IN THE COURT OF APPEAL OF THE SUPREME COURT OF JUDICATURE

APPELLATE JURISDICTION

CIVIL APPEAL NO. **105** OF **2001**

BETWEEN:

THE GUYANA BANK FOR TRADE AND INDUSTRY LIMITED, a company incorporated in Guyana under the provisions of the Companies Act, Chapter 89:01 and continued under the Companies Act 1991, whose registered office is situated at lots 47-48 Water Street, Georgetown, Demerara.

Appellants/Plaintiffs

- and –

1. **MOHAMED SAFFEE**
2. **MOHAMED HOOSAIN**
3. **ANGAD RUPEE**

Respondents/Defendants
Jointly and severally

BEFORE

THE HONOURABLE MADAM JUSTICE DESIREE BERNARD – CHANCELLOR
THE HONOURABLE MADAM JUSTICE CLAUDETTE SINGH– JUSTICE OF APPEAL
THE HONOURABLE MR. JUSTICE IAN CHANG – JUSTICE OF APPEAL

Mr. Richard Fields S.C. for the Appellant.

Mr. Saphier Hussain for the Respondents.

2005

January 14
February 18

J U D G M E N T

CHANG J.A. (delivered the judgment of the Court):

The sole question for determination in this appeal is the legal status of a writ filed in the Registry of the Supreme Court but not served until after the expiry of twelve months of the date of its filing.

On the 11th April, 2000, the appellant/plaintiff filed in the Registry of the Supreme Court a writ indorsed with a Statement of Claim along with an Affidavit Verifying Claim. The appellant claimed against the respondents/defendants, jointly and severally, a sum of money loaned to the first and second-named respondents and guaranteed by the third-named respondent. The usual filing fees and fees for service of copies of the writ with Affidavit Verifying Claim on the respondents were paid.

The marshal's return of service made on the 9th June, 2001 disclosed that service of copies of the writ along with copies of the Affidavit Verifying Claim was effected on the first and second-named respondents on the 5th July, 2001 i.e. more than 12 months of their filing. It is of no moment for the purpose of this appeal that there was no evidence of the service of the writ on the third-named respondent.

When the matter came up for hearing in the Bail Court, Counsel for the respondents challenged the validity of the service of the writ on the ground that such service was not effected within twelve months of the filing of the writ. Counsel for the respondents submitted that, on that account or for that reason, the action was abandoned altogether and incapable of being revived on the application of Order 32 Rule 9(1)(a) of the Rules of the Supreme Court.

The Bail Court Judge upheld that submission and ruled that the action was deemed abandoned and incapable of being revived under Order 32 Rule 9(1)(a) of the Rules of the Supreme Court since no document was filed and no step in the proceeding was taken within twelve months of the filing of the writ.

The appellant filed a Notice of Appeal to this Court challenging the decision of the High Court Judge.

In this Court, Senior Counsel submitted on behalf of the appellant that, since the writ was a specially indorsed writ filed with Affidavit Verifying Claim in respect of which leave to defend was never given or any determination made as to whether the matter should take its normal course,

Order 32 Rule 9(1)(a) had no application and only Order 12 which is intituled "Proceedings in Specially Indorsed Writs" could have then applied. Senior Counsel further submitted that, under Order 12, the action was and always remained "ripe for hearing".

This Court has difficulty with and does not endorse the use of the words "ripe for hearing" by Senior Counsel in the context of this case. Those words appear in Order 32 itself which defines at what stage or juncture in the proceeding a cause or matter becomes "ripe for hearing". If it were the submission of Senior Counsel that Order 32 had no application, then it does appear that Senior Counsel was approbating and reprobating in submitting that the matter was and always remained "ripe for hearing." At best, such a submission was somewhat obfuscatory of the main thrust of Senior Counsel's argument. What Senior Counsel must have meant was that, under Order 12 and without any reference to Order 32, summary judgment in favour of the appellant was obtainable in the High Court since the writ was specially indorsed and filed with Affidavit Verifying Claim and all the requisite fees were paid. But, in any event, judgment was dependent on effective service of the writ.

The gist of Senior Counsel's submission was that Order 32 Rule 9(1)(a) had no room for application since the matter never reached the stage where leave to defend was given and a determination made that the matter should take its normal course.

Counsel for the respondents submitted in reply that since the local Rules of the Supreme Court are silent on and do not specify within what period of time a writ should be served after its filing, the English Rules of the Supreme Court applied and, by the application of Order 6 Rule 8 in particular, the service of the writ had to be effected within twelve months of its filing.

Counsel submitted that since no service was effected within that time, the action was abandoned and incapable of being revived by the application of Order 32 Rule 9(1)(a).

Order 32 Rule 9(1) prescribes:

> **"A cause or matter shall be deemed altogether abandoned and incapable of being revived if prior to the filing of a request for hearing or consent to judgment or the obtaining of a judgment –**
>
> **(a) any party has failed to take any proceeding or file a document therein for one year from the date of the last proceeding had or the filing of the last document therein; ....."**

Under Order 32 Rule 9(1)(a), a party must have failed to take any proceeding or file a document within the action for one year. In the instant case, it is undisputed that the writ was issued under Order 3 Rule 6 and the action commenced under Order 1 Rule 3. The issue for determination is whether any party had failed to take any proceeding or file a document in the proceeding for one year.

In the case of **Gillette v. Rai and Peter Taylor Company Limited (1968) GLR 303**, Stoby C, in dealing with Order 32, stated at 307:

> **"The proceeding or document envisaged in Rule 9(1)(a) is one which a party to the cause is required to take by rules of court so that the action can become ripe for hearing." (underscoring mine).**

In **Barbuda Enterprises Limited v. Attorney General of Antigua and Barbuda (1993) 1 WLR 1052**, in dealing with Order 34 of the Rules of Court of the Eastern Caribbean, which is essentially similar to Order 32 of the local Rules, Lord Bridge of Harwich, delivering the judgment of the Privy Council, said at 1056:

> **"First, Order 34 is, as already observed, draconian in its effect and its provisions**