

13/3/91

Blanca Russo Reynolds - Arthur K. Reynolds

22nd February 1991

11th March, 1991

On 25th January I made an order discharging a mareva injunction^{B-40} granted by Matthew J. on the 2nd November 1990, and on the same date, counsel for the plaintiff filed a summons returnable for 1st February, 1991, applying for an order granting leave to appeal against that order, and also for a further order granting a stay of the judgement pending the hearing and determination of the appeal.

On 1st February, 1991, a stay of execution was granted until 22nd February, 1991, on which date it was extended to 28th February, 1991.

An affidavit in support of the summons was sworn by Counsel for the plaintiff setting out the grounds -

1. That the Limitation Act 1988 could not bar the plaintiff's right to sue upon the said judgement.
2. That the onus of proof lay on the defendant to show that the Mareva injunction was obtained in circumstances which amounted either to misrepresentation or concealment of material facts and/or was a fraud on the Court or that some irregularity had occurred and the defendant failed to have discharged this burden.
3. That points of law if any could only be dealt with on the pleadings in the instant suit and that no pleadings had as yet been filed.

- 52
4. That this case raises a rather important point of law on the Limitation Act 1988, namely, whether a judgment obtained before 1988 whether foreign or local is bound by the Limitation Act 1988 or whether equitable or legal right are merely extinguished by the Limitation Act and same ought to be argued before a higher tribunal to have an interpretation thereon.

Counsel for the plaintiff submitted that under the Eastern Caribbean Supreme Court Act 1970 (No. 8 of 1970 the Act) Section 31 he had an appeal as of right but that out of the abundance of caution he had filed a summons seeking leave to appeal: that subsequent to the filing he had researched the matter and had come to the conclusion that there was no need to apply for leave. He contended that the Court had the power to grant the leave sought even though the right to appeal was automatic.

On the other hand, Counsel for the defendant argued that the Court had no jurisdiction to grant leave to appeal: that by Section 31 (1) (g) (ii) of the Act the plaintiff had an automatic right of appeal: that there was no need to apply to the court for leave to appeal and that the court does not act in vain.

Counsel argued that the plaintiff would need to apply for extension of time to file an appeal in accordance with O 64 R5 of the Rules of the Supreme Court.

I agree with Counsel for the defendant. This Court has no jurisdiction to grant the leave sought as The Act does not authorise the Court to grant leave to appeal where an injunction is granted or refused. Section 31 (2) (g) reads:

SS
No appeal shall lie under this section-

(g) without the leave of the Judge or of the Court of Appeal from any interlocutory judgement or any interlocutory order given or made by a judge except

(ii) where an injunction or the appointment of a receiver is granted or refused.

Counsel for the plaintiff did not exercise his right under this section and the Court cannot entertain his application for leave to appeal.

Counsel for the plaintiff argued that a stay of execution should be granted: that there is a proper application before the Court and that he had no objection to the funds being kept in an account in the name of the Registrar of the High Court pending the determination of an appeal.

Counsel for the defendant contended that there was nothing upon which the Court could act to grant a stay and cited from the Supreme Court Practice. 059 R13/1

I am of the view that, as I have held that this Court has no jurisdiction to grant leave to appeal, the application for stay or execution also fails.

.....
M. JOSEPH
PUISNE JUDGE.