

IN THE SUPREME COURT OF FIJI AT SUVA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NUMBER: CBV 0001 of 2012

(Court of Appeal No. ABU 43 of 2010)

BETWEEN: **KAMAL CHAND** and **RESHMI VERMA**

Petitioners

AND: **BIJAY KUMAR** aka **VIJAY KUMAR**

Respondent

Coram: Hon. Chief Justice Anthony Gates, President of the Supreme Court
 Hon. Madam Justice Anjala Wati, Justice of the Supreme Court
 Hon. Mr. Justice Kotigalage, Justice of the Supreme Court

Counsel: Petitioners in person
 Mr. Dorsami Naidu for the Respondent

Date of Judgment: Thursday 24th June 2016

JUDGMENT OF THE COURT

Gates, P

1. The respondent's application to strike out the petition for special leave for want of prosecution was heard by a three judge bench. The judgment in the application could not be delivered before Hon. Justice Kotigalage completed his term in office.

2. The parties have given their written consent pursuant to s. 10(1) of the Supreme Court Act 1998 ("*SCA*"), that the remaining Judges of the panel could proceed to deliver judgment.
3. I have read in draft the judgment of Wati J. I agree with the decision and its reasons. I also agree with the orders for dismissal of the appeal and the orders in relation to costs.

Wati, J

4. By a summons of 27 July 2012, the respondent seeks that the petitioners show cause why their appeal should not be struck out for want of prosecution or for being an abuse of the process of the Court.
5. The respondent also seeks an order that the costs ordered by both the Supreme Court in the sum of \$1,500 and the Court of Appeal in the sum of \$3,000 be paid out of the monies deposited by the petitioners in the Court of Appeal.
6. The Supreme Court had ordered costs on 8 March 2012 in the sum of \$1,500 upon dismissing the petitioners summons for stay of the execution of the orders of the trial Court. It had specifically ordered that the said sum be paid within 21 days.
7. The Court of Appeal had ordered the sum of \$3,000 on 25 November 2011 after the petitioners appeal against the orders of the trial Court was dismissed.
8. The payment of the costs remains outstanding till today.
9. It is the respondent's contention that the petition for appeal was filed on 3 January 2012. The matters regarding the records have been attended to but the petitioners'

have failed to comply with the other procedures of the court to enable prosecution of the appeal.

10. The specific allegation is that there has been no initiative on the part of the petitioners to set the matter down for hearing and that the delay now constitutes an abuse of the process of the Court.
11. The respondent says that due to the delay in getting the matters finalized, it is not possible to have a fair hearing of the issues in the action or that the delay is likely to cause or has caused serious prejudice to him. The specific nature of the prejudicial effect has not been clearly stipulated in the affidavit.
12. On the day the summons was listed for hearing, the counsel for the petitioners informed the Court that an affidavit in opposition had not been filed and an adjournment was requested.
13. The Full Court refused the application for adjournment to file an affidavit in opposition. The summons to strike out the petition for want of prosecution was filed some 7 months before the matter was listed for hearing. The counsel for the petitioners did not provide the court with any adequate reason why an affidavit in opposition could not be filed. It was very late in the day for counsel for the petitioners to require time to file an affidavit in opposition.
14. One would have expected the petitioners to spring up to their feet and file an affidavit in opposition as the basis for the application was that there was intentional and contumelious delay on their part to comply with the rules to enable prosecution of their appeal.
15. In such a situation, a simple affidavit showing the reasons for the delay in the process would not and should not consume such a vast amount of time.

16. The only reason the petitioners counsel put forward for not filing an affidavit in opposition was that the first named petitioner works on an island and that he comes to the mainland only once a month.
17. Filing an affidavit does not require the presence of the petitioners in the place where the counsel resides. Many parties file affidavit from a foreign jurisdiction. In this case, the petitioners should have given proper instructions to enable the preparation and filing of the affidavit or in other words the counsel should have obtained proper instructions to do so. If the matter was attended to with due diligence, there would not be a delay of 7 months to file a simple affidavit.
18. There being no acceptable explanation and justification provided why an answer or an affidavit could not be filed on time, the Full Court had refused the petitioners application for an adjournment to file an affidavit. The application for striking out was therefore heard without the affidavit in opposition.
19. This then brings me to the application itself. The counsel for the respondent has brought this application for striking out under s. 12 of the Supreme Court Decree 1991 ("**SCD**"). The SCD has been repealed and replaced by the SCA. Any reference to the repealed legislation is incorrect.
20. Rule 19 (1) of the Supreme Court Rules 1998 ("**SCR**") has a provision which allows the Chief Registrar to bring to the attention of the President of the Court any failure to comply with the Rules. Upon hearing the parties, the Court has powers to strike out the matter for want of prosecution. The Rule reads:

 "**(1)** *If an appellant or petitioner who has lodged a notice of appeal or petition makes default in doing any act or taking any step within the time provided by these Rules, the registrar must inform the President of the default and the President may*

cause the appeal or petition to be entered on a list of the Court for mention on a particular day and time.

