

IN THE FIJI COURT OF APPEAL

CIVIL JURISDICTION

CIVIL APPEAL NO. ABU0014 OF 1996

(High Court Civil Action No. 496 of 1992)

BETWEEN:

ATTORNEY GENERAL OF FIJI & MINISTER FOR JUSTICE
AND FIJI TRADE AND INVESTMENT BOARD

APPELLANTS

-and-

PACOIL FIJI LIMITED

RESPONDENT

Mr. D. Singh for the Appellants
Mr. G. P. Shankar for the Respondent

Date and Place of Hearing : 8 May 1997, Suva
Date of Delivery of Judgment : 15 May 1997

JUDGMENT OF THE COURT

On 29 November 1996 this Court dismissed an appeal by the Attorney General of Fiji and Minister for Justice and Fiji Trade and Investment Board (the appellants) from a decision of Pathik J. and allowed in part a cross appeal by Pacoil Fiji Limited (the company). The result left standing a judgment in favour of the company for damages to be assessed for negligence in giving assurances to the company about the provision of tariff or equivalent protection for its business. This was an interlocutory judgment. See Thomas v Bunn [1991] 1 A.C. 362. However, on 27 February the appellants applied by Motion on Notice for a stay of the assessment of damages by the High Court

“pending leave to appeal to the Supreme Court”. This Motion was dismissed by Tikaram P. on 9 April. The proceedings before this Court comprise an appeal by the appellants from the decision of Tikaram P. refusing a stay, and a Notice of Motion filed on 10 April seeking leave to appeal to the Supreme Court out of time against the judgment of this Court of 29 November 1996. It would be convenient to deal first with the application for leave to appeal to the Supreme Court.

Since the judgment of this Court was interlocutory the appellants did not have an appeal to the Supreme Court as of right under s.8(1)(b) of the Supreme Court Decree, but only an appeal by leave of this Court under s.8(1)(c). This provided:-

“An appeal shall lie from decisions of the Court to the Supreme Court in the following cases, that is to say:

...

c) With the leave of the Court from decisions in any civil proceedings where in the opinion of the Court the question involved in the appeal is one that by reason of its great general or public importance or otherwise, ought to be submitted to the Supreme Court.”

The Court referred to in this paragraph is the Court of Appeal. See the definition in s.2. Section 12(a) of the Decree enables a single judge of the Court to determine an application for leave to appeal to the Supreme Court under s.8(1)(c), but this does not restrict the power of a Full Court to entertain an original application. SCR r.5(4) provides that every application for leave to appeal should be lodged within 42 days “from the date of the decision of the Court”. Although the Order of this Court of 29 November was not perfected until 24 February time runs from the date of the

decision not from the date it was perfected. This is clear from the terms of r.5(4) which may be contrasted with CAR r.16 which provides that time for an appeal to this Court runs from the date the order of the High Court is perfected.

The appellants did not apply for leave to appeal to the Supreme Court within the time limited by r.5(4). Mr. D. Singh for the appellants sought an extension of this time limit, but in our judgment there is no power in this Court to grant such an extension. SCR r.47 makes the High Court and Court of Appeal Rules applicable to the Supreme Court and the Supreme Court therefore has power to extend time limits in its rules. However, r.47 does not apply to this Court. There is ample power in this Court to extend the time for appealing from the High Court (CAR rr.6, 26(2), 27) but in our opinion these rules only apply in respect of appeals to this Court. Because of the terms of SCR r.5(4) such rules do not apply to applications to this Court for leave to appeal to the Supreme Court. JJ

The position is similar to that which applies in New Zealand and formerly applied in Australia and Fiji with respect to appeals to the Privy Council. If an intending appellant failed to apply for conditional leave to appeal within time, the local Court had no power to extend the time and the intending appellant had to petition the Privy Council for special leave. Compare Supreme Court Decree s.8(2). Although petitions for special leave to the Supreme Court must be made within 42 days (r.4(2)) the Supreme Court has power under r.47 to extend that time.

In our opinion this Court has no power to grant the Motion for leave to appeal to the Supreme Court out of time and it should be dismissed with costs.

The appeal from the decision of Tikaram P. refusing a stay of proceedings should also be dismissed. This Court has express power to order a stay of proceedings on a judgment of the High Court pending an appeal to this Court (CAR rr.26, 34). The High Court also has power to stay execution or other proceedings on its judgments under HCR O.45 r.10 and that power is also available to this Court through CAR r.6. Both Courts also have inherent powers to control their own proceedings which could be exercised to stay the assessment of damages under an interlocutory judgment.

This Court therefore has power to make the order sought and the question is whether that power should be exercised in this case. There is no appeal, or petition for special leave, pending in the Supreme Court and special leave may not be granted even if a petition is now filed. There has been serious and hitherto unexplained delay, the judgment is only interlocutory, and there will later be an appeal as of right on all issues from any final judgment of this Court on an appeal against the assessment of damages provided the sum of \$20,000.00 or more is involved. As Tikaram P. said:-


"In these circumstances I see no reason why the Respondent be denied the fruits of its success. There is no appeal pending and there is no application filed to extend time. Furthermore no exceptional circumstances exist to delay assessment of damages.

If the applicants were in earnest they would have taken appropriate steps at the appropriate times.

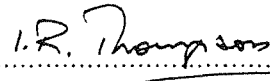
Taking all the circumstances into account including the legal situation it would be unfair to delay assessment proceedings."

The Orders of this Court therefore are:-


- 1. Notice of Motion for leave to appeal to the Supreme Court out of time dismissed with costs.
- 2. Appeal from Order of Mr. Justice Tikaram dated 9 April 1997 refusing a stay of the assessment of damages by the High Court dismissed with costs.



 Sir Maurice Casey
Judge of Appeal



 Mr. Justice Ian Thompson
Judge of Appeal



 Mr. Justice Handley
Judge of Appeal