

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

**CIVIL APPEAL NO. ABU0051 OF 2003L**  
 (High Court Civil Action No. HBC0157 of 1999L)

**BETWEEN:**

**DEOJI AND SONS LIMITED**

**Applicant/Appellant**

**AND:**

**GURDEV SINGH, MALKIT SINGH** (sons of Pritam Singh)  
**BACHITRA SINGH** f/n Bayant Singh

**Respondents**

**In Chambers:**

Smellie, JA

**Hearing:**

Thursday, 6<sup>th</sup> November 2003, Suva

**Counsel:**

Mr. K. Vuataki for the Applicant/Appellant  
 Mr. R. R. Gordon for the Respondent

**Date of Judgment:** Friday, 14<sup>th</sup> November 2003

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**JUDGMENT OF SMELLIE - JA**

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**Introduction**

On the 14<sup>th</sup> May 2001 Justice Prakash in the High Court at Lautoka awarded the respondent on a summary judgment application the sum of \$31,295.00 for unpaid rent and interest.

On the 28<sup>th</sup> November 2002 the same judge rejected an application filed on the 11<sup>th</sup> June 2001 for leave to appeal the summary judgment and for a stay pending the hearing of the appeal.

There were further skirmishes at High Court level but on the 27<sup>th</sup> March 2003 the appellant applied to this court for leave to appeal out of time against the judgment of \$31,295.00 entered as recorded above summarily on the 14<sup>th</sup> May 2001.

The hearing was preceded by directions from the then the President Hon Justice Jai Ram Reddy giving time for the filing of the further affidavits and the exchange of submissions prior to fixture date.

### The Hon Justice Sheppard's Decision

The directions of the President were complied with and the matter was fully argued on the 4<sup>th</sup> August 2003 and a reasoned 6 page judgment handed down on the 14<sup>th</sup> August 2003.

In his decision Sheppard JA set out all the circumstances and discussed several allied issues such as whether a summary judgment is interlocutory or not and the importance of having orders sealed once judgment is given. The *ratio decidendi* of the judgment, however, is that the Court of Appeal refused leave to appeal out of time. The judge expressed it thus on pages 5 and 6 of his opinion:

*"The Singhs have had judgment against Deoji for \$31,295 since 14<sup>th</sup> May 2001. The application for leave to appeal to this court could have been made to it in 2001. Deoji chose to make the application to the High Court which was a course which was open to it. It is now 2 years and 3 months since the judgment was recovered. The Singhs have been deprived of the benefit of it for that period. I have reached the conclusion that this application made as it was on 27<sup>th</sup> March 2003 nearly 2 years after the judgment was recovered is simply too late. It is in the public interest that litigation should be concluded within a reasonable time. Deoji cannot shelter behind the delay in the High Court which, for whatever reason, took over 18 months to deliver judgment on the application made for leave to appeal. It was Deoji's decision to apply to the High Court rather than the Court of Appeal. The application was carefully considered by Prakash J. and dismissed. It is not as if an application for leave to appeal has not been heard."*

*Justice must be done to both parties. The Singhs have been deprived of the benefit of their judgment for over 2 years. That is an important consideration to be weighed in the balance.*

*In all the circumstances I have decided that Deoji's notice of motion must be dismissed."*

### The Present Applications

Despite Sheppard JA's conclusion which clearly brought the prospect of overturning the substantive judgment for \$31,295.00 to an end the appellant moved again on the 11<sup>th</sup> September 2003 for leave to appeal and wished to further amend the motion at the commencement of the hearing before me.

As I endeavored to make clear to the counsel for the appellant at the hearing the further application for leave now sought cannot possibly be entertained. In effect it would place me in the position for being asked to embark on a consideration again of all that Sheppard JA traversed in his judgment in the hope (presumably) that I would reach the different conclusion. But the matter has been decided already and I have no jurisdiction to tamper with it. In legal terms it is *res judicata* and the appellants current applications are correctly categorized by Mr Gordon on behalf of the respondents as an abuse of process.

### Conclusion

Given the status of applications as described above the brief arguments at the commencement of the hearing as to whether the appellant should have leave to amend the motion recede to the point of insignificance.

Against the possibility of further argument however, leave to amend is refused and the original applications are struck out on the grounds of abuse of process.

Costs

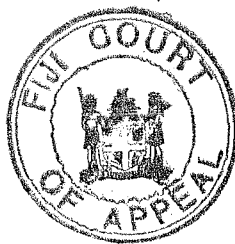
Mr Gordon pressed for solicitor and client costs but I declined to rule on that basis observing that the lengthy submissions that have been filed were of something of an over-kill.

Nonetheless these applications are entirely without merit. Sheppard JA on the last application awarded cost of \$500.00. On this occasion applying a solicitor and client approach to the work that was appropriate I would award a \$1,000.00 costs.

In addition the respondents are to have the following disbursements incurred by their counsel and solicitors:

- . Air fare return from the west \$182.00
- . Taxi fares to and from the airport \$80.00
- . Hotel accommodation over a night \$134.00
- . Meals \$50.00
- . Filing fees and oath fees as fixed by the Registrar.

I formally order the payment of the above costs by the appellants Deoji and Sons Limited to the respondent.



*Robert Smellie*  
Smellie, JA

Solicitors:

Messrs. Vijay Naidu and Associates, Lautoka for the Applicant  
Messrs. Gordon and Company, Lautoka for the Respondents