(2) *The registrar must give not less than 14 days' notice to the parties of a day, time and place fixed for mention under paragraph (1).*

(3) *On the day mentioned the Court may order that the appeal or petition be struck out for want of prosecution or make any other order as in the circumstances is appropriate”.*

21. Although the matter was not listed at the initiative of the Registrar, the petitioners are entitled to move the Court to strike out a petition or appeal for want of prosecution under the same provisions of Rule 19. I also find that the requisite 14 days' notice provided for in Rule 19(2) has been met as the matter was listed for hearing 7 months after the filing.

22. It is a very strong act on the part of the Court to strike out a matter for want of prosecution without hearing the merits of the case. At the same time every Court must be able to control its own process to ensure smooth case management and movement of files. A party who files an appeal and does nothing about moving the same forward is unnecessarily consuming the resources of the Court. In such cases, the Court must deal with the failure to curb any prejudice to the other parties to the proceedings and the case management system.

23. I propose not only to deal with the matter on the application for striking out but also to determine whether the petition for special leave has met the threshold outlined in s. 7(3) of the SCA for leave to be granted for it to proceed any further.

24. The approach in deciding whether a matter should be struck out for want of prosecution is stated by Salmon LJ in the English case of *Allen v. Sir Alfred McAlpine & Sons Limited; Bostic v Bermondsey & Southwark Group Hospital*

Management Committee; Sternberg & Another v Hammond & Others [1968] 1 All ER 543 (CA), where the following was stated at 561 e-h:

“[A] A defendant may apply to have an action dismissed for want of prosecution either (a) because of the plaintiff’s failure to comply with the Rules of the Supreme Court or (b) under the Court’s inherent jurisdiction. In my view it matters not whether the application comes under limb (a) or (b), the same principles apply. They are as follows: In order for such an application to succeed, the defendant must show:

- (i) that there has been inordinate delay. It would be highly undesirable and indeed impossible to attempt to lay down a tariff – so many years or more on one side of the line and a lesser period on the other. What is or is not inordinate delay must depend on the facts of each particular case. These vary infinitely from case to case, but it should not be too difficult to recognize inordinate delay when it occurs.*
- (ii) that this inordinate delay is inexcusable. As a rule, until a credible excuse is made out, the natural inference would be that it is inexcusable.*
- (iii) that the defendants are likely to be seriously prejudiced by the delay. This may be prejudice at the trial of issues between themselves and the plaintiff, or between each other, or between themselves and the third parties. In addition to any inference that may properly be drawn from the delay itself; prejudice can sometimes be directly proved. As a rule, the longer the delay, the greater the likelihood of serious prejudice at the trial”.*

25. In *Cassimjee v. Minister of Finance* (455/11) [2012] ZASCA 101; 2014 (3) SA 198 (SCA) (1 June 2012), the Supreme Court of Appeal of South Africa outlined the factors that are generally considered relevant to the consideration of striking out matters for want of prosecution. It was said at paragraph 11:

“There are no hard and fast rules as to the manner in which the discretion to dismiss an action for want of prosecution is to be exercised. But the following requirements have been recognized. First, there should be a delay in the prosecution of the action; second, the delay must be inexcusable and, third, the defendant must be seriously prejudiced thereby. Ultimately the enquiry will involve a close and careful examination of all the relevant circumstances, including, the

period of the delay, the reasons therefore and the prejudice, if any, caused to the defendant. There may be instances in which the delay is relatively slight but serious prejudice is caused to the defendant, and in other cases the delay may be inordinate but prejudice to the defendant is slight. The court should also have regard to the reasons, if any, for the defendant's inactivity and failure to avail itself of remedies which it might reasonably have been expected to do in order to bring the action expeditiously to trial".

26. From the above cases, the factors that need to be considered to decide whether a matter should be struck out for want of prosecution can be summarized as follows:

- (i) *Is there delay in prosecution of the appeal?*
- (ii) *Is the delay inexcusable?*
- (iii) *Will the respondent be prejudiced as a result of the delay?*

I will examine each factor in turn.

