PAVITER'S DEPARTMENTAL STORE

v.

LODHIAS LIMITED

[SUPREME COURT, 1978 (Williams J.), 21st April]

Civil Jurisdiction

Practice and procedure—judgment in default of defence entered more than 12 months after the last proceeding in the action—whether entering judgment a proceeding in the action—whether necessary before entering judgment to give notice to the other party—Supreme Court Rules (Cap. 9) Order 3 Rule 6.

Judgment in default of defence was entered more than 12 months after the last proceeding in the action. No notice had been given to the Defendant.

Held: The entry of judgment in default of defence is a proceeding in the action which if taken more than 12 months after the last proceeding must be the subject of one months notice to the Defendant.

Cases referred to:

Deighton v. Cookle [1912] 1 K.B. 206

Webster v. Myer 14 (1884-1885) Q.B.D. 231

Interlocutory Appeal from the Deputy Registrar of the Supreme Court.

G. P. Shankar for the appellant

M. S. Sahu Khan for the respondent

WILLIAMS J. :

The plaintiff, a firm in Singapore filed their writ on 10.6.76 for $(U.S.) 3,522.10 against the defendants for the dishonour on 10.7.73 of a Bill of Exchage drawn upon the Chartered Bank of Singapore.

The statement of claim was filed on 18/6/76.

An appearance was entered on 24/6/76.

A Summons for judgment under Ord. 14 r. 1 was adjourned on 6/8/76 when the defendant was ordered to file his defence and affidavit on or before 12/8/76 but the defendant failed to comply. However, successive adjournments were allowed by consent. On 19/11/76 the plaintiff discontinued his application under 0.14. r. 1.

Judgment in default of defence was signed on 25/11/ 77.

On 23/3/78 the defendants issued a summons to set it aside on the ground that entering judgment was a step in the action taken more than 12 months after the last proceeding and notice of the plaintiff's intention to enter judgment had not, contrary to 0.3 r.6, been given to the defendant. It is further alleged in the summons that the plaintiff had consented not to enter judgment prior to 25/11/77.

There is no affidavit in support of the alleged agreement not to enter judgment; however, submissions on this ground have been deferred pending this ruling.

Dr Sahu Khan for the defendant submitted that entering judgment by default is a proceeding in the action.

Mr G. P. Shankar for the plaintiff contents otherwise.

O. LXVIV. r.3 of the Supreme Court Practice of 1912 was practically the same as r. 176 of the Rules of Hilary Term, 1853 which are substantially the same as our 0.3 r.6. Reference to the foregoing rules was made by Vaughan Williams J. in *Deighton v. Cookle* [1912] 1 K.B. 206, at 209 when he quoted Lord Ellenborough's judgment in *May v. Wooding.* 3 N. & s. 500, as follows—

> " The reason of the rule is this, that while the matter is still in controversy, the party should, after so long a lapse as four terms without any proceedings, have notice, that he may prepare himself, but, when the matter has passed in *rem judicatem* by the verdict, the same reason does not apply."

Vaughan Williams J. following that quotation said,

> "_____ the rule only applied to proceedings towards judgment and did not apply to proceedings after judgment."

Thus if judgment is given by the verdict of a jury or of a judge sitting alone the entering thereof is a proceeding after judgment has been obtained and does not fall within the rule. On the other hand if judgment has not been obtained then any step taken towards obtaining it would appear to be a step in those proceedings which are covered by the rule.

That appears to have been the reasoning adopted in *Webster v. Myer* 14. (1884-85). Q.B.D. 231 wherein the defendant defaulted in appearing and the plaintiff took no step for a year. Brett M.R. in delivering the judgment of the Court of Appeal said at p.233,

> " Now 0.LKVIV.r.13 provides that where no proceeding has been taken for a year, the party who desires to proceed shall give a month's notice of his intention to proceed. I think from its very nature the entry of judgment is clearly a "proceeding" in an action; and if it be so it is impossible to suppose any step which comes more completely within the operation of the rule."
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> In the same appeal Lindley L.J. said at p. 234, "The fact of more than a year having elapsed since the last proceeding tends to show that the plaintiff had intended to abandon the prosecution of the action, and it might be very unjust to allow him to sign judgment without giving the defendant an opportunity of establishing to the satisfaction of the Court that the plaintiff is not entitled to proceed further."

From those decisions it appears to me that whether judgment is to be entered in default of appearance or in default of defence, the signing thereof is a further proceeding under o.3.r.6 requiring the person taking that step to give a month's notice to the other party.

It follows that the judgment must be set aside and notice under 0.3. r.6 issued to the defendant. The defendant will pay the costs of this application.

Appeal allowed; interlocutory judgment set aside.