

IN THE COURT OF APPEAL, FIJI ISLANDS
ON APPEAL FROM THE HIGH COURT OF FIJI

CIVIL APPEAL NO. ABU0042 OF 1999S
(High Court Civil Action No. HBA0018 OF 1997)

BETWEEN:

SURESH CHARAN

Appellant

AND:

BANS RAJ

Respondent

Coram:

The Rt. Hon. Sir Thomas Eichelbaum, Presiding Judge
The Rt. Hon. John Steele Henry, Justice of Appeal
The Hon. Sir Rodney Gallen, Justice of Appeal

Hearing:

Friday, 12 October 2001, Suva

Counsel:

Appellant in Person
Mr. D. Sharma for the Respondent

Date of Judgment:

Thursday, 18 October 2001

JUDGMENT OF THE COURT

On 8 November 1996 the Small Claims Tribunal sitting at Suva made an order for payment of the sum of \$2000 by the appellant to the respondent. A judgment debtor summons then issued. On 2 May 1997 the appellants applied to the Magistrates' Court for, inter alia, leave to appeal the order of 8 November 1996 out of time. The application was dismissed by Ms. Phillips on 12 May 1997 in a carefully reasoned judgment. On 29 May 1997 the appellant filed in the High Court a notice of appeal against that decision, and also an associated application seeking three orders : stay, leave to appeal the Small Claims Tribunal decision, and setting aside the enforcement order.

In a judgment dated 10 July 1997 and delivered the following morning 11 July, Scott J dismissed the appeal against the refusal of the Resident Magistrate to extend the time for appealing the Small Claims Tribunal order for payment.

Apparently arising from the subsequent arrival in the High Court of the formal record from the Magistrates' Court, a further date of hearing of the appellant's appeal dated 29 May 1997 was allocated. That came before Byrne J, who proceeded to hear full argument without becoming aware of the decision of Scott J. After the conclusion of the hearing but before judgment, that decision came to his notice. In a written judgment delivered on 26 August 1999 Byrne J dismissed the appeal, holding that the matter was res judicata and that the further attempt to prosecute the appeal was an abuse of process. The present appeal is from that judgment.

This Court's relevant jurisdiction is contained in S.12(1) of the Court of Appeal Act. Cap 12. It provides :

"12 - (1) Subject to the provisions of subsection (2), an appeal shall lie under this Part in any cause or matter, not being a criminal proceeding to the Court of Appeal -

(a) from any decision of a judge in chambers;

(b) from any decision of the High Court under the provisions of the Matrimonial Causes Act;

(c) on any ground of appeal which involves a question of law only, from any decision of the High Court in the exercise of its appellate jurisdiction under any enactment which does not prohibit a further appeal to the Court of Appeal."

Paragraphs (a) - (b) have no present application. As to para (c), the only identifiable question of law which arises is whether Byrne J was right in holding that an appeal against the decision of the Resident Magistrate had already been determined by Scott J. We are satisfied the Judge was correct. The judgment of Scott J records that when the matter came before him he directed the appeal be heard in conjunction with the so-called interim applications filed at the same time as the notice of appeal. In his fully reasoned judgment, Scott J expressly and clearly dismissed the appeal in so far as it related to the leave to appeal out of time point. It must follow therefore, as Byrne J held, that what was effectively a second appeal to the High Court on the same issue could not and did not lie. The judgment delivered on 11 July 1997 remained and to this day remains extant and is a matter of record. That necessarily disposes of this appeal, which must fail.

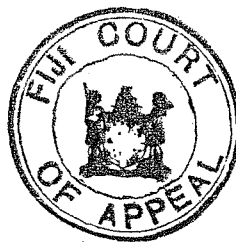
One further matter is worthy of comment. Mr. Charan's suggestion that Scott J lacked jurisdiction to hear and determine his appeal has no substance. The fact that the formal certified record from the Magistrates' Court was not available at the appeal hearing does not go to jurisdiction. Moreover it is clear from Scott J's judgment and the material before him that he was fully cognisant of the relevant facts and of the Resident Magistrate's reasons for refusing leave. It can also be said that the Magistrate's judgment disclosed cogent

reasons against allowing the appellant, who had been advised of the date of hearing, the indulgence of an appreciable extension of time to challenge the Small Claims Tribunal order.

For the above reasons the appeal is dismissed. The appellant is ordered to pay the respondent's costs in this Court of \$750 together with such disbursements as may be fixed by the Registrar. In accordance with the order of the President of the Court dated 16 September 1999, the Registrar is directed to pay the sum of \$2000 paid into Court together with accrued interest to the respondent.

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Sir Thomas Eichelbaum
Presiding Judge



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Rt. Hon. John S. Henry
Justice of Appeal

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Sir Rodney Gallen
Justice of Appeal

Solicitors:

Appellant in Person
Messrs. R. Patel and Company, Suva for the Respondent