The Delay

27. In order to assess the period of delay and the nature of the same, it is important that the history of the proceedings, since the filing of the petition for special leave be outlined.

28. The petition for special leave was filed on 3 January 2012. Immediately after that, a summons for stay of execution of the judgment was filed on 11 January 2012. In that summons it was also sought that the property in respect of which existed the dispute not be dealt with in any way by the respondent and that the petitioners be allowed peace and quiet enjoyment of the property.

29. The summons for stay of execution was listed for call over on 23 January 2012. On that date the Court ordered that the petitioners counsel file notice of appointment of solicitors and serve the same on the respondent within 7 days. Further, 21 days was

granted for the respondent to file an affidavit in opposition and 7 days for the petitioners to reply if necessary. The matter was then adjourned to 28 February 2012.

30. On 28 February 2012, the counsel for the petitioners informed the Court that an affidavit in opposition was served on the same day and that time was sought for a reply to be filed. The Court granted the petitioners time until 4pm 2 March 2012 to file an affidavit in reply and fixed the matter for hearing. It must be noted that on this date the petitioners had decided not to pursue the stay application any further. This is evident by the letter written by Mr. Chaudhry on 28 February 2012 to the following effect:

"We refer to the above matter and wish to advise that we have conferred and sought instruction from our clients with respect to the stay application currently before the Supreme Court. We wish to advise that our clients will not pursue the stay application and we will make application to withdraw this application at the next Court date. This letter is written to advise you of our client's position so as to avoid any inconvenience and or costs on the part of your clients. In withdrawing the application we seek that costs be costs in the cause.

By a copy of this letter we are informing the Supreme court Registry of the same".

31. It was therefore unnecessary that the counsel for the petitioners then chose to delay the matter by asking for further time to file an affidavit in opposition.
32. It must be noted that the Court had granted a very short time to ensure that the stay application is heard on an expedited basis and that the petition for special leave also proceeds to hearing.
33. When the stay application was set for hearing on 8 March 2012, the counsel for the petitioner withdrew the application. I note that no affidavit in reply was filed.

34. The Court struck out the matter with the following remarks:

“ ...This summons appeared to have been a doomed application from the start...”

35. There was in fact no need for the summons for stay of execution to be filed. The affidavit in reply by the respondent showed that the petitioners had vacated the property when they had been served with the notice of 2 December 2011. The affidavit in reply also indicated that the petitioners had vacated the property in January 2012 and there were new tenants on the property.
36. The affidavit in reply was not contradicted by any further material by the petitioners which indicates that there was no need for the petitioners to have filed the summons for stay or to press on for it to be continued. The need for the stay did not exist when they had vacated the property. The application for injunction in the summons for the respondent not to deal with the property was not even pressed for. It was withdrawn.
37. The filing of the summons for stay was the first notable delay on the part of the petitioners to proceed with the matter without a serious desire to prosecute the same.
38. After the summons for stay was disposed, the Chief Registrar issued a summons to the parties on 13 June 2012 for the matter to be called before her on 19 June 2012 to settle the records. The parties appeared before her on 19 June 2012. The petitioners counsel sought 21 days adjournment to seek instructions from the petitioners as at that time they did not have any further instructions.
39. The Chief Registrar noted that security for costs had been paid and adjourned the matter to 24 July 2012.

40. In the interim the Registrar issued a notice for call over on 19 June 2012 for 26 June 2012. The matter was thus listed in Court on 26 June 2012. This is the precise time when the petitioners should have moved the court for a hearing date of the petition for special leave since it was already six months after filing of the petition.

41. The letter by the Supreme Court Registry to the parties of 14 June 2012 issued prior to the notice of call over had clearly indicated that the purpose of the call over was to fix a hearing date in the upcoming session scheduled from 7 to 21 August 2012. Through the same letter, the parties were asked to file a list of documents that was to form part of the record for Supreme Court. The timeframe was by 18 June 2012.

42. The letter from the Registry read:

"The above petition refers.

This petition is being listed for a call over of cases on Tuesday the 26th June at 11.20am to fix a hearing date for the Supreme Court session scheduled from the 7th – 21st August, 2012. A notice of call over will be sent in due course.

Parties to the appeal are to submit a list of documents that will form part of the record of the Supreme Court. The same is to be sent to the registry by 18 June 2012".

