

IN THE FIJI COURT OF APPEAL

Civil Jurisdiction

Civil Appeal No. 39 of 1977

Between:

CENTRAL TRADING COMPANY

Appellant

- and -

CHANDRA KANTA

Respondent

Mr. A.M.L. Ramritu for the Appellant
Mr. V. Parmanandam for the Respondent

JUDGMENT OF THE COURT

25/11/77
Henry J.A.

This is an appeal against the refusal to grant leave to issue execution in respect of a judgment entered against respondent on December 30, 1961 for the sum of £1,139.6.4 and costs £7.7.0. Order 46:2 enacts that a writ of execution may not issue without leave of the Court (inter alia) where six years or more have elapsed since the date of judgment. The judgment debtor died on July 11, 1969. The present application has been served on his executrix.

The learned judge held that Sec. 4 subsection 4 of the Limitation Act 1971 precluded the making of an order granting leave. This provision reads as follows:

"4(4) - An action shall not be brought upon any judgment after the expiration of twelve years from the date on which the judgment became enforceable, and no arrears of interest in respect of any judgment debt shall be recovered after the expiration of six years from the date on which the interest became due."

"Action" is defined in Section 2 as including any proceeding in a Court of law. It was held that the present application for leave was such a proceeding and accordingly that any enforcement of the judgment is now statute-barred. The period of twelve years has expired.

Counsel for the executrix conceded, and rightly in our view, that Section 4, subsection 4 does not apply to the present application. This question was, in our respectful opinion, correctly so decided in W.T. Lamb & Sons v. Rider (1948) 2 KB 331 where an Order similar to Order 46:2 and similar legislative provisions were exhaustively reviewed. The Court of Appeal said at p.337:

"It follows from the above brief survey that the right to sue on a judgment has always been regarded as a matter quite distinct from the right to issue execution under it and that the two conceptions have been the subject of different treatment. Execution is essentially a matter of procedure - machinery which the court can, subject to the rules from time to time, in force, operate for the purpose of enforcing its judgments or orders."

This distinction was referred to by Brandon J., in Berliner Industrial Bank v. Jost (1971) 2 ALL E.R. 117, 126. We find accordingly that the application was not barred by Section 4 subsection 4.

The question whether or not leave ought to be granted after the time when an "action" on the same judgment could not be brought, is a matter which was not considered in the Court below nor was it argued in this Court. In passing we draw attention to Halsbury's Laws of England 3rd Edition Vol. 16 para. 8 page 7 and Vol. 24 page 227 note (t).

The appeal is allowed. The order in the Supreme Court is set aside and the application is remitted for a further hearing. No costs are allowed.

(Sgd.) T. Gould
VICE PRESIDENT

(Sgd.) C. Marsack
JUDGE OF APPEAL

(Sgd.) T. Henry
JUDGE OF APPEAL

25/11/77