

SAINT LUCIA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 5 of 1991

BETWEEN:

EVANS CALDERON

Appellant

and

LETITIA VIVIAN CALDERON

Respondent

Before: The Honourable Chief Justice Floissac - President
The Honourable Mr. Justice Byron J.A.
The Honourable Mr. Justice S. Singh J.A. (Ag.)

Appearances: The Appellant in person
Mr. C.A. McNamara for the Respondent

1992: May 25, 26.

JUDGMENT

FLOISSAC, C.J.

On the 10th April 1991, the appellant filed a Notice of Appeal against a judgment which was delivered by Matthew J. on the 15th March 1991 and whereunder the appellant was required (inter alia) to pay by way of maintenance to the respondent the sum of \$1500 every month commencing 31st January 1991. On the 29th January 1992, the appellant's appeal was dismissed for want of prosecution, that is to say for the appellant's failure to file the record of appeal and to comply with the other requirements of rule 24 of the Court of Appeal Rules 1968.

The appellant now applies for the restoration of his appeal. The application is made under rule 26(3) of the said Court of Appeal Rules which provide that:

"An appellant whose appeal has been dismissed under this rule may apply by notice of motion that his appeal be restored and the Court may in its discretion for good and sufficient cause order that such appeal be restored upon such terms as it may think fit."

According to rule 26(3), the restoration of an appeal is the result of a judicial discretion, the prerequisite to the exercise of which is good and sufficient cause. Therefore, in order to succeed in his application for the restoration of his appeal, an appellant must establish (1) that there is good and sufficient

must establish (1) that there is good and sufficient cause for the restoration and (2) that there are preponderant circumstances which should incline the Court in the interest of justice to exercise its discretion in favour of the restoration.

Accordingly, the first question to be answered in this case is whether the appellant has established good and sufficient cause for the restoration of his appeal. In this respect, the ground upon which the appellant seeks to have his appeal restored is the reason which he has advanced for his failure to prosecute the appeal. The reason is that although the Notes of Evidence which the appellant requested were delivered to his employee in due time, the employee never notified the appellant that she had received the same. This reason is not supported by any evidence that the appellant diligently pursued his request for the Notes of Evidence. This therefore raises the subsidiary question as to whether the negligence or fault of an appellant or his employee can ever constitute good and sufficient cause for the restoration of the appellant's appeal. I must say that I am predisposed to answer that subsidiary question in the negative.

But assuming that such negligence or fault could constitute good and sufficient cause, there still remains the second question as to whether the circumstances of this case justify the exercise of a judicial discretion in favour of the restoration of the appellant's appeal. The answer to that second question must be in the negative. Firstly, on the 18th February 1992 when the appellant filed his Notice of Motion for the restoration of his appeal, more than ten months had elapsed since the delivery of the judgment in favour of the respondent. Secondly, although the appellant deposed in his Affidavit that he verily believed that he had "a more than reasonable case to be tried or reviewed by the Court of Appeal", he made no attempt to satisfy this Court that he has an arguable appeal or a reasonable prospect of success in his appeal if it were reinstated. Thirdly, the degree of prejudice to

a judgment in her favour appears to be greater than the degree of prejudice (if any) to the appellant by the refusal to restore an appeal which has not been proved to be arguable or meritorious.

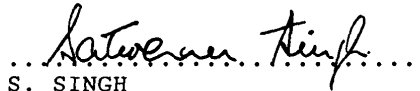
In those circumstances and in the exercise of its judicial discretion, this Court must refuse to restore the appellant's appeal and must dismiss the application in that behalf.



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V.F.FLOISSAC
Chief Justice



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C.M.D.BYRON
Justice of Appeal



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S. SINGH
Justice of Appeal (Ag.)