

27

IN THE PRIVY COUNCIL

No. 30 of 1970

O N A P P E A L

FROM THE SUPREME COURT OF MAURITIUS

B E T W E E N :

Ramdharry Insurance Co. Ltd. represented
by the Chairman of its Board of Directors,
Mr. Deckeenanun Ramdharry, of Port Louis.

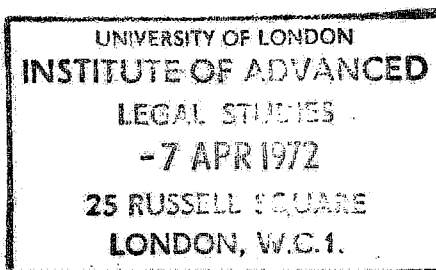
Appellants

- and -

Desmond O'Shea, acting both for himself
and as legally representing his minor sons
John Desmond Fabian O'Shea, Paul Simon
O'Shea, Jeremy James Prince O'Shea, Desmond
Francis O'Shea and Stephen Anthony O'Shea.

Respondent

RECORD OF PROCEEDINGS.



BERNARD SOLLEY & CO.,
9 Cavendish Square,
London, W1M 0EN.

Solicitors for the Appellants.

CHARLES RUSSELL & CO.,
Hale Court,
21 Old Buildings,
Lincoln's Inn,
London, WC2A 3UL.

Solicitors for the Respondent.

(i)

IN THE PRIVY COUNCIL

No. 30 of 1970

O N A P P E A L
FROM THE SUPREME COURT OF MAURITIUS

B E T W E E N :

Ramdharry Insurance Co. Ltd.,
represented by the Chairman of
its Board of Directors, Mr. Deokeenanun
Ramdharry, of Port Louis

Appellants

- and -

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and as legally representing his minor sons
John Desmond Fabian O'Shea, Paul Simon
O'Shea, Jeremy James Prince O'Shea, Desmond
Francis O'Shea and Stephen Anthony O'Shea

Respondent

RECORD OF PROCEEDINGS

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Affidavit of Hurry Banzigou	20th May 1970
Affidavit of Talewonsing Ramdharry	20th May 1970
Certificate of the Master and Registrar	3rd June 1970

ON APPEAL
FROM THE SUPREME COURT OF MAURITIUS

B E T W E E N :

Ramdharry Insurance Co. Ltd. represented
by the Chairman of its Board of Directors,
Mr. Deokeenanun Ramdharry, of Port Louis Appellants

- and -

10 Desmond O'Shea, acting both for himself
and as legally representing his minor sons
John Desmond Fabian O'Shea, Paul Simon
O'Shea, Jeremy James Prince O'Shea, Desmond
Francis O'Shea and Stephen Anthony O'Shea Respondent

RECORD OF PROCEEDINGS

No. 1

Statement of Claim

IN THE SUPREME COURT OF MAURITIUS AND ITS
DEPENDENCIES.

In re:-

20 Desmond O Shea, acting both for himself and
as legally representing his minor sons John
Desmond Fabian O'Shea, Paul Simon O'Shea,
Jeremy James Prince O'Shea, Desmond Francis
O'Shea and Stephen Anthony O'Shea
Plaintiff

v.

30 Ramdharry Insurance Co.Ltd. represented by
the Chairman of its Board of Directors,
Mr. Deokeenanun Ramdharry, of Port Louis
Defendant

In the Supreme
Court

No. 1

Statement of
Claim.
7th August
1969.

In the Supreme
Court

No. 1

Statement of
Claim.

7th August 1969

(continued)

STATEMENT OF CLAIM:

10. On the 15th December 1965 an accident occurred on the public road between Cannoniers Point and Grand Baie, between car No. H.293 driven by Mrs. Mary Frances Josephine O'Shea, and in which Paul Simon O'Shea, Jeremy James Prince O'Shea and Desmond Francis O'Shea were also travelling, and car No. F 616 driven by Veerapen Veerapa Pillay and insured by the Defendant.

10

20. As a result of the said accident the Plaintiff in his own personal name and his aforesaid capacity entered before the Supreme Court of Mauritius against Veerapen Veerapa Pillay a Statement of Claim served upon the said Veerapen Veerapa Pillay on the 16th February 1967, (Reg. DH 359 No. 6738), in which he claimed damages amounting to Rs 865,492.35.

30. Notice of the bringing of the proceedings was given to the Defendant in virtue of a notice under the signature of the under-signed Attorney-at-Law served on the 22nd February 1967 (Reg. DH 359 No. 6826) within the delay prescribed by law.

20

40. On the 9th October, 1968, (Reg. B 115 No. 427) the Supreme Court delivered a judgment (Reg. B 115 No. 427) against Veerapen Veerapa Pillay, in which it awarded to the Plaintiff in his personal name and in his aforesaid capacity damages amounting to Rs 706,782.58 - together with costs which have been duly taxed and amount to Rs 5,870.08.

30

50. The costs of causing the said judgment to be signed and registered amount to Rs 14,965.70.

60. Veerapen Veerapa Pillay was granted by the Supreme Court of Mauritius on the 25th November 1968, conditional leave to appeal against the said judgment under section 81 (i) (b) of the Constitution of Mauritius.

70. This leave was withdrawn and the order made on the 25th November 1968, was rescinded by the above Court on the 12th May, 1969.

40

80. The said judgment of the Supreme Court delivered on the 9th October 1968, is now executory.

In the Supreme Court

No. 1

90. The Plaintiff in his personal name and in his aforesaid capacity avers that the Defendant is bound in law to pay to him the sum of Rs 727,618.36 made up as follows:-

Statement of Claim.
7th August 1969
(continued)

10	Amount due in virtue of the judgment referred to in paragraph 4 above	Rs 706,782.58
	Costs as per duly taxed Bill of Costs	5,870.08
	Costs of causing the judgment referred to in paragraph 4 above to be registered	14,965.70
		<u>Rs 727,618.36</u>

20 100. The Plaintiff therefore prays from this Honourable Court for a judgment ordering the Defendant to pay to him in his personal name and in his aforesaid capacity the sum of Rs 727,618.36 for the causes above set forth.

With interest and costs.

30 You, the abovenamed Defendant, are hereby required, called upon and summoned to cause an appearance to be entered for you at the Supreme Court of Mauritius and its Dependencies by filing in the office of the Master and Registrar of the said Court a Statement of Defence in answer to the present Statement of Claim within FIVE DAYS from the service hereof upon you.

If the amount claimed in capital, interest, costs (amounting to Rs 1,000.- subject to taxation) and accessories be paid to the Plaintiff or his attorney within FOUR DAYS from the service hereof upon you, all further proceedings will be stayed.

Issued by the Plaintiff abovenamed and styled, at the domicile by him elected in the office of the undersigned attorney-at-law,

In the Supreme Court

No. 1

Statement of Claim.
7th August 1969
(continued)

situate in No. 8 George Guibert Street, Port Louis.

Under all legal reservations. Dated at Port Louis, this 6th day of August 1969.
(s) G.A. Robert of No. 8 George Guibert Street, Port Louis, Attorney for the Plaintiff.

To The Defendant abovenamed and styled at its registered office, situate at Royal Street, Port Louis.

Amount of claim	Rs 727,618.36	10
Interest	(Memo)	
Costs (subject to taxation)	<u>1,000.-</u>	

This Statement of Claim was duly served by me, the undersigned Usher on Ramdharry Insurance Co. Ltd., represented by the Chairman of its Board of Directors, Mr. Deokeenanun Ramdharry by leaving a true and certified copy thereof with the latter in person found at the registered office of the said Company situate at the corners of Corderie and Royal Streets, Port Louis. On Thursday the 7th day of August, 1969. (s) A. Goupy, usher S.C.

20

Registered at Mauritius on the seventh day of August one thousand nine hundred and sixty-nine Reg. DH 369 No. 5958. Received rupee one and cents five Fixed duty 5% surcharge.

(s) E. Cupidon.

No. 2FURTHER PARTICULARSIn the Supreme
CourtNo. 2Further
Particulars
19th August
1969.Concerning paragraph 4 of the Statement of Claim

Q. (a) How is the sum of Rs 5,870.08 mentioned in the said paragraph arrived at? Please give full particulars of same.

(b) When has the costs taxed by the Master and Registrar if at all? [sic]

10 A. The bill of costs for Rs 5,870.08 containing full details of the sum of Rs 5,870.08 is dated the 17th October 1968, has been registered on the 30th October, 1968, in Reg. A 367 No. 9115 and has been taxed by Mr. P de Ravel, Ag Master & Registrar of the Supreme Court. The date of the Master and Registrar's signature does not appear on the bill. The bill may be inspected by the Defendant, his attorney or agent on any office day between office hours.

20 Concerning paragraph 5 of the Statement of Claim

Q. How is the sum of Rs 14,965.70 arrived at? Please give full particulars of same.

30 A. The sum of Rs 14,965.70 represents the amount paid to the Registrar General for the registration of the judgment of the Supreme Court (Reg. B 115 No. 427) mentioned in para 4 of the Statement of Claim. The receipt delivered by the Registrar General may be inspected by the Defendant, his attorney or agent, on any office day between office hours.

The delay of one week prayed for by the Defendant is granted.

Under all legal reservations.

Dated at Port Louis, this 19th day of August, 1969.

(s) G.A. Robert of No. 8 George Guibert Street, Port Louis, Plaintiffs' Attorney.

In the Supreme
Court

No. 2

To the Defendant abovenamed and styled
having his legal domicile elected at the office
of Mr. Attorney G. Baguant situate at Desforges
Street, Port Louis.

Further
Particulars
19th August
1969.

(continued)

I hereby acknowledge good and valid service
of the foregoing Answer to Particulars, a true
and certified copy whereof I have received
this 19th day of August, 1969.
(s) G. Baguant, Defendant's Attorney.

Registered at Mauritius on the Twentieth
day of August one thousand nine hundred and
sixty nine. Reg. A370 No. 11486 Received
rupee one and cents five.

10

Fixed duty 5% Surcharge. (s) E. Cypidon

No. 3

Statement of
Defence.
8th October
1969.

No. 3

Statement of Defence

1. The Defendant admits the allegations
contained in paragraphs 1, 2, 3, 4 and 5 of the
Statement of Claim.

2. In answer to paragraphs 6 and 7 of the
Statement of Claim, the Defendant avers:

20

(a) That conditional leave to appeal was
granted to the said Veerapen Veerapa Pillay by
the Supreme Court provided (I) that the said
Veerapen Veerapa Pillay should within 6 weeks
from the date of the order of the Court enter
into a good and sufficient security to the
satisfaction of the Master and Registrar of the
Supreme Court in the sum of ten thousand rupees
(Rs 10,000.-) for the prosecution of the
appeal and (II) that the said Veerapen Veerapa
Pillay should procure the preparation of the
record and the despatch thereof to England
within four months of the said order;

30

(b) That the said Veerapen Veerapa Pillay
failed to comply with the proviso contained in
the abovementioned judgment because of certain
circumstances beyond his control namely that,
after the judgment delivered against him as

mentioned in paragraph 4 of the Statement of Claim, he suffered from a depressive illness with some paranoid elements and had to attend Brown Sequard Hospital for psychiatric treatment when he was treated by Dr. Raman, the Psychiatrist of the said hospital.

In the Supreme
Court

No. 3

Statement of
Defence.
8th October
1969.

(continued)

10 (c) That on the 27th March, 1969, the said Veerapen Veerapa Pillay moved the Supreme Court of Mauritius for an order granting him further delay for the finalisation of the appeal but on the 12th May, 1969, the Court refused to grant him a further delay to prosecute the appeal and the order made on the 25th November, 1968, granting him conditional leave to appeal was rescinded.

20 (d) That in virtue of Section 81 (5) of the Mauritius Independence Order, 1968, the said Veerapen Veerapa Pillay has now applied for special leave to appeal to the Judicial Committee of the Privy Council against the judgment mentioned in paragraph 4 of the Statement of Claim;

(e) That the petition to Her Majesty in Council praying for special leave to appeal has been lodged on the 4th August, 1969, by the said Veerapen Veerapa Pillay and the said petition will be heard shortly;

30 (f) That the services of Messrs. Archibald Leslie Bryden and Williams, Privy Council Agents & Solicitors, of 20 Old Queen Street, in the City of Westminster, London S.W.1 and Mr. John Platts Mills Q.C. and Mr. O.K. Rummun have been retained on behalf of the said Veerapen Veerapa Pillay to proceed with his petition for special leave to appeal.

40 3. In answer to paragraph 8 of the Statement of Claim, the Defendant denies that the said judgment of the Supreme Court delivered on the 9th October, 1968 is now executory and avers that the Plaintiff has no right of action against the Defendant until the Judicial Committee of the Privy Council has given a final decision in respect of the petition lodged by Veerapen Veerapa Pillay for special leave to appeal.

In the Supreme Court

No. 3

Statement of Defence.

8th October 1969.

(continued)

The Defendant further avers that the present action entered by the Plaintiff against the Defendant Co. is premature because the Judicial Committee of the Privy Council may very well either reverse the Supreme Court's said judgment or reduce the damages awarded, should it decide to entertain the appeal.

In the alternative the defendant also avers that it would not be just and equitable for the Court to give judgment against the defendant for the reasons above stated until the Judicial Committee of the Privy Council has given a final decision in respect of the petition lodged by Veerapen Veerapa Pillay for special leave to appeal.

10

4. The defendant denies therefore the averments made by the plaintiff in paragraph 9 of the statement of claim.

5. The defendant therefore prays that this action be dismissed with costs.

20

Under all legal reservations.

Dated at Port Louis, this 8th day of October 1969

(s) G. Baguant of Desforges Street, Port Louis, Defendant's Attorney.

To/ the abovenamed plaintiffs electing their legal domicile in the office of Mr. G.A.Robert, Attorney-at-law, of George Guibert Street, Port Louis.

A true copy, (s) G. Baguant, Defendant's Attorney

30

Reg. A 371 No. 13509.



IN THE PRIVY COUNCIL
ON APPEAL FROM THE SUPREME COURT OF MAURITIUS

No. 4
Motion.

In the Supreme
Court

No. 4

Motion.
17th October
1969.

In re:-

Desmond O'Shea, Plaintiff

v.

Ramdharry Insurance Co. Ltd.
Defendant

and

In re:

10 Desmond O'Shea, Applicant

v

Ramdharry Insurance Co. Ltd.
Respondent

MOTION PAPER

20 COUNSEL is instructed to move this Honourable Court for an Order under Rule 20 of the Rules of the Supreme Court, 1903, that (a) the Statement of Defence dated the 8th October 1969, and served by Respondent on Applicant in the above matter should be struck out and that (b) judgment should be entered in Applicant's favour in the sum of Rs 727,618.36 Cs claimed by him from Respondent, together with costs.

For the reasons fully set out in the hereto appended affidavit.

Under all legal reservations.

Dated at Port Louis, this 17th day of October, 1969.

30 (s) G.A. ROBERT of No. 8 George Guibert Street,
Port Louis, Attorney for the Plaintiff and
Applicant (s) Jean E. PIAT
P. RAFFRAY, Q.C.
of Counsel for the Plaintiff and Applicant.

In the Supreme Court

No. 5

AFFIDAVIT OF GEORGES ANDRE ROBERT

No. 5

Affidavit of George Andre Robert. 16th October 1969.

In re:

Desmond O'Shea, acting both for himself and as legally representing his minor sons John Desmond Fabian O'Shea, Paul Simon O'Shea, Jeremy James Prince O'Shea, Desmond Francis O'Shea and Stephen Anthony O'Shea
Plaintiff

v.

10

Ramdharry Insurance Co. Ltd. Defendant

and

In re:

Desmond O'Shea, acting both for himself and as legally representing his minor sons John Desmond Fabian O'Shea, Paul Simon O'Shea, Jeremy James Prince O'Shea, Desmond Francis O'Shea and Stephen Anthony O'Shea
Applicant

v.

20

Ramdharry Insurance Co. Ltd. Respondent

I, Georges Andre Robert, of Port Louis, Attorney-at-law,

Make oath and say

1. That I am the Attorney and agent of the Plaintiff and Applicant in the above matters.

2. That the Applicant has on the 7th day of August 1969 entered against the Respondent a Statement of Claim in which he claimed from the Respondent a sum of Rs.727,618.36. for the causes therein set out.

30

3. That the Respondent having failed to file a defence in answer to the said Statement of Claim, the Applicant has applied for and obtained a Rule Nisi against the Respondent.

4. That the Respondent has applied to the above Court for a stay of proceedings, which application has been dismissed with costs.

In the Supreme Court

No. 5

5. That the Respondent has thereupon caused to be served on the Applicant a Statement of Defence dated the 8th October 1969, in which he admitted paragraphs 1 to 5 of the said Statement of Claim.

Affidavit of
George Andre
Robert.
16th October
1969.

10 6. That the Respondent's answers to the other averments of the said Statement of Claim show no defence and/or are frivolous and vexatious.

(continued)

7. That it is urgent and necessary that the above Court should order under Rule 20 of the Rules of the Supreme Court, 1903 that

(a) the said Statement of Defence be struck out for the causes set out above and that

(b) judgment should be entered in Applicant's favour for the sum of Rs.727,618.36. claimed by him from Respondent, together with costs.

20

8. That I therefore pray accordingly.

Sworn by the abovenamed deponent at Chambers, Court House, Port Louis this 16th day of October 1969.

(s) G.A. Robert Before me (s) M. Latour-Adrien
Judge.

Registered at Mauritius on the seventeenth day of October One thousand nine hundred and sixty nine Reg. A371 No. 13510 received Rupee one and cents five. Fixed duty 5% Surcharge

30

(s) Jean Pierre.

In the Supreme
Court

No. 6

Notice of
Motion.
17th October
1969.

No. 6

Notice of Motion

TAKE NOTICE that the Applicant in the above matter shall on Monday the 20th day of October 1969, at 10.30 a.m. or at such later time as the above Court may sit to hear motions, move the above Court situate at Jules Koenig Street, Port Louis, for an Order under Rule 20 of the Rules of the Supreme Court, 1903, that (a) the Statement of Defence dated the 8th October, 1969, 10 and served by Respondent on Applicant in the above matter should be struck out and that (b) judgment should be entered in Applicant's favour in the sum of Rs. 727,618.36 Cs claimed by him from Respondent, together with Costs.

And this for the reasons fully set out in the hereto appended affidavit, a true and certified copy whereof is herewith served upon you in order that you may not plead or pretend ignorance of same. 20

And take further notice that the said motion will be heard on the day and at the time and place aforesaid whether you be present or not.

Under all legal reservations.

Dated at Port Louis, this 17th day of October, 1969.

(s) G.A. Robert of No. 8 George Guibert Street, Port Louis.

Attorney for the Plaintiff and Applicant 30

To the Respondent abovenamed having his legal domicile elected in the office of Mr. Attorney G. Baguant, of Desforges Street, Port Louis.

I hereby acknowledge good and valid service of the foregoing Notice of Motion, a true and certified copy whereof I have received this 17th day of October, 1969.

(s) G. Baguant
Attorney for Respondent 40

Registered at Mauritius on the Seventeenth day of October one thousand nine hundred and sixty nine Reg. A371 No. 13512 Received rupee one and cents five Fixed duty 5% surcharge.

In the Supreme Court

No. 6

(s) Jean Pierre

Notice of Motion.
17th October 1969.

(continued)

No. 7

No. 7

Proceedings

Proceedings
20th October 1969.

On Monday the 20th October, 1969.

Before the Hon. Sir Michel Rivalland, C.J.

10 D. O'Shea v. Ramdharry Insurance Co.Ltd.

J. Piat replacing A. Raffray Q.C. of counsel for applicant moves in terms of motion paper which he files together with an affidavit sworn by Mr. Attorney George Andre Robert and notice of motion.

R. Sewgobind appears for the respondent, moves for a postponement of 1 month to consider his position - whether counter affidavit will have to be filed.

20 Piat states that his instructions are not to object to a postponement to a fortnight.

The Court orders the case to be mentioned on 10.11.69.

(s) F. Koo Seen Lin for Master and Registrar.

On Monday the 10th November, 1969.

10th November 1969.

A. Raffray Q.C., (P. Nairac with him) appears for applicant.

R. Sewgobind appears for respondent moves that

In the Supreme
Court

No. 7

Proceedings
10th November
1969.

(continued)

21st January
1970.

the case be fixed for hearing on any date in
January.

On question from Court he states that in
the light of progress made in the case before
the Privy Council, he does not propose to move
for amendment of the defence.

To 21.1.70. Merits.

(s) F. Koo Seen Lin for Master and Registrar

On Wednesday 21st January, 1970.

Garrioch, J.

10

15090:- D. O'Shea v. Ramdharry Ins. Co. Ltd.

A. Raffray, Q.C. (P. Nairac, Q.C. with him)
appears for applicant.

R. Sewgobind (O. Rummun with him) appears for
respondent.

Raffray addresses the Court.

Sewgobind replies and puts in doct. A, B & C.

Raffray rejoins.

The transcript of the shorthand notes of the
argument of both counsel are hereto appended. 20

Court reserves judgment.

(s) R. Standley for Master and Registrar.

No. 8Addresses of CounselIn the Supreme
CourtNo. 8Argument of Mr. A. Raffray, Q.C. for the
Plaintiff:-Addresses of
Counsel.
21st January
1970.

10 Mr. A. Raffray, Q.C.: My Lords, this motion comes as a last, and I hope a really last step in the long drawn out litigation first between Mr. O'Shea and ors. against Mr. Pillay which was the subject of the original case before this Court (action in damages) and subsequently the claim against Ramdharry Insurance Co. Ltd. which is the present defendant in this case.

20 My Lords, this motion is to the effect (at page 1 of Your Lordships' brief) that the Court, exercising its powers under Rule 20 of the Rules of the Supreme Court, 1903, should hold that the Statement of Defence dated the 8th October, 1969, and served by Respondent on Applicant in the above matter should be struck out and that judgment should be entered in Applicant's favour in the sum of Rs 727,618.36 claimed by him from Respondent, together with costs.

20 This motion, My Lords, is supported by an Affidavit by Mr. Attorney Georges Robert, which Your Lordships will find at pages 4 and 5 of the brief, to the effect that the Applicant has entered a statement of Claim against Ramdharry Insurance Co. claiming the sum of Rs 727,618.36 which was the figure granted by the Court in the case of O'Shea v. Pillay, that the Respondent has failed to file a defence in answer to the said Statement of Claim, that the Applicant has applied for and obtained a Rule Nisi against the Respondent that the Respondent has applied to the above Court for a stay of proceedings, which application has been dismissed with costs, that the Respondent has thereupon caused to be served on the Applicant a Statement of Defence dated the 8th October, 1969, in which he admitted paragraphs 1 to 5 of the said Statement of Claim, that the Respondent's answers to the other averments of the said Statement of Claim show no defence and/or are frivolous and vexatious, that it is urgent and necessary that the above Court should order under Rule 20 of the Rules of the Supreme Court, 1903,

30

In the Supreme
Court

No. 8

Addresses of
Counsel.
21st January
1970.

(continued)

that the said statement of Defence be struck out for the causes set out above and that judgment should be entered in Applicant's favour for the said sum.

Now, My Lords, the Statement of Claim which, in the present action, is dated 7th August 1969, is based really on Section 61 of the Road Traffic Ordinance, 1962 which I shall briefly quote in a minute and is based on the fact (that is paras. 1 to 5 of the Statement of Claim) that, in the original action by Mr. O'Shea and others v. Veerapen Veerapa Pillay insured by the defendant Insurance Company, judgment was obtained in damages against Mr. Pillay in the sum of Rs 706,782 together with costs which have been duly taxed and amount to Rs 5,870. Further it is alleged that the costs of causing the said judgment to be signed and registered amount to Rs 14,965.

10

Now, paragraphs 6 and 7 allege that Mr. Pillay was granted by the Supreme Court conditional leave to appeal to the Privy Council, and on the 12th of May, 1969 the leave was rescinded by the above Court, the would-be appellants having failed to comply with the conditions set down by the Court in granting conditional leave, specially furnishing the necessary security.

20

The conditional leave was rescinded, and the plaintiff goes on to allege that the said judgment of the Supreme Court delivered on the 9th October, 1968, is now executory. Now the plaintiff alleges, in his personal name and in his aforesaid capacity, that the defendant is bound in law to pay to him the sum of Rs 727,618.36 made up as follows - the details are given - and the Plaintiff prays for a judgment.

30

When it is alleged in para. 9 by the Plaintiff in his personal name and in his aforesaid capacity that the Defendant is bound in law to pay the amount of the judgment with costs, the plaintiff is relying on section 61 of the Road Traffic Ordinance 1962 which enacts the liability of insurers in respect of third party requirements as follows :-

40

"61 - (1) If, after a certificate of insurance has been issued under subsection (3) of section 57 of this Ordinance to the person.....judgments. The only restrictions to which this enactment is subject are contained in subsection (2) of section 61 as follows:

In the Supreme Court

No. 8

Addresses of Counsel.
21st January 1970.

(continued)

10

"(2) No sum shall be payable by an insurer under the foregoing provisions of this section -

(a) in respect of any judgment, unless before or within fourteen days after the commencement of the proceedings in which the judgment was given the insurer had notice of the bringing of the proceedings or

(b) in respect of any judgment, so long as execution thereon is stayed pending an appeal."

20

Now, it is alleged in the Statement of Claim, My Lords, in para. 3, that notice of the bringing of the proceedings was given to the Defendant in virtue of a notice under the signature of the undersigned Attorney-at-law served on the 22nd February, 1967, within the delay prescribed by law, and this is admitted by the defendant in his Statement of Defence. So that the first condition has been fulfilled; notice has been served on the Insurers in due course and in due time.

30

What about the second condition that the Insurers are not liable in respect of any judgment so long as execution thereon is stayed pending an appeal?

It has been alleged, My Lords, that conditional leave was granted to Mr. Pillay by this Court to appeal to Privy Council and this leave has been subsequently rescinded in May, 1969, as alleged in para. 7, so that it is alleged that the said judgment of the Supreme Court is now executory.

40

Now, I must at this stage refer shortly to the Order entitled the Mauritius (Appeals to Privy

In the Supreme
Court

No. 8

Addresses of
Counsel.

21st January
1970.

(continued)

Council) Order 1968, Government Notice No. 59 of 1968, which governs now all appeals to Privy Council, under Clause 4 of that Order - Leave to appeal to Her Majesty in Council: (Reads clause 4).

Under Clause 6 of this Order we see that "where the decision appealed from requires the Appellant to pay money or do any act, the Court shall have power, when granting leave to appeal, either to direct that the said decision shall be executed or that the execution thereof shall be suspended pending the appeal, as to the Court shall seem just, and in case the Court shall direct the said decision to be carried into execution, the person in whose favour it was given shall, before the execution thereof, enter into good and sufficient security ..." which was not the case in this instance. Quoting from memory, I think it must be evident that when conditional leave was granted by this Court to Mr. Pillay execution was stayed at the same time.

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Now, it is also important to note that the extreme that conditional leave may be granted under Order 4 is upon condition that the appellant within a period to be fixed by the Court but not exceeding 90 days from the date of the hearing of the application for leave to appeal should have fulfilled all formalities; so that the 90 days' delay or period is the extreme delay within which formalities should be fulfilled.

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SHORT RECESS

On resuming after short recess:-

Mr. A. Raffray, Q.C.: My Lords, now, if we turn to the Statement of Defence we see that the Defendant, at page 7 of Your Lordships' brief, admits all the allegations contained in paragraphs 1, 2, 3, 4 and 5 of the Statement of Claim, that as regards paragraphs 6 and 7, namely, the allegations regarding the abortive attempt to obtain leave to appeal from this Court, the Defendant launches into allegations of the various facts which, according to him, tend to explain why he has failed in fulfilling the conditions of the prosecution of the appeal within the prescribed

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statutory delay. The Defendant further explains that he unsuccessfully tried to obtain further delay which was turned down by this Court and explains under paragraph (d) of paragraph (2) of the Statement of Defence that he has now applied to the Privy Council for special leave to appeal from the judgment in question. He goes on to say that the petition for special leave has been lodged on the 4th August, 1969, that is to say, 5 or 6 months ago, and that the said petition will be heard shortly. We are now on the 21st January, and the petition has not been heard yet.

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Now, the gist of the question before the Court is contained in paragraph 3 of the Statement of Defence which alleges as follows:

"3. In answer to paragraph 8 of the Statement of Claim, the Defendant denies that the said judgment of the Supreme Court delivered on the 9th October, 1968 is now executory and avers that the Plaintiff has no right of action against the Defendant until the Judicial Committee of the Privy Council has given a final decision in respect of the decision lodged by Veerapen Veerapa Pillay for special leave to appeal.

The Defendant further avers that the present action entered by the Plaintiff against the Defendant Co. is premature because the Judicial Committee of the Privy Council may very well either reverse the Supreme Court's said judgment or reduce the damages awarded, should it decide to entertain the appeal.

In the alternative the Defendant also avers that it would not be just and equitable for the Court to give judgment against the Defendant for the reasons above stated until the Judicial Committee of the Privy Council has given a final decision in respect of the petition lodged by Veerapen Veerapa Pillay for special leave to appeal."

"4. The Defendant denies therefore the averments made by the Plaintiff in paragraph 9 of the Statement of Claim."

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"5. The Defendant therefore prays that this action be dismissed with costs."

This is the defence which is before this Court.

Now, My Lords, on the basis of the motion which I make today, the Applicants Mr. O'Shea and Others submit that there is no defence at all, that on the face of the Statement of Defence, on the face of the pleadings, there is no defence raised by the Defendant, and that therefore this Statement of Defence should be struck out and judgment should be entered in favour of the Plaintiff. We reply, My Lords, on Rule 20 of the Rules of the Supreme Court which reads as follows :

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"The Court may order....."

This Rule is a well-known Rule and is more or less a verbatim reproduction of Order 18 Rule 19 which Your Lordships will find in Supreme Court Practice 1967, Vol. 1, pages 270 and fol. The English Rule reads as follows :

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"The Court may at any stage....."

Really we are on all fours with the English Rule. The scope of the Rule is evident, My Lords. I read from the bottom of page 270:

"This Rule constitutes....."

The principles on which this power is exercised, My Lords, are also well-known and will be found by Your Lordships at the bottom of page 271 and on page 272 of the Supreme Court Practice as follows :

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"It is only in plain and obvious cases....."

