

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

CIV 2009-404-001521

BETWEEN	RAJENDRA PRASAD Appellant
AND	INDIANA PUBLICATIONS (NZ) LIMITED First Respondent
AND	ARIN LAL Second Respondent
AND	INDIAN NEWSLINK Third Respondent
AND	VENKAT RAM Fourth Respondent
AND	MAHESH PARERA Fifth Respondent
AND	CHENCHU NAGULU Sixth Respondent

Hearing: (On the papers)

Appearances: R Prasad in Person
G M Harrison for the Defendants

Judgment: 9 October 2009 at 3:00pm

COSTS JUDGMENT OF WYLIE J

This judgment was delivered by Justice Wylie
on 9 October 2009 at 3:00pm pursuant to r 11.5 of the High Court Rules

Registrar/Deputy Registrar
Date:

Solicitors/Counsel:
Parshotam & Co, P O Box 27 079, Mt Roskill, Auckland
G M Harrison, P O Box 4338, Auckland
Copy to:
R Prasad, P O Box 14 637, Panmure, Auckland

[1] In a reserved decision issued on 3 August 2009, I allowed an appeal by Mr Prasad. I held that he had discontinued proceedings in the District Court, and I set aside a decision by Judge Andr e Wiltens dismissing Mr Prasad's claim, and giving judgment in favour of the respondents.

[2] I left two issues outstanding – first costs on the discontinuance, and secondly costs on the appeal.

Costs on the discontinuance

[3] Rule 480C of the District Courts Rules provides that a plaintiff who discontinues a proceeding against a defendant must pay costs to the defendant of and incidental to the proceeding up to and including the discontinuance. As noted in my substantive judgment, the rule raises a presumption as to costs.

[4] I have received memoranda from the parties. It is my clear view that costs should be awarded against Mr Prasad in favour of the respondents.

[5] Notwithstanding submissions by Mr Prasad to the contrary, it is clear that I have jurisdiction to make an order as to costs – see s 76(1)(c) of the District Courts Act 1947.

[6] In my view an award of indemnity costs is appropriate in this case. