of \$150 ordered on 27<sup>th</sup> April, 2016 and a further \$150 cost as wastage court costs than(sic) the claim be struck out. Plaintiff has not complied with the court orders given 27<sup>th</sup> April, 2016'

On 13<sup>th</sup> June, 2016 having observed that the unless orders have not been fully complied with the Master had made following orders  
'The Plaintiff has not complied with the unless orders of 25<sup>th</sup> May, 2016 and also of 2<sup>nd</sup> June, 2016. The Court therefore uses its discretion to strike out the claim with cost to be assessed if not agreed.'

[5] After this order an application for reinstatement was made but the counsel for the Plaintiff had written a letter to the Defendant's counsel advising that they would be withdrawing that application as the correct procedure would be to seek extension of time to file leave to appeal. This letter is marked as JK 7 to the Affidavit in opposition to the summons. It should also be noted that letter was dated on 11<sup>th</sup> July, 2016, but the application seeking extension was filed only on 28.09. 2017.

### Analysis

[6] Order 59 rule 8 of the High Court Rules states as follows



'8(1) An appeal shall lie from a final order or judgment of the Master to a single judge or the High Court.

(2) No appeal shall lie from an interlocutory order or judgment of the Master to a single judge of the High Court without the leave of a single judge of the High Court which may be granted or refused upon the papers filed.

[7] Order 59 rule 9 deals with the time period for appealing and when it is an interlocutory order the time period is 7 days.

[8] There was no application seeking leave to appeal filed within 7 days from the order of the Master , hence the present application was filed 28.09.2017 though the Plaintiff was fully aware of the correct procedure as late as 11<sup>th</sup> July, 2016. There is a delay over 15 months, even if one calculate the knowledge of the counsel of the correct procedure, and this inordinate delay is not explained or excusable considering that the conduct of the Plaintiff in this action. The Plaintiff had and even repeatedly disobeyed with the orders of the court.

[9] The Masters had tried every available tool at their disposal to drive the Plaintiff to prosecute his action. This should not be the case as Plaintiff should be more eager to prosecute their actions as they are the claimants who come to court seeking redress, if they are serious about their claims.

[10] In a recent UK Supreme Court decision of **Revenue and Customs Commissioners v BPP Holdings Ltd and others**[2017] 4 All ER 756 (Per Neuberger P) cited the following quote with authority to emphasis the importance of case management .

"It is appropriate to state the words of Lawrence Collins LJ in **Fattal v Walbrook Trustee (Jersey) Ltd** [2008] EWCA Civ 427, [2008] All ER (D) 109 (May) (at [33]):

*'[A]n appellate court should not interfere with case management decisions by a judge who has applied the correct principles and who has taken into account matters which should be taken into account and left out of account matters which are irrelevant, unless the court is satisfied that the decision is so plainly wrong that it must be regarded as outside the generous ambit of the discretion entrusted to the judge.'*

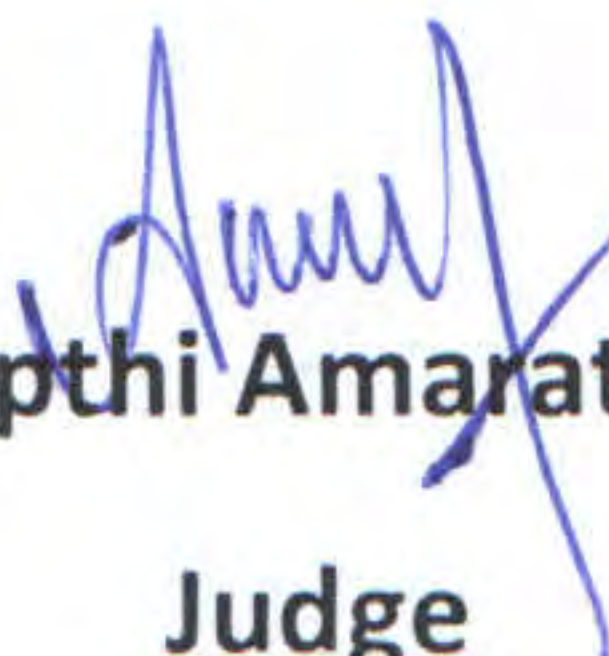


- [11] The Master had exercised his discretion properly as the Plaintiff was repeatedly disobeyed the orders of the court and had not even complied fully with the unless orders. If such actions are to be condoned the case management will not be successful in any court and non compliance would be the order of the day.
- [12] This court will be reluctant to revise or set aside a Master's discretionary order in the exercise of case management, when correct principles are applied. In this case the Plaintiff was given ample opportunity for compliance but it had repeatedly not complied with orders of the court. So there is no merits in this prospective leave to appeal against the Master's decision to strike out.
- [13] The applicant had not explained the reason for delay when they have written to the counsel for the Defendant that the correct application is to seek extension of time for leave to appeal.
- [14] Even the present summons is defective in more than one manner. While seeking enlargement of time to file leave to appeal , the applicant is also seeking setting aside of Master's Order.
- [15] In the circumstances the Summons filed on 28.9.2017 is struck off. The cost of this application is summarily assessed at \$1,500 considering the circumstances of the case and also conduct of the applicant.

#### **Final Orders**

- [16] a. Summons filed on 28.9.2017 is struck off.
- b. The cost of this application is summarily assessed at \$1,500.



  
Deepthi Amaratunga  
Judge