Now, I submit that it is rather seldom that this Court does exercise this rather extreme power granted under this Rule, but if ever there was a case to justify the Rule and to allow its application, it is this case. I submit that the judgment in Pillay's case is plainly executory, that no amount of applications to the Privy Council for special leave which certainly Mr. Pillay is entitled to try, no amount of delay, no amount of

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time being allowed to elapse without apparently anything being done will in the least help the Defendant to establish that the judgment which has been obtained against Mr. Pillay is not executory. A party who applies to the Privy Council for special leave, My Lords, may, in certain cases, and sometimes does, obtain a stay of execution of the judgment which he tries to obtain leave to appeal against. If we refer to Privy Council Practice at pp.131 and 132, we see that where special leave was granted in the case of the Bank of Australasia (?) it was said the admission of appeal will, of course, stay proceedings in the Court below. Again in Safford & Gryla (?) at pp. 764 and 765 it was held that the admission of the appeal will of course stay the proceedings in the Court below. In other words, it may be within the jurisdiction of the Privy Council to grant a stay of execution subject, of course, to security, subject to terms, and it is en passant rather striking to see that in this case the defendants are merely asking that this action should be stayed, or should even be dismissed, because this is the last paragraph of their Statement of Defence, without mentioning the furnishing of security, and during that time, they seem to contend, the Plaintiffs Mr. O'Shea and Others should remain content with allowing time to elapse until the case is ready to be taken before the Privy Council, and there is, of course, no guarantee that this action will be pursued and, still less, won, and that judgment delivered by this Court will ever be amended, or quashed, or set aside, or modified by the Privy Council.

However that may be, My Lords, my point is that it is not within the jurisdiction of this Court to grant any stay of execution at this stage. In other words, this Court is, so to speak - I do not know whether I can use this term - functus officio in so far as the appeal to the Privy Council is concerned. The conditional leave has been rescinded, and therefore the power which this Court had to grant a stay of execution under Order 6 of the Privy Council Rules which I have quoted at the beginning can no longer be exercised by the Court; execution cannot be stayed.

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I submit that the defendant in this case is labouring under a confusion. He may or he may not have, or rather Mr. Pillay may or may not have a right or may apply if he so thinks fit before the proper forum to have execution of the judgment which has been obtained against him stayed. This is one thing. Another thing is what is to be done with the present pleadings, with the present Statement of Claim, the present Statement of Defence. I submit that the Statement of Defence does not raise one single issue which can be described as a shadow of a defence to the Claim contained in the Statement of Claim. The question of stay of execution is entirely irrelevant to the Claim contained in the Statement of Claim, namely, that judgment, having been obtained against his insured Mr. Pillay, the present Defendants, Messrs. Ramdharry and Co. are bound under Section 61 of the Road Traffic Ordinance to pay the amount of the judgment and that the judgment is executory. There is not a single word, there is not a single paragraph in the Statement of Defence, My Lords, which can show in any way that this is not the position.

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Under the circumstances, I submit that all the long-winded paragraphs of the Statement of Defence amount to simply nothing. It is a complete void. There is a complete lack of defence, and it is not sufficient for the defendants to say: this judgment is not executory, therefore section 61 does not apply. There is no attempt to show why the judgment is not executory, otherwise than this irrelevant allegation made that the Defendant is still trying to obtain special leave from the Privy Council which is a fact entirely irrelevant to the issue contained in the Statement of Claim. It is not sufficient purely and simply for the defendant to say that the judgment is not executory. That will not do. I submit that the judgment is executory and that there is nothing in the Statement of Defence which is worthy to be inquired into by the Court. In other words, there is no issue raised by the defendant in his Statement of Defence which can in the most remote way be considered as a defence at all.

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Under the circumstances, I submit this is

quite the sort of case, the sort of situation which Rule 20 is intended to deal with, and I submit therefore that the plaintiffs are entitled to have the whole of the Statement of Defence struck out and judgment entered for them accordingly.

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10 My Lords, my learned friend has just called my attention to the fact that it is a two-legged application. Of course, we are also alleging that this defence is vexatious and frivolous.

20 I may quote quite a number of facts to show that it is very vexatious on the part of the defendants to insist on the plaintiffs being kept waiting after months and months have elapsed and without the plaintiffs being able to obtain a penny or see any indication of anything forthcoming. I submit that the first leg is so clear and so obvious that really I do not need this second part of the motion.

Argument of Mr. Sewgobind for the Defendant:

Mr. Sewgobind: May it please Your Lordships, the motion to strike out the Statement of Defence as my learned friend says, is based on Rule 20 of the Supreme Court which says that the defence should be struck out if it amounts to no defence or when it is vexatious or frivolous.

30 The case before Your Lordships is not for a stay of proceedings at all. What we have to know, in my humble submission is whether the Statement of Defence is an abuse of the process of the Court. In other words, the sum total of all the principles laid down in the Supreme Court Practice under Order 18 Rule 19 amount to this: that it must amount to an abuse of the process of the Court or it is not a defence at all in the sense that nothing has been denied or some other thing like that. We have to see whether any issue has been raised, any averment in the Statement of
40 Claim has been denied in this Statement of Defence or not, whether in fact issue has been joined between the plaintiff and the defendant or not. This is the thing which Your Lordships, in my humble submission, will have to find from the Statement of Claim and from the Statement of

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Defence.

My learned friend has laid great stress on the fact that the defendant has admitted paras. 1, 2, 3, 4, and 5 of the Statement of Claim of Mr. O'Shea. But what do paras. 1, 2, 3, 4 and 5 say? They only say that there was an accident, that a case was entered by the person who was the victim of the accident against the person responsible for the accident, judgment was obtained in a certain sum, notice was served on the Insurer of proceedings to be started and judgment was awarded in that sum and with costs.

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Now, we have admitted it, and this, I submit, shows most strongly the bona fide of the defendants. We have not denied these although we could have put the plaintiffs to the proof thereof. So that when we say in the Statement of Defence that we admit paras. 1 to 5, this cannot be held to be either frivolous or vexatious or anything like that. On the contrary, it shows complete sincerity on the part of the defendants. That is as regards the admission of paras. 1 to 5 of the Statement of Claim. This admission, instead of going against them, fortifies their sincerity. So, this does away with the submission of vexatiousness or frivolousness on the part of the defendants.

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Now, the striking out of pleadings, whether it is Statement of Claim or Statement of Defence, is a very extreme step, a very extreme measure to take, and as my learned friend quoted from the Supreme Court Practice, it is only in the most obvious cases that the Court will have to exercise it, in plain and obvious cases.

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Now, there is one thing which arises; we have joined issue, at least on two points as Your Lordships will see. In fact, the averments in the Statement of Claim amount first to a narration of what took place up to paragraph 5. We have admitted that. Then come paragraphs 6 and 7 regarding how proceedings of application for leave here in Mauritius was started and how proceedings ended. We have, in this Statement of Defence, given explanations after denying, so that there is something there. If it was not important to refer to the application for leave to Her Majesty in Privy Council I think the

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10 plaintiffs would not have put it in their Statement of Claim. The plaintiffs have thought it fit and proper to include that there was an application on the part of Ramdharry Insurance for leave to appeal to the Privy Council and that ended in an abortion, or it ended without any success. We have, in our Statement of Defence, explained the circumstances why the application was discarded by the Court, or was not successful. So, there is again some sort of issue which has been joined between the plaintiff and the defendant. We come then to paragraph 8 which is the crux of the Statement of Claim; that the said judgment against Mr. Pillay on the 9th October, 1968 is now executory.

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20 Here I may submit that under the Road Traffic Ordinance, Section 61, to which my learned friend has made reference, there is a sort of executory measure which is granted: instead of executing the judgment against the person against whom judgment has been delivered, there is a right to sue the Insurance Party. The Ordinance does not even say sue or bring action. The Road Traffic Ordinance does not say shall sue or shall take action against the Insurer, but says that the Insurer shall pay. This is a matter for construction as to whether automatically when a party obtains a judgment, he can claim the right against the Insurer. But the plaintiff has chosen to come by way of action against the Insurance Company. All this suggests, My Lords, that this is an executory measure granted by the Ordinance. There would be no point in granting something which already existed, that is, execution against the judgment debtor, Mr. V. Pillay. This is an additional measure of an executory nature going against the Insurer by the Road Traffic Ordinance. So, that is the averment of the Statement of Claim: that the said judgment is now executory. Here, we join issue, we join issue on a most important point. We deny that this judgment is now executory. It is not, at this stage, that we have to enter into argument for or against this proposition, namely, this issue whether the judgment is executory or not. Otherwise we would be having a preliminary trial of the main action. I read from Supreme Court Practice Order 18, Rule 19, at page 271,

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My Lords:

"In applying this Rule....."

So that we are not embarking here on a preliminary hearing of the question whether the judgment is executory or not. That will be debated when the main action between the plaintiff and the defendant comes for trial before this Court. It is only then that each party will put forward his argument, otherwise we would be disposing of the case at this stage. 10

So, on this most important point issue has been joined. This is a most important point raised by the Plaintiffs in the Statement of Claim.

The second point in issue is in our defence at para. 3. It is the question of prematureness. Here is a major issue raised by the defendant and describing why the action against the defendant is premature: because there are proceedings leading to an appeal before Her Majesty in Council, and Your Lordships will see in para. 2, sub-para. (e) of the Statement of Defence that reference is made to the fact that the petition to Her Majesty in Council for special leave to appeal has been lodged on the 4th August, 1969 by the said Veerapen Veerapa Pillay and that the said petition will be heard shortly. "Shortly" is vague here. Since then we have received some indication of progress made in that direction. We have not been lying idle, and the defendant has not been acting frivolously or vexatiously in any manner. Of course, the proceedings to appeal have been carried very far from Mauritius, i.e. in London, and we have no direct control over the matter. We have entrusted those things to Privy Council agents, solicitors and learned counsel there. I beg to file two cablegrams. I understand that my friend has no objection to the production of these documents which rather supplement this sub-para. (e), to which I have just referred, of para. 2 of our Statement of Defence. It does not show much, but it does show that the machinery is going on, and we know the machinery of the Privy Council does not go very fast in view of 20 30 40

the large number of cases.

Mr. A. Raffray, Q.C.: Nowadays, they have got nothing to do because of the previous colonies becoming independent.

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10 Mr. Sewgobind: Your Lordships will see that the letter says that in view of the business waiting, we will have to wait too. The letter reproduces the cablegrams and says that, in view of the business still waiting, our case will have to wait for its turn before it comes for hearing. That is the gist of the letter. So that the position is as follows: the first application for leave to appeal lodged on the 4th August, 1969, as we have said in our Statement of Defence, has been recast and a new petition for leave to appeal to Her Majesty in Council has been lodged with counsel in London, the hearing of which may come on the dates as suggested in the cablegrams. If Your Lordships will allow me, I may file a copy of the
20 petition itself.

