

IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)

A T L A U T O K A

Civil Jurisdiction

Action No. 273 of 1978

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Between

SURUJ KUMARI d/o Bahadeo

Plaintiff

- and -

JAYANT LODHIA s/o Hargovind Lodhia
'LODHIA & SONS'
HARGOVIND LODHIA

Defendants

Mr. S. P. Shankar

Counsel for the Plaintiff

Mr. Sahu Khan

Counsel for the First Defendant

Messrs. Stuart, Reddy & Co. Counsel for the First and Second Defendant

J U D G M E N T

The cause of action in this case arose on 6th November, 1975 when the car owned by the second defendant was involved in a collision with the car owned and driven by the plaintiff's husband, who died as a result of the collision.

On 20th September, 1978 the plaintiff took out the writ of Summons which was served on the second and third defendants within the following twelve months as provided in Order 6 of the supreme court Rules.

The first defendant was not served within the twelve-month period, presumably because his whereabouts were then unknown - though in the circumstances it seems that substituted service could have been asked for.

On 5th December, 1980 the plaintiff appeared before the Court to ask that "leave to serve writ of summons on the first defendant be extended" (sic) and an order was made "in terms". The application and the order could perhaps have been better worded, but to put the best interpretation on it in favour of the plaintiff the validity of the writ could not be extended beyond 20th September, 1980. Order 6 rules 8(2) and (3) read as follows -

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"(2) Where a writ has been served on a defendant, the court may by order extend the validity of the writ from time to time for such period, not exceeding twelve months at any one time, beginning with the day next following that on which it would otherwise expire, as may be specified in the order, if an application for extension is made to the Court before that day or such later date (if any) as the court may allow.

(3) Before a writ, the validity of which has been extended under this Rule, is served, it must be marked with an official stamp showing the period for which the validity of the writ has been so extended."

It will be seen therefore that the application for extension was made over twelve months after the validity of the writ had expired. To interpret Order 6 Rule 8(2) strictly therefore the extension apparently granted by the Court had already expired before it was granted. That on the fact of it seems nonsensical. I am not saying that in appropriate exceptional circumstances a Court could not grant two extensions, but if such were the case the application and the order would have to be very carefully worded so that it was quite clear what was happening and the period of the extension was carefully recorded. It will be noted that the order does not specify the period of the extension, nor does the writ bear on it an official stamp showing the period of the extension as required by Order 6 rule 8(3).

It can only be concluded therefore that the validity of the writ had expired before it was served on the first defendant, and that service is therefore set aside.

The first defendant also asks for an order that no further extension of the validity of the writ be granted on the grounds that no further exceptional circumstances exist, and that any claim against him is now statute barred. I think those are arguments that should be raised if ever the plaintiff tries to have the validity of the writ extended again. That part of the order requested is therefore declined.

The first defendant to have his costs to be taxed if not agreed,

Lautoka,
1st March, 1982

(G. C. I. Dyke)
Judge