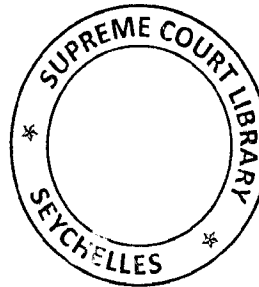


IN THE COURT OF APPEAL OF SEYCHELLES
COURT OF CIVIL APPEAL

SCA No: 17 of 2005

FRANK PAYET



Appellant

vs

MARC DONALD THOMAS

Respondent

=====

Before: Bwana, Hodoul, Domah, JJA
Counsel: Mr. S. Rajasundaram for the Appellant
Mr. J. Renaud for the Respondent

Date of Hearing: 23 November 2006
Date of Judgment: 29 November 2006

JUDGMENT OF THE COURT

Domah, JA

[1] Learned Counsel for the respondent has raised a procedural objection to the hearing of this appeal. It is to the effect that the amount of damages which falls to be adjudicated upon in the present appeal being less than SR 10, 000, the matter is not appealable.

[2] He also submitted that, in any such case, it was open to the appellant to seek leave of the Supreme Court; or special leave of this court before he could pursue the present matter but that even those leaves have not been obtained.

[3] It is a fact that the appellant had obtained judgment before the District Court in a claim based on "faute" under article 1382 for the

amount of SR 7, 815.00 as damages. The respondent had appealed to the Supreme Court and Renaud J. had allowed the appeal. It is also a fact, considering the sum involved, that appellant has not shown to us that he obtained leave either from the Supreme Court or special leave from this Court to enable him to prosecute his appeal.

~~[4] Section 12 (2) (a) (ii) of the Courts Act is amply clear on the matter. It provides:~~

"In civil matters no appeal shall lie as of right ... from any final judgment or order of the Supreme Court where the only subject-matter of the appeal has a monetary value and that value does not exceed ten thousand rupees."

[5] In answer to the objection raised, Learned Counsel for the appellant submitted before us that the grounds he has raised in the matter have nothing to do with the amount but with the law to which no monetary value can be set.

[6] To that, Learned Counsel for the respondent was quick to respond. His repartee was that it does not alter the fact that, were this appeal to succeed, the amount that his client would recover would be no more than SR 7, 815.00.

[7] We found the argument of learned Counsel for the appellant very ingenuous but for the reason given by learned Counsel for the respondent, we decline jurisdiction inasmuch as the appeal falls below the appealable amount prescribed by law.

[8] That is not all. If the appellant took the view that the appeal was otherwise meritorious, it was open to him to seek leave from the Supreme Court, irrespective of the amount. In case of refusal by the Supreme Court, it would still have been open to him to seek special leave from this Court. Neither was applied *per.*

[9] Irrespective of the monetary amount, a party may still be able to prosecute an appeal, provided that he obtains leave to do so from the court below. The Supreme Court, may, in its discretion, grant such leave to appeal if, in its opinion, the question involved in the appeal is one which ought to be the subject-matter of appeal. Thus, sections 12 (2) (b) of the Courts Act provides:

"In any such cases as aforesaid, the Supreme Court, may, in its discretion, grant leave to appeal if, in its opinion, the question involved in the appeal is one which ought to be the subject-matter of appeal."

[10] A second chance, as it were, is afforded to a litigant in case the ~~Supreme Court has refused leave. He may apply to this Court for Special Leave, by virtue of section 12 (2) (c) which provides -~~

"Should the Supreme Court refuse to grant leave to appeal under the preceding paragraph, the Court of Appeal may grant special leave to appeal."

[11] None of these procedural requirements have been fulfilled by the appellant. We have also examined, in the exercise of our discretionary powers under section 12 (3) the present case as a whole. It is our view that it does not raise any matter so important in law that we should make use of them on an application or proprio motu.

[12] The appeal is, accordingly, dismissed with costs.

I concur:

I concur:


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B. DOMAH
JUSTICE OF APPEAL


.....
S. J. BWANA
AG. PRESIDENT


.....
J. M. HODOUL
JUSTICE OF APPEAL

Dated this 29 November 2006, Victoria, Seychelles