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IN THE FIJI COURT OF APPEAL

Civil Appeal No. 35 of 1985

Between: SUBODH KUMAR MISHRA Appellant

- and -

CAR RENTALS (PACIFIC) LTD Respondent

(IN CHAMBERS)

Mr. Sohan Singh for the Appellant.
Mr. Anand Singh for the Respondent.

Date of Hearing : 27th June, 1986.

Delivery of Judgment: 4th July, 1986.

JUDGMENT OF THE COURT

Speight, V.P.

By an order of this Court dated 8th November, 1985 the judgment in favour of the respondent obtained in the Magistrate's Court at Nadi was set aside "conditional upon the appellant paying into court the sum of \$2,217.48 or giving security for that amount to the satisfaction of the Registrar of the Magistrate's Court at Nadi within 30 days from the date of this judgment".

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The respondent was dilatory in complying and did not tender appropriate security until April of this year. The Magistrate's Court refused to accept the same and appellant has now applied for an extension of time.

As a preliminary point Counsel for Respondent, in opposing, submitted that this Court now had no further jurisdiction and the matter was entirely in the hands of the Magistrate's Court. When questioned he was unable to give any authority for this unusual proposition, nor was counsel for appellant able to counter by showing we have jurisdiction to make the order sought. This is simply not good enough. This is the paramount Court of the country and counsel privileged to appear in it should be prepared, especially when they decide to raise such a fundamental issue. We have looked the matter up. It takes less than five minutes to ascertain:-

1. Section 13 of the Court of Appeal Act Cap. 12 gives this Court the powers of the Supreme Court.
2. Order 3 rule 5 and Order 45 rule 6 of the Rules of the Supreme Court clearly and in terms authorised the extension of time for any person to do any act required by any judgment.

We turn to the merits. Appellant has been neglectful at a number of stages during the history of these proceedings. He deserves no sympathy and in the ordinary course we would refuse the indulgence. But there are other and larger issues arising out of the same cause of action - his wife has issued proceedings for personal injury in the Supreme Court and the learned magistrate on 9th August, 1984 ordered that on security being effected the appellant's case be reported to the Supreme Court pursuant to section 32 of the Magistrates Court Act (Cap. 14) to be consolidated with the personal injury action. If that is to be the course of things then Respondent has suffered no delay.

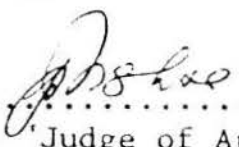
Counsel informed us that they thought the Supreme Court proceedings were still on foot. That may or may not be so. We extend the time for security to 30 days from date, conditional on Appellant's solicitors certifying to the Registrar of the Magistrate's Court at Nadi that the personal injury claim is still pending in the Supreme Court and has not been settled or withdrawn. In default of such certificate the present application is dismissed.



 Vice-President



 Judge of Appeal



 Judge of Appeal