Underlining is Mine

43. Rule 35 of the SCR states that the Registrar must arrange a call-over of pending appeals or petitions. The rule reads:

" The registrar must arrange a call-over of all pending appeals or petitions before the President to appoint the dates for the hearing of the appeal or petition and when dates are appointed for hearing of any appeal or petition the parties must be ready to be heard on the day so appointed".

44. In terms of the above rule, the Court did its part by appointing a call over of the petition for special leave. It was a simple responsibility of the petitioners or their counsel to have moved the Court for a hearing date. Before the call over the records were ready for collection. The parties were advised of this by a notice dated 22 July 2012.
45. Instead of seeking a hearing date on the date appointed for call over, the counsel for the petitioners informed the court that the solicitors on record wished to withdraw from the matter. The Court expressed concern that outstanding costs had not been paid. It adjourned the matter for 9 July 2012 to deal with the issue of costs and the withdrawal of counsel.
46. By 9 July 2012, the petitioners counsel had not made or filed any application to withdraw as counsel. Further time was sought for the same to be filed and served on the petitioners. On this date the counsel for the respondent did not appear in Court. The Court again expressed concern about the outstanding costs not paid and adjourned the matter to 2 August 2012 for the application for withdrawal to be filed and for the question of costs to be dealt with.
47. On 17 July 2012 the petitioners counsel then filed a summons to withdraw as counsel alleging mainly that proper fees had not been paid to the lawyers.
48. On 27 July 2012, the respondents filed the current application for striking out for want of prosecution.
49. When the matter was called in Court on 2 August 2012 as scheduled, the petitioners counsel had not served the summons for withdrawal on their client. No order for withdrawal therefore could be made. The summons for withdrawal was dismissed with an order that it could be re-filed without any further court filing fees. The

summons to dismiss for want of prosecution was listed for hearing on 23 August 2012.

50. On the hearing date, the counsel for the petitioners advised the Court that they have been re-instructed and that they will appear for the petitioners. Mr. Naidu expressed concern about non-payment of the costs, the delay in the matter, and there being no affidavit in response to his application for striking out. Mr. Naidu informed the Court that he was ready to file the submissions in the main appeal within 21 days.
51. Having heard the parties, and despite the existence of the summons to strike out for want of prosecution, the petitioners were given the benefit to file their submissions on the petition for special leave to appeal by 13 September 2012 and the respondent was given time by 27 September 2012. The petition for special leave was listed for hearing on 16 October 2012. The summons to strike out for want of prosecution was adjourned for the same day. It is not clear from the records whether the summons was listed for hearing or for a mention only.
52. The petitioners did not file any submission by 13 September 2012 or at all. Therefore the respondent also could not file any submissions. The time for filing the submissions was abridged as there was already delay in hearing the appeal.
53. The petitioners having not filed the submissions as ordered by the Court were in foul of rule 35 of the SCR to ensure that the matter is ready for hearing. The rule imposes on the parties a mandatory obligation to ensure that the matter is ready.
54. Rule 36 of the SCR also requires that statements of written submissions be lodged before the date appointed for hearing. Although a slighter longer time is given for the parties to file the submissions, it must be noted that no such submissions were filed until the Court decided to list the summons to strike out for want of prosecution for

hearing which was heard 3 months after the scheduled hearing of the petition for special leave. Even there was breach of Rule 36 to file the submissions.

55. The petition for special leave did not get called for hearing on 16 October as the petition was not ready for hearing. The matter was thus put off the list. Together with the petition, the summons to strike out the matter for want of prosecution lay in abeyance.
56. What then appears from the records is that without ensuring that the matter is put back on the list for hearing, the petitioners then wrote a letter to the Court for refund of the \$10,000 which they had deposited by a consent order of the Court of Appeal as a condition for stay.
57. On the instructions of the Lord President, the registry sought the views of the respondent's counsel for refund of the monies. The counsel for the respondent refused to grant consent that the monies be returned and raised the question of unpaid costs by the petitioners ordered by the Court of Appeal and Supreme Court. The counsel then requested that the matter be called in Court so that the Court can be addressed on the issue of costs and further costs that has been incurred. It was also suggested in the letter that an alternative would be to provide the respondent with 7 days to file further applications in Supreme Court for various orders regarding the funds and the case.
58. It was at the insistence or shall I say request of the respondent that the application for striking out which had got put off the list since 16 October 2012 was listed for hearing.
59. Since their default in filing the submissions on the petition for special leave, the petitioners showed no interest to ask for the petition to be listed for hearing. They were only interested in getting the monies refunded.