Mr. A. Raffray, Q.C.: We also have got a letter from Mr. O'Shea's solicitor in London. I had no objection to my learned friend producing the telegrams, but I do not think that the Court should allow my friend to go any further into that.

30 Mr. Sewgobind: All this is to show that we have been doing our best and that we have not been frivolous, because there has been much stress laid on delay, protraction and so on.

40 Now, the meaning of "frivolous" and "vexatious" has been given under Order 18, Rule 19. There are very many cases. It must be plain that there is no chance of success at all. It is no reason for rejecting a pleading just because it is very very weak. It may fail, it may fail, it may not succeed: that is not enough. Wherever there is something which is debatable and issue is joined, I submit that the Court should not have recourse to this extreme measure of striking out the pleadings. And Rule 20 says that the pleadings ex facie must show that there is no defence and that it is vexatious and frivolous. But ex facie the

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pleadings show that issue has been joined on three or more important points raised in the Statement of Claim. Can we say that these points are not worth anything unless we hear arguments and come to a decision on them?

I submit that this Statement of Defence discloses a defence. Whether it may fail or succeed is a different matter. In fact, my learned friend has not given any argument at all in support of the proposition that there is anything vexatious or frivolous; he just confined himself to showing that the defence is no defence at all. But until we hear arguments on the question whether the judgment is executory or not, I submit that Your Lordships cannot set aside this defence. 10

Reply of Mr. A. Raffray, Q.C.:

Mr. A. Raffray, Q.C.: I would like first of all to refer Your Lordships to a book on insurance as my learned friend raised the question whether it was necessary or not to sue the Insurers under Section 61. I must say that this was a point which has caused me some doubt when I looked into this matter. But I think that the following passage from SHAWCROSS on Insurance, page 294, answers this point. It reads as follows : 20

"It is remarkable that there is no provision whereby the Insurer is obliged to pay if their assured fails to satisfy the judgment against him. It is clear that Insurers are under this sub-section obliged immediately to pay the amount of the judgment in the circumstances indicated in the section. It should be noted that the third party, in order to enforce his judgment against an Insurer, must proceed by way of action. He cannot merely execute the judgment which he has obtained against the assured against the Insurers." 30 40

So that, whether we like it or not, it means further time, further delay, further procedure, further expenses. But we had to enter an action against the defendant before proceeding to

execute.

The second point which my learned friend has raised was that the mere fact that he was questioning whether the judgment obtained was executory or not was a sufficient defence. If we refer, My Lords, to para. 3 of the Statement of Defence, we see that the defendant explains his contention that the judgment is not executory. He says:

10 "In answer to paragraph 8 of the Statement
of Claim, the Defendant denies that the
said judgment of the Supreme Court
delivered on the 9th October, 1968, is
now executory and avers that the
plaintiff has no right of action against
the Defendant until the Judicial
Committee of the Privy Council has given
a final decision in respect of the
decision lodged by Veerapen Veerapa
20 Pillay for special leave to appeal."

This is the point on which the Defendant contends that the judgment is not executory. I humbly submit, my Lords, that this cannot hold water, cannot be entertained and is the equivalent of no defence at all.

As regards the point that the Respondent's answers to the averments of the Statement of Claim are frivolous and vexatious, my learned friend has produced two telegrams from Mr.
30 Pillay's attorney in London showing - I am quoting from memory - that the petition has been lodged some time this month, on the 16th January, as opposed to the allegation that it had been lodged on the 4th August, 1969, the allegation which was made as long ago as 8th October 1969 by the Defendant in para. (e) of para. (2) of the Statement of Defence that the petition to Her Majesty in Council had been
40 lodged on the 4th August, 1969. Apparently this was not true and not correct

Mr. Sewgobind: This is correct. I said that the petition had been recast and re-lodged.

Mr. A. Raffray, Q.C.: The question is very simple. The question is whether there is a case

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to be tried, whether there is an issue raised in the Statement of Defence, whether it is right, fit and proper that the proceedings should be held indefinitely, or whether it is vexatious or frivolous to raise this sort of irrelevant matters in the Statement of Defence. I have nothing to add. I submit that on both points the motion should be granted and the Court should proceed.

Court: We reserve judgment.

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No. 9

Proceedings
9th March 1970.

No. 9

PROCEEDINGS

On Monday 9th March, 1970.

Before the Hon. H. Garrloch, Ag. C.J. and the Hon. C. Moollan Ag. J.

15090 - D. O'Shea v. Ramdharry Insurance Co.Ltd.

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P. Nairac Q.C., (A. Raffray with him) appears for applicant.

R. Sewgobind appears for respondent moves for leave to withdraw from the case for personal reasons.

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The Court grants leave to Sewgobind to withdraw.

O.K. Rummun appears for respondent.

To 11.3.70 Merits.

(s) F. Koo Seen Lin for Master and Registrar.

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11th March 1970

On Wednesday the 11th day of March, 1970.

A. Raffray, Q.C. (P. Nairac, Q.C., with him), appears for the applicant.

O.K. Rummun appears for the respondent.

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Rummun states that he is in complete agreement with the submissions made by R. Sewgobind at the sitting of the 21st January, 1970, and both counsel agree that there is a full record of the submissions made on that day. They both make a few more submissions to the Court the transcript of the shorthand notes of which is hereto appended.

10 It is further agreed that Rummun, who has not had time to go completely through the record, will submit by Friday next any authorities he may wish.

Court reserves judgment.

(s) R. Standley for Master and Registrar.

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20 Mr. Raffray: My Lords, this motion is made under Rule 12 of our rules of court and arises out of the pleadings in the case of O'Shea v. Ramdharry Insurance Co. Ltd. and more especially out of defence, the gist of which is to be found in para. 3 of the Statement of Defence to the effect that the defendant denies; in para. 3 of the Statement of Defence, "that the said judgment of the Supreme Court..... for special leave to appeal"

The defendant concludes in paras. 4 and 5:

30 "The defendant denies therefore.....
be dismissed with costs."

Under rule 20 of our rules, My Lords, the applicant moved that this defence should be struck out, that the Statement of Defence should be ignored as it disposes no reasonable and possible defence and also because the defence is frivolous and vexatious which is the second aspect of that statement of defence. This is to

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be found in the affidavit sworn to by Mr. Georges Robert in support of the motion which Your Lordships will find at pages 4 and 5 of the brief and especially at pages 5 and 6 of the affidavit to the effect that "the respondent's answers.....are frivolous and vexatious."

Our rule 20 is more or less a verbatim reproduction of Order 18, rule 19 and this is the reference which in the shorthand transcript seems to be somewhat incomplete. The English rule is now Order 18, rule 19 and is to be found at pages 270 and following of the Supreme Court Practice of 1967 and Your Lordships will find not only the text of the English Rule but also very complete comments and judgments enunciating the principles on which the Court may act.

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The statement of claim is based on the Road Traffic Ordinance of 1962, section 61 which lays down that the Insurance Company shall "pay to the persons entitled to the benefitto interest on judgment." It is under this section that the action is entered against the insurance company who are the insurers in the case of Pillay v. O'Shea and against whom judgment has been obtained by O'Shea. Sub-section 2 of section 61 sets down a limit to that liability of insurers as follows: "No sum shall be payable.....of the proceedings." It was alleged in the Statement of Claim that there was an accident in which the plaintiff was injured and so on and judgment was given in his favour for a certain sum and Veerapen Veerapa Pillay had to direct the insurance company and this is not denied in the Statement of Defence. I mean Nos. 1 to 5. The liability has arisen in respect of the judgment. There has been a motion for leave to appeal which was granted. "Leave to appeal to Her Majesty in Council.....may think it reasonable." Then again "When the decision appealed from.....suspended pending the appeal."

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I quoted sections 4 and 6 of the Order in Council of 1968 which is to be found in G.N. 59 of 1968, page 172 et seq. and in sections 4 and 6 which regulate that Order. Your Lordships will find, so far as this Court is concerned,

conditional leave of appeal having been granted and judgment under consideration is fully executive so far by this Court. Therefore, I might submit that it follows inevitably that the claim against the insurance company is in order and the allegation in the Statement of Defence that either the claim is premature or the judgment is not executory is not supported by the very pleadings and by the terms set forth in the Privy Council Order in Council of 1968. Therefore there is no defence at all under our law and before this Court.

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Mention is made, and of course this fact is relied upon by the respondent to this motion, to the effect that certain proceedings are now pending before the Judicial Committee of the Privy Council with a view to obtaining from the Privy Council special leave to appeal. This is possible. It is open to Mr. Pillay who was the defendant in the first case to lodge an appeal, but I submit this is entirely irrelevant it has nothing to do with the present case and I refer Your Lordships to text books on matters of Privy Council. I would like to quote the passages first of all from Privy Council Practice, Bentwitch, 3rd Edition, bottom of page 131, to the effect that the Privy Council may, when considering a motion for special leave to appeal to Privy Council, may grant a stay of execution on terms of security and so forth; but this is the jurisdiction of the Privy Council and with which we are not concerned.

Again the same principle is referred to in Privy Council Practice, Sufford and Wheeler, bottom of page 764 and page 765. The Privy Council has jurisdiction to order stay of execution on terms of security, but I do not know really whether this can apply to this Court. Mr. Pillay who is not the party involved in this motion will be granted at all stay of execution. I submit that what is happening before the Privy Council is entirely irrelevant to the merits of the present case to the present motion and that it does not matter really whether there is a case pending before the Privy Council or not; as a matter of fact. This would rather perhaps touch on the second aspect of this motion, namely that

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the same defence is frivolous and vexatious.

But the fact is My Lords, that this story, if I may be forgiven to use that word with due deference to my learned friend this story of proceedings before the Privy Council for special leave to appeal has been going on now for nearly one year. It has been raised as far back as mid of last year I think and we have been kept on being told that matters were pending before the Privy Council and this went on from month to month and up to now. The only thing which can be stated to the court, I understand, by my learned friend to-day, is that the matter will be heard by the Privy Council on the 23rd March. I submit My Lords, with due respect, that this is a situation which, I do not think it is unreasonable to say, is vexatious, that the sort of defence raised by the respondent to the effect that this motion is premature and that the matter should be only delayed is frivolous, but they go a bit further, they ask the court in the Statement of Defence that the case should be dismissed.