60. I find that the petitioners have been in continuous default since 23 August 2012 until 6 February 2013 to file their submissions on the main appeal. 5 months after the order for submissions had been made; there was no effort to ensure that the matter proceeded to trial. This is not the only delay to comply with the orders of the Court and the SCR. There has also been unnecessary delay by filing of applications such as stay of execution of orders and summons for withdrawal of counsel, both of which were not proceeded with. The petitioners have wasted much time in filing these applications and not complying stringently with the orders of the court. The order for costs to be paid within a certain time frame has also been ignored by the petitioners.

61. The nature of the delay I find is inordinate.

Reasons for the Delay

62. At the time of the hearing of the application for striking out, the petitioners found a new counsel. Notice of change of solicitors by Nacolawa and Daveta Law were filed on 1 February 2013.

63. There was no explanation why the petitioners or their counsel had failed to comply with the orders of the court to pay the costs and to file the submissions on appeal to ensure that the matter is heard.

64. Since no explanation has been proffered, I find that the delay is inexcusable and inordinate. There has been flagrant disregard of the orders of the court and any indulgence to the petitioners would be inappropriate.

65. The Supreme Court of India in the case of *Maninderjit Singh Bitta v. Union of India & Others IA No. 10 of 2010* at paragraph 10 made the following observation in dealing with an application for contempt by willful disobedience of the orders of the Court. Although the issue before this Court is strictly not about contempt, it is similar

to that of contempt in that the petitioners have not been complying with the orders of the Court without any valid excuse. The Supreme Court of India said:

“Every person is required to respect and obey the orders of the court with due dignity for the institution...must act expeditiously as per the orders of the court and if such orders postulate any schedule, then it must be adhered to. Whenever there are obstructions or difficulties in compliance with the orders, least that is expected ...is to approach the court for extension of time or clarifications, if called for. But, where the party neither obeys the orders of the court nor approaches the court making appropriate prayers for extension of time or variation of order, the only possible inference in law is that such party disobeys the orders of the court. In other words, it is intentionally not carrying out the orders of the court. Flagrant violation of the court’s orders would reflect the attitude of the concerned party to undermine the authority of the courts, its dignity and the administration of justice”.

66. It follows that if the petitioners had any difficulty in not complying with the orders of the Court or the Rules, it was their duty to inform of the Court of the difficulty for appropriate directions to be issued. They cannot expect to sit on the default especially when the onus and responsibility is on them to move the matter. The least that is expected is to provide the Court with satisfactory reasons why orders were not complied with. In this case the Court is bereft of any reason why the matter lay dormant for months. The conduct is simply unacceptable.

Prejudice to the Respondent

67. The legal dispute between the parties started in 2004 and finalized by the trial Court in 2010. After the trial courts judgment, the petitioners, exercising their right, appealed the decision which was delivered on 25 November 2011. Since the date of the initial dispute, the petitioners have had the enjoyment of the property by exclusive occupation without having to pay any rental monies. They vacated the property in 2012. It is only in 2012 that the petitioners left the property and the same has been put

on rent by the respondent who lives overseas. He has been waiting for a final verdict in the case since 2004. It is now over a decade that the matter remains pending without any finalization. The delay can only be laid at the petitioner's door. There is naturally prejudice in having to continuously engage a counsel to appear in court and protect one's property interest without knowing when the matter will be finalized. This amounts to a drain on a person's pocket and careful planning of what is to happen to the property especially since the respondent lives overseas. As per the evidence in the trial Court, there was always a need for him to sell the property and even that is put on hold although there are no orders restraining the sale.

68. I find that the petitioners have without any valid reason failed to prosecute the claim and that there is no intention that the petition for special leave be prosecuted. I come to the inevitable conclusion that the only resolution in this matter is to strike out the petition for want of prosecution. However, in the larger interest of justice, I must examine the petition for special leave too and determine whether the grounds meet the threshold test for leave to be granted.

Petition for Special Leave

69. There are no submissions of either party on record. The respondent would have filed one if the petitioners filed theirs. It is for the petitioners to establish that the grounds of appeal raises issues that meet the tests outlined in s. 7(3) of the SCA for leave to be granted.

70. In absence of any submissions, I have perused the notes of evidence and the judgments of both the High Court and the Court of Appeal. From the records, it is clear that the petitioners had brought a claim in the High Court for specific performance of the oral sale and purchase agreement for sale of a house which the respondent had allowed them to occupy as husband and wife since 2001. The petitioners had contended that the respondent has breached the agreement by not

selling the property to them. The trial Court found that there was no binding agreement to sell the property at \$55,000. It was further found that the offer was by the petitioners to buy the property before the respondent left for overseas and that they could not complete their offer as no monies exchanged hands when the respondent left the country. The Court also found that even if there was a binding agreement, the petitioners failed to comply with the essential term of the contract which was to pay the purchase price to the respondent before he left for Australia.

71. The petitioners appealed the decision. The Full Court dismissed the appeal on the findings that the contract for the sale of land was void for uncertainty in that there was no time prescribed for the payment of the purchase price.
72. The petitioners say that the Full Court erred in law and fact in not finding that there was an agreement between the parties for the sale of the land and that the respondent refused to honour the agreement when the petitioners were ready for payment of the purchase price by a loan which they had obtained.
73. Pursuant to s. 7(3) of the Supreme Court Act 1998 ("*SCA*"), for the petitioners to obtain special leave to appeal, they must show to the Court that the grounds of appeal raise far-reaching questions of law, are matters of great general or public importance or are matters that are otherwise of substantial general interest to the administration of civil justice.
74. The issues raised before the Court centres around construction of contracts for sale of land and what would constitute a certain agreement capable of being enforced. There are numerous settled authorities on this point of law and the Supreme Court need not reinvent the wheels in this area of law. The issue therefore does not involve far-reaching questions of law or one that is of general or public importance. This is a family dispute and the decision on the dispute does not have any effect generally or

on the public. The question of construction of land sales agreement will not have any impact on the administration of justice.

75. I find that the petitioners have failed to satisfy the threshold for special leave and on s. 7(3) of the SCA, the petition is not sustainable.

76. I finally find that neither can special leave be granted for want of the threshold test being met nor can it proceed any further because of the delay by the petitioners for any affirmative action on their part to enable prosecution of the appeal.

77. The petition for special leave must therefore be dismissed.

Costs and Payment out from Monies deposited in Court

78. The respondent has asked for costs of the appeal and also for an order that the same be paid out from the money deposited by the petitioners in Court. It is not disputed that a sum of \$10,000 was paid in on an order of the Court of Appeal of 25 February 2011. The sum was offered and deposited by the petitioners as their undertaking as to damages.

79. The respondent has incurred costs in defending the appeal. He had to incur costs for his counsel to appear in Court from Nadi. City agents were hired to appear on some days. The agency fees had to be paid and costs were also incurred in bringing the application for striking out and attending to the hearing.

80. By a letter of 6 December 2012, the respondents counsel was asked by the Court to supply the Fees Schedule which was provided by a letter dated 21 January 2013.

81. The bills of costs indicate that as at 23 August 2012, the fees amounted to \$2,400 most of which includes disbursements. After 23 August 2012, there was a further

attendance of the respondent's counsel in Court to argue the application for striking out.

82. The respondent has incurred costs due to the petitioners' lack of affirmative action to enable prosecution of the petition. It is only fair that a reasonable amount summarily assessed be paid to the respondents as costs. I find that a sum of \$2,000 is justified in the circumstances of the case.

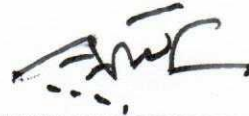
83. The counsel for the respondent has asked the court that all the outstanding costs be paid out from the \$10,000 that the petitioners deposited as their undertaking as to damages. The petitioners have failed to pay the respondent costs so far ordered in the sum of \$4,500. There should be an end to the litigation and any outstanding costs not paid will only drag the matter into enforcement proceedings. It is only proper that the file be disposed and the matters put to rest.

84. I find that it is proper to order costs to be paid out from the sums sitting in Court paid by the petitioners.

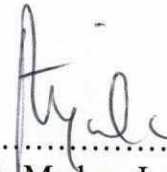
ORDERS OF THE COURT

85. The orders of the Court are:

- (1) *The petition for special leave is struck out and stands dismissed.*
- (2) *Upon this summons, the petitioners to pay to the respondent costs assessed at \$2,000.*
- (3) *The outstanding earlier costs in the sum of \$4,500 (together with costs on this summons and resultant dismissal) in favour of the respondent must be paid out from the monies held by the Court. The balance sum to be returned to the petitioners.*



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The Hon. Chief Justice Anthony Gates
President of the Supreme Court



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The Hon. Madam Justice Anjala Wati
Justice of the Supreme Court

Solicitors:

Petitioners in person

Messrs. Pillai Naidu for Respondent