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I submit that this really is a glaring instance of a complete lack of defence. There is a complete absence of reasonable defence. There is no reason why this case which has been dragging on, this case of O'Shea v. Ramdharry, based on a clear text of our law, section 61 of the Road Traffic Ordinance, that this claim should not proceed to its final decision which is that being given that there is no guarantee and no reasonable defence in the pleadings in the statement of defence, that the Statement of Defence should be struck out and that judgment should be entered against the defendant company.

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Mr. O.K. Rumman: My Lords, as the case stands, I would say that I have had a very short time to study the case. On the very day when the case was going to be fixed I was retained and I base myself on the shorthand notes, that means the argument of my friend Sharma. Unfortunately I received a copy of the shorthand notes at about 10.15 this morning and my difficulty would be to argue the case completely. I will argue to a certain extent and I would ask the Court to

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grant me time, and within reasonable delay, to submit to the Court certain authorities in support of the case.

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(continued)

10 In my argument I am going to endorse the submission of my learned friend Sewgobind who appeared in the case when the case came before our late Chief Justice. In his submission he drew the attention of the Court to two points: the first point was that the defendant has joined issue on two points and the first point was whether the judgment against the insured, against Pillay, was executory and the second point was that the action against the insurance company, meaning the defendant, is premature.

20 On the first point, on the point of executory, whether the judgment is executory or not, my friend based himself on the Road Traffic Ordinance. My friend has emphasised that it was not executory because the decision of the Judicial Committee of the Privy Council has not been given so far. On that day my friend argued, as it was in his defence, that the case was coming very shortly; but to-day My Lords, I am prepared to make a statement from the bar that the case is definitely coming for hearing on the 23rd of this month, in other words, on Monday week. We have letters from our agents in London and also a cable which we can produce.

30 Court: We have your statement, that is sufficient.

40 Mr. Rummun: The case is coming and a decision is going to be reached very shortly after the 23rd March. After the Judicial Committee of the Privy Council have decided on the application made by the insured, as it is referred in the defence, the decision of this Court, of the Supreme Court of Mauritius could be maintained or it could be reversed or any change could be brought. If there could be any reversal of the decision, then it would be very dangerous to take action against the insurance company. If the decision is maintained then it is executory.

Therefore, in my submission, as my friend submitted, the action is too quick at this stage and there will be some further delay before going

In the Supreme Court

No.10

Addresses of Counsel.
11th March 1970.

(continued)

against the Insurance Company, that is to say, we could wait for the final decision of the Judicial Committee, then it will be executory. In my submission it is not executory at this stage, it cannot be enforced against the Insurance Company. The action taken against the insured cannot be enforced against the Insurance Company.

As for the authorities, My Lords, I would like to have some further delay.

10

Court: We understand your difficulty, I do not think that you need too long a delay, a short delay would be enough. On Friday you can submit the authorities you want to quote in support of your case.

Mr. Rummun: Yes, My Lord, I will try to do my best to submit them by Friday next.

No.11

Proceedings
3rd April 1970.

No. 11

PROCEEDINGS

On Friday, 3rd April, 1970.

20

A. Raffray Q.C., (P. Nairac, Q.C., with him) appears for plaintiff.

Y. Mohamed replacing O.K. Rummun appears for defendants.

Mohamed states that his instructions are to move for a postponement of the case as the defendants are going to move for an amendment of the defence in order to bring in a plea of breach of warranty. He adds that defendants have new facts which they want to bring before the Court.

30

Raffray states that on the present motion there cannot be any motion for amending the Statement of Defence.

At this stage the Court states that the object of having the case mentioned this day is

to have confirmation that the application for special leave to appeal to the Privy Council has been dismissed.

In the Supreme Court

No.11

Raffray puts in a letter - marked "D"

Proceedings
3rd April
1970

Mohamed puts in a letter - marked "E" - undertaking to have it registered by his Attorney.

(continued)

The Court reserves judgment.

(s) F. Koo Seen Lin for Master and Registrar.

10

No. 12

No.12

JUDGMENT

Judgment
24th April
1970.

In the matter of:

DESMOND O'SHEA

Plaintiff

v.

RAMDHARRY INSURANCE CO.LTD.

Defendant

and

In the matter of:

DESMOND O'SHEA

Applicant

v.

20

RAMDHARRY INSURANCE CO.LTD.

Respondent

30

The plaintiff has brought an action against the defendant company, in its capacity as insurer of Veerapen Veerapa Pillay, who was sued in tort by the plaintiff in respect of a street accident and who was condemned by this Court in October, 1968, to pay to the plaintiff a sum of Rs 706,782.58 cs. with costs. The gist of the plaintiff's claim is that, after judgment had been given against him, Veerapen Veerapa Pillay applied for and was granted conditional leave to

In the Supreme
Court

No.12

Judgment
24th April
1970

(continued)

appeal against the judgment to the Privy Council, but that the leave was subsequently withdrawn. Consequently, the judgment of the Court has now become executory by Law against the defendant who, as insurer, had been duly notified of the proceedings against Mr. Pillay.

By its defence, which was filed on October 10, 1969, the defendant company has admitted the averments in the plaintiff's Statement of Claim save and except that it denies that the judgment referred to has become executory. It contends in substance that the reason why leave to appeal to the Privy Council has been withdrawn was that Mr. Pillay had, owing to ill-health been unable to furnish in time the security ordered by the Court and he had been refused an extension of time to do so; that Mr. Pillay has petitioned the Privy Council for special leave to appeal; that the petition for special leave has been lodged and will be heard shortly; that, consequently, the judgment of this Court against Mr. Pillay is not executory, and the plaintiff has no right of action against the defendant company, until the Privy Council has given a final decision in respect of Mr. Pillay's petition; and that it would not be equitable for this Court to give judgment against the defendant until a decision is made by the Privy Council.

On October 20, 1969, the plaintiff moved this Court under Rule 20 of the Rules of the Supreme Court, 1903, for an order (1) striking out the defendant company's Statement of Defence on the ground that it showed no defence and was frivolous and vexatious, and (2) giving judgment for the plaintiff against the defendant in the sum of Rs 727,618.36 cs with costs.

The application came before us on March 11, this year. After hearing the parties we took time to consider. On March 24, information reached the Court that Mr. Pillay's petition had been dismissed by the Privy Council. On April 3, we caused the case to be mentioned for the purpose of having confirmation by the parties that Mr. Pillay's petition had in fact been refused. Both parties confirmed that such

was the case and filed relevant documents in support of their statement.

In the Supreme
Court

No.12

Judgment
24th April
1970.

(continued)

We have now to consider whether, in the circumstances, we should accede to the plaintiff's application to strike out the defendant's Statement of Defence and give judgment in the plaintiff's favour.

10 The powers of this Court under Rule 20 of the Rules of the Supreme Court and the principles governing their exercise were discussed by this Court in the case of *Ragoonanan v. The Mauritius Government Railways* (1942) M.R.87, and authorities on the subject reviewed. It is quite clear from these authorities that the jurisdiction of the Court to strike out pleadings is only to be exercised in cases where it is evident that the claim or defence put forward cannot really succeed, and that unless that is reasonably plain, it is a jurisdiction which in practice is not exercised, or exercised only 20 with the greatest care. To use the words of Willmer L.J. in *Waters v. Sunday Pictorial Newspapers Ltd.* [1961] 1 W.L.R. 967, at p. 970:

It is well-established that the drastic remedy of striking out a pleading, or part of a pleading, cannot be resorted to unless it is quite clear that the pleading objected to discloses no arguable case.

30 We will, therefore, ask ourselves the question, does the defence put forward by the defendant company disclose an arguable case. Whatever be the amount of care and circumspection with which we are prepared to approach the case, we must, we are afraid, answer this question in the negative. The defendant company has staked its whole defence on the fact that Mr. Pillay had applied for special leave to appeal to the Privy Council and on the necessity to wait for the Privy Council's decision. This defence has now fallen 40 through and the defendant company is, on the pleadings, left without any arguable case.

We accordingly hold that this is one of the exceptional instances where the Court is empowered to act under Rule 20 of our Rules of Court and we order that the defendant's Statement of Defence

In the Supreme Court

No.12

Judgment
24th April
1970

(continued)

be struck out. Having regard to the facts set out in the plaintiff's statement of claim which are admitted by the defendant, we further hold that the judgment given by the Court against Veerapen Veerapa Pillay has now, by virtue of Section 61 of the Road Traffic Ordinance, 1962, become executory as against the defendant company and we order that judgment be entered against it in the plaintiff's favour in the sum of Rs 727,618.36 cs with costs. 10

(sd) H. Garrioch, Acting Chief Justice

(sd) M. Latour-Adrien, Acting Senior Puisne Judge

24th April, 1970.

No.13

Notice of Motion
8th May 1970

No. 13

NOTICE OF MOTION

IN THE SUPREME COURT OF MAURITIUS

In the matter of :-

RAMDHARRY INSURANCE COMPANY LIMITED, represented by the Chairman of its Board of Directors, Mr. Deokeenanun Ramdharry, of Port Louis

Applicants

20

v/s

Desmond O'Shea, acting both for himself and as legally representing his minor sons John Desmond Fabian O'Shea, Paul Simon O'Shea, Jeremy James Prince O'Shea, Desmond Francis O'Shea and Stephen Anthony O'Shea, being themselves represented in Mauritius by Messrs. Joseph Andre Robert and Georges Robert, Attorneys at law, of Georges Guibert Street, Port Louis, acting jointly or separately in Virtue of a power of Attorney drawn up on the 17th February, 1967, by Notary Pierre Doger de Speville, Reg.A362 No. 1356.

Respondents

30

MOTION PAPER:-In the Supreme
Court

No.13

Notice of
Motion
8th May 1970
(continued)

10 Counsel is instructed to move this Honourable Court (i) for Leave to Appeal to Her Majesty the Queen, Her Heirs and Successors in Her or Their Privy Council against the judgment delivered in the above matter by the above Court on the 24th April, 1970, giving judgment in favour of the Respondents against the Applicant Company for a total sum of Rs 727,618.36 cs. and Costs, the said Applicant Company being ready and willing to fulfill all the formalities which the Court may direct him to fulfill for the due prosecution of the said appeal and (ii) for an Order directing that the execution of the said judgment be suspended pending the Appeal.

And this for the reasons fully set forth in the hereto annexed affidavit.

Under all legal reservations.

20 Dated at Port Louis, this 8th day of May 1970.

(s) Rashard Khadaroo of Sir Virgile Naz Street, Port Louis.

Attorney for the Applicant Company

(s) J. Bedaysee, Counsel for the Applicant
Company

No. 14

AFFIDAVIT OF TALEWONSING RAMDHARRY

30 I, Talewonsing Ramdharry, of Beau Bassin, Director of The Ramdharry Insurance Co. Ltd.

No.14
Affidavit of
Talewonsing
Ramdharry
8th May 1970.

MAKE SOLEMN AFFIRMATION AS A HINDU AND SAY :-

1. That I am one of the Directors of the Applicants' Company.

In the Supreme
Court

No.14

Affidavit of
Talewonsing
Ramdharry
8th May 1970.

(continued)

2. That the Respondents entered an action against the Applicant Company on the 6th August, 1969, before this Honourable Court praying for a judgment in favour of the Respondents against the Applicant Company for the following sum as per statement of Claim (Reg. DH369 No. 5958):-

Amount in virtue of a judgment	Rs 706,782.58	
Costs as per duly taxed bill costs.....	Rs 5,870.08	10
The costs of causing the said judgment to be signed and registered and amount to.....	Rs 14,965.70	
	<u>Rs 727,618.36</u>	

3. That on the 24th April, 1970, this Honourable Court delivered judgment in favour of the Respondents against the Applicant Company awarding the sum of Rs 727,618.36 cs.

4. That the Applicant Company is dissatisfied with the said judgment and has resolved to move this Honourable Court for Leave to Appeal to Her Majesty in Council. 20

5. That the Applicant Company is advised that an appeal to Her Majesty in Privy Council lies as of right under Section 81 (1) (B) of the Constitution of Mauritius published in Schedule to Mauritius Independence Order 1968 (G.N. 54/1968).

Solemnly affirmed as Hindu by the abovenamed deponent at Chambers, Court House, Port Louis, this 8th day of May, 1970. 30

(s) T. Ramdharry.

Before me (s) J. Vallet Ag. Master and
Registrar, S/Court.

Registered at Mauritius on the eighth day of May one thousand nine hundred and seventy. Reg. A372 No. 9642. Received rupee one and cents five. Fixed duty 5% surcharge.

(s) Jean Pierre

40

No. 15

NOTICE OF MOTIONIn the Supreme
CourtNo.15Notice of
Motion
8th May
1970

10 TAKE NOTICE that the abovenamed
Applicant Company shall upon the strength of
an affidavit solemnly affirmed by the represent-
ative of the Applicant Company on the 8th day of
May, 1970, a copy of which is herewith served
upon you in order that you may not plead or
pretend ignorance of same on MONDAY the 11th
day of May, 1970 at 10.30 a.m. of the clock in
the forenoon, or any subsequent day or days
when the above Court shall sit and hear motions,
move this Honourable Court for Leave to Appeal
to Her Majesty the Queen, Her Heirs and
Successors in Her or their Privy Council against
the judgment delivered by the above Court in the
above matter on the 24th April, 1970, giving
judgment in favour of the Respondents against the
Applicant Company in the total sum of
20 Rs 727,618.36 cs. and costs.

And take further notice that you are hereby
required and summoned to be present before the
above Court on the day and at the hour aforesaid
when the said motion will be made.

And take further Notice that the said
motion will be made on the aforesaid day and hour
whether you will be present or not.

Under all legal reservations.

30 Dated at Port Louis, this 8th day of May,
1970.

(s) Rashard Khadaroo
of Desforges Street, Port Louis,
Applicants' Attorney.

To the abovenamed Respondents.

40 The foregoing Notice of Motion together
with the Affidavit thereto annexed was duly
served by me, the undersigned Usher, upon the
Respondents abovenamed by leaving two true and
certified copies thereof for Messrs. Joseph Andre
Robert and George Robert, Attorneys-at-law, with
the said Mr. George Robert found in person at his

In the Supreme
Court

No.15

Notice of
Motion
8th May 1970
(continued)

office situate at Georges Guibert Street Port
Louis.

On Friday the 8th day of May, 1970.

(s) Sobnath, Usher
Supreme Court

Registered at Mauritius on the eighth day
of May one thousand nine hundred and seventy.
Reg. DH 374 No. 2683 received rupee one and
cents five. Fixed duty 5% surcharge.

(s) Jean Pierre

10

No.16

Proceedings
11th May 1970

No. 16

PROCEEDINGS

On Monday the 11th day of May, 1970.

Before the Hon. M. Latour-Adrien, Ag. S.P.J. and
the Hon. M. Rault, Ag. Judge.

15421 - Ramdharry Insurance Company Limited v.
D. O'Shea.

J. Bedaysee appears for the applicants
and moves in terms of the motion paper dated
8th May, 1970, which he files together with
an affidavit and a notice of motion.

20

P. Nairac, Q.C. appears for the
respondent. He states that the motion may be
resisted and moves that an early date be fixed for
hearing.

By consent of parties, Court fixes the
matter to the 14th May, 1970, at 11 a.m. to be
heard on merits.

(s) R. Standley for Master and Registrar.

On Thursday the 14th day of May, 1970.

J. Bedaysee appears for the applicants.

P. Nairac, Q.C. appears for the respondent.

In the Supreme
Court

No.16

Proceedings
14th May 1970

10 Bedaysee refers to Section 81 (1) of the Mauritius Independence Order, 1968, and states that in the present case there is a final decision of the Supreme Court and the value is over and above Rs 10,000. He contends that applications for leave to appeal have been in existence ever since 1863 and several cases and have been referred to the Judicial Committee of the Privy Council. He quotes the cases of Mungur and Others v/s Mungur and Others (1967), Bouvet v. Mauritius Turf Club (1963), Choppy and Another v. Choppy & Others, 1966 M.R.1, and submits that the Court should find no difficulty in granting leave to appeal because the law has it that one can go as of right.

20 Bedaysee submits that the power of the Court whether to grant or not a stay of execution has existed since a long time. He refers to Sections 4 and 6 of G.N. No. 59 of 1968 and submits that fixing security is not new to our law, He further submits that the Court has never refused to grant a stay of execution and points out that in the case of O'Shea v. Pillay conditional leave was granted and there was no question of execution of judgment.

30 Nairac refers to Section 6 of G.N. No. 59. He submits that the Court may order that judgment be executed. The powers of the Court are further defined in Section 7.

Nairac again submits that the Court has a completely free hand in determining both the amount and the nature of the security to be furnished.

40 Referring to the circumstances of the case, Nairac observes that considerable expenses have already been incurred by the respondent and that the fixing of a security will entail further expenses. He submits that it would be right on the part of the Court to make its own estimation by taking into account the eventual outcome of the

In the Supreme
Court

No.16

Proceedings
14th May 1970
(continued)

appeal for which leave is being sought.

Nairac further submits that the Court should, when fixing the amount of security, assess the hardship which will be added to the hardship already suffered by the respondent. From the wording of Sections 6 and 7 of the G.N. No. 59 is it obvious that it is not intended that the whole amount of judgment should be the security.

As regards the question of leave, Nairac submits that if leave to appeal is granted such appeal will have to be heard in London and the respondent would have to be represented there and would have thus to incur further expenses.

10

He next refers to subsection 4 of Section 81 of G.N. No. 54 of 1968 and quotes the judgment delivered on 24.4.70. He submits that the defendant Company (now applicant) had no defence and where there is no defence this should be included in what is frivolous and vexatious.

20

He quotes Supreme Court Practice, 1967 Ed., Order 18, Rule 19, pp. 273, 274; English Law Report, 10 A.C., pp. 215, 218, 219.

Nairac then states that it appears from an affidavit filed in S.C.R. No. 15002 that the applicant company has been selling certain real properties. He submits that in the circumstances it is to be feared that further such sales may take place. Therefore if leave to appeal is granted it would be necessary when fixing the delay that such an eventuality be taken into consideration especially as the brief that will have to be prepared will be a minute one and will not require much time.

30

At this stage, Bedaysee states that he would be grateful for an adjournment to be able to reply. Court states that it reserved judgment but that it shall, if necessary, hear him on any point which needs to be enlightened.

40

(s) R. Standley for Master and Registrar.

No. 17JUDGMENTIn the Supreme
CourtNo.17Judgment
18th May
1970.

10 On the 24th April, 1970, the Supreme Court gave judgment holding that a prior judgment given by the Court in favour of the Respondent against one Veerapen Veerapa Pillay had become executory as against the Ramdharry Insurance Co. Ltd. and ordering that judgment be entered against the Company in the sum of Rs 727,618.36 cs. with costs.

The Insurance Company is now applying for leave to appeal to the Privy Council under section 81 (1) (b) of the Constitution. Learned Counsel for the respondent has tentatively submitted that the Court should refuse leave to appeal under section 81(4) which reads as follows:

20 In this section the references to final decisions of a court do not include any determination thereof that any application made thereto is merely frivolous or vexatious.

30 In our view a statement of defence is not an application within the meaning of the subsection. It follows that section 81(4) does not curtail the right of an unsuccessful defendant to appeal to the Privy Council where the matter in dispute on the appeal is of the value of Rs 10,000 or upwards. As guardian of the Constitution the Court is bound to give effect to the applicant's right no matter what its views as to the merits of the appeal may be. We therefore grant the applicant leave to appeal under Section 81(1)(b) of the Constitution upon condition (1) that the applicant shall, within one week from the date of this judgment, enter into good and sufficient security to the satisfaction of the Master and Registrar in the sum of Rs 10,000 for the due prosecution of the appeal and the payment of all such costs as may become payable by the applicant in the event of his not obtaining an Order granting him final leave to appeal or of the appeal being dismissed for non-prosecution or of the Judicial Committee of the Privy Council

40

In the Supreme
Court

No.17

Judgment
18th May
1970

(continued)

ordering the applicant to pay the costs of the appeal, as the case may be, and (2) that the applicant shall procure the preparation of the record and despatch thereof to England within three weeks from the date of this judgment.

We further direct that the decision of the Court granting damages to respondent shall be carried into execution. Before execution respondent shall enter into security for the due performance of such order as Her Majesty in Council shall think fit to make on the appeal in the following manner:

10

1. Respondent shall enter into a recognizance in his own name for the full amount of the judgment and costs.

2. He shall further furnish one or more sureties who shall be bound jointly with respondent but severally among themselves in such sum or sums as added together shall be equal to the amount recoverable under the judgment.

20

3. In the event of respondent finding sureties for part of the amount but failing to find sureties for the total amount recoverable, he shall be at liberty to issue execution for the total amount and shall retain such sums recovered under the judgment as are secured under paras. 1 and 2 above but shall forthwith pay the balance into Court to await the decision of the Privy Council.

30

Costs of the present application to be costs in the Cause,

(s) M. Latour-Adrien, Acting Senior Puisne
Judge

(s) M. Rault, Acting Judge.

18th May, 1970.

No. 18

In the Supreme
CourtORDER GRANTING FINAL LEAVE TO APPEAL

No.18

IN THE SUPREME COURT OF MAURITIUS

Order grant-
ing Final
Leave to
Appeal
8th June
1970On Monday 8th June, 1970, in the 19th year of
the reign of Queen Elizabeth the Second.

In the matter of:-

10 Ramdharry Insurance Company Limited,
represented by the Chairman of its
Board of Directors Mr. Deokeenanun
Ramdharry, of Port Louis, Applicant

v/s

20 Desmond O'Shea, acting both for
himself and as legally representing
his minor sons John Desmond Fabian
O'Shea, Paul Simon O'Shea, Jeremy
James Prince O'Shea, Desmond Francis
O'Shea, Stephen Anthony O'Shea, being
themselves represented in Mauritius
by Messrs. Joseph Andre Robert and
Georges Robert, Attorneys at law, of
Georges Guibert Street, Port Louis,
acting jointly or separately in virtue
of a power of attorney drawn up on the
17th February 1967, by Notary Pierre
Doger de Speville, Reg. A352 No.1356.
Respondents

30 UPON HEARING J. Bedaysee, of Counsel for
the Applicant, and P. Nairac, Q.C. of Counsel for
the Respondents, stating that the conditions
imposed by the Supreme Court having been
fulfilled to the satisfaction of the Master
and Registrar and leaving the matter in the
hands of the Court;

IT IS ORDERED that the Applicant BE and
HE is HEREBY granted final leave to appeal to
Her Majesty in Council.

By the Court,
(K.C.Chan Wan Chung)
for Master & Registrar, Supreme Court.

Exhibits

Exhibit 'A'
Cable, A.L.
Bryden &
Williams
16th January
1970.

Exhibit 'A'

CABLE, A.L. BRYDEN & WILLIAMS TO DEO.

NNNNAX

ZCZC BDM476 ADD656 LHC778 SLH087

I WPL CO GBLH 041

LONDONLH 41 16 1545

PORT LOUIS MAURITIUS

PETITION LODGED PRIVY COUNCIL THIS SIXTEENTH
JANUARY FOR SPECIAL LEAVE APPEAL AGAINST
DECISION SUPREME COURT ON NINTH OCTOBER 1968
O'SHEAS VERSUS PILLAY SUPPLEMENTING PETITION
LODGED FOURTH AUGUST LAST STOP THIS BEING
SERVED THIS DAY

10

ND COPY POSTED YOU

STANDFAST

COL 1968

Exhibit 'B'
Cable A.L.
Bryden &
Williams to
Deo
29th January
1970.

Exhibit 'B'

CABLE, A.L. BRYDEN & WILLIAMS TO DEO.

NNNN

ZCZC BDM340 ADD315 LHD784 SLH084

20

I WPL CO GBLH 027

PORT LOUIS CASSIS

LONDONLH 27 20 1555

29 JAN 70

DEO

PORT LOUIS MAURITIUS

IMPOSSIBLE STATE DEFINITE DATE HEARING BUT
POSSIBLY ABOUT TWELFTH FEBRUARY EARLIEST STOP
ENDEAVOURING ARRANGE DATE ACCEPTABLE PLATTSMILLS
STOP IS EXCHANGE PERMIT REMITTANCE L200 ISSUED

STANDFAST

L200

30

EXHIBITS

Exhibit 'C'
Letter,
A.L. Bryden
& Williams
to G.
Baguant
16th Jan. 1970
(continued)

A copy of the Petition is enclosed, which no doubt you will pass on to Mr. Rummun. The telegraphic transfer mentioned in your cable of the 12th instant has not yet arrived and we trust that it will do so in the course of next week.

Yours faithfully,

(s) A.L. Bryden & Williams

Me G. Baguant,

No. 3 Desforges Street,
Port Louis, MAURITIUS.

10

Enc.

Air Mail.
Reg. A373 No. 2999

Exhibit 'D'
Letter,
Charles
Russell & Co
to G.A.
Roberts.
24th March
1970.

Exhibit 'D'DLETTER, CHARLES RUSSELL & CO. TO G.A. ROBERTS

CHARLES RUSSELL & CO.

Hale Court,
21 Old Buildings,
Lincolns Inn,
London W.C.2.

20

E/FCP/SAH

24th March 1970.

Dear Sir,

V.V. Pillay v. Desmond O'Shea

We confirm our cable of yesterday's date informing you that the Petitions for special leave to appeal to the Privy Council had been dismissed.

The Petitions were heard by a Board of the Judicial Committee of the Privy Council consisting of Lord Hodson, Lord Guest and Lord Donovan. The Petitioner briefed Mr. Platts Mills Q.C., Mr. McHale and Mr. Rummun and we briefed Mr. Mervyn Heald for the Respondents.

30

Mr. Platts Mills addressed the Board for a period of 70 minutes and Mr. Heald's argument in reply lasted 40 minutes. Mr. Platts Mills then addressed the Board for a further 5 minutes. Neither Mr. McHale nor Mr. Rummun addressed the Board and Counsel were asked to withdraw. Counsel were recalled about 15 minutes later when Lord Hodson said that the Board would humbly advise Her Majesty to dismiss the Petitions, and ordered the Petitioner to pay the costs.

10

In due course an Order to tax will be issued by the Registrar of the Privy Council and when our Bill of Costs has been taxed the amount will be inserted in prints of the Order dismissing the Petitions.

A sealed copy of the Order dismissing the Petitions will be given to us by the Registrar for transmission to the Registrar of your Court and it will then be in order for you to enforce the Judgment.

20

If the Insurance Company pay the full amount of the damages in Mauritius and you have any difficulty in remitting the money to Mr. O'Shea in Dublin or to us we shall be glad if you will let us know as we may be able to help.

Yours faithfully,

(sd) Charles Russell & Co.

30 G.A. Robert, Esq.
8 Georges Guibert Street,
Port Louis,
Mauritius.

Registered at Mauritius on the thirty first day of March one thousand nine hundred and seventy. Reg. A 373 No. 6093 received rupee one cents forty. Fixed duty 5% Surcharge, + stamp.

(s) N. Balasoupramanien

EXHIBITS

Exhibit 'D'
Letter,
Charles
Russell & Co
to G.A.
Roberts.
24th March
1970

(continued)

EXHIBITS

Exhibit 'E'
Letter, A.L
Bryden &
Williams to
G. Baguant
23rd March
1970.

Exhibit 'E'LETTER, A.L. BRYDEN & WILLIAMS TO G. BAGUANT

A.L. BRYDEN & WILLIAMS 20 Old Queen Street,
Westminster
LONDON S.W.1.

Our Ref: S.282/ALB

23rd March 1970.

Dear Sir,

V.V. Pillay v. Desmond O'Shea and Others

We regret to have had to cable to you today 10
as follows:-

"Deo Port Louis (Mauritius) Petition dismissed
with costs, Standfast."

Mr. Rummun, will report fully to you as to
his conference with Mr. Platts-Mills and
Mr. McHale of Counsel at which we were
assisting and the hearing today of the
Petition.

The Petition was heard by Lords Hodson,
Guest and Donovan, the Petitioner's three Counsel 20
being present but only Mr. Platts-Mills being
heard, as only one Counsel each side is heard
on a Petition. Mr. Mervyn Heald of Counsel
appeared and was heard for the Respondents.
The hearing took two hours, mostly occupied by
Mr. Platts-Mills. After Counsel had been heard,
the Court was cleared and the Judges conferred.
On the Court being re-opened Lord Hodson, who
presided, announced that they would advise Her
Majesty that the Petition should be dismissed. 30
Respondent's Counsel then asked for costs, which
request was granted.

Mr. Platts-Mills appeared to us ably to
present the arguments for the Petitioner. On
the legal points involved they appeared to us
superior to the able legal arguments of Counsel
for the Respondents. Their Counsel also alleged
that an Insurance Company had been concerned
from start to finish so should have found the
security in time and pointed out that, though 40

the accident had happened in December 1965 and Judgment given only after an interval of nearly three years, no payment whatever had been made. He submitted that it would not be proper to permit further delay by granting leave.

10 This matter of the Respondents having been entirely without any compensation for the accident which happened about four and a quarter years ago probably had some effect on the result and possibly a decisive effect, which it might not have had if a substantial payment had been made or security given or at least actual expenses had been met. To dispute totally any liability after judgment was not only hopeless but damaging to the prospect of obtaining leave to appeal on the substantial point available. Mr. Platts-Mills and Mr. McHale explained this to Mr. Rummun, when he had stated to them the reason why the insurers wished to keep it open.

20

As usual, no reasons were given for refusing leave to appeal, so they are unknown.

Yours faithfully,

(s) A.L. Bryden & Williams

Mr. G. Baguant, No. 3 Desforges Street,
Port Louis, Mauritius.

30 Registered at Mauritius on the third day of April one thousand nine hundred and seventy. Reg. A373 No. 6424. Received rupee one and cents seventy five. Fixed duty 5% surcharge + stamps.

(s) N. Balasoupremanien

EXHIBITS

Exhibit 'E'
Letter, A.L.
Bryden &
Williams to
G. Baguant
23rd March
1970

(continued)

O N A P P E A L
FROM THE SUPREME COURT OF MAURITIUS

B E T W E E N :

Ramdharry Insurance Co. Ltd. represented
by the Chairman of its Board of Directors,
Mr. Deckeenanun Ramdharry, of Port Louis.

Appellants

- and -

Desmond O'Shea, acting both for himself
and as legally representing his minor sons
John Desmond Fabian O'Shea, Paul Simon
O'Shea, Jeremy James Prince O'Shea, Desmond
Francis O'Shea and Stephen Anthony O'Shea.

Respondent

RECORD OF PROCEEDINGS.

BERNARD SOLLEY & CO.,
9 Cavendish Square,
London, W1M 0EN.

Solicitors for the Appellants.

CHARLES RUSSELL & CO.,
Hale Court,
21 Old Buildings,
Lincoln's Inn,
London, WC2A 3UL.

Solicitors for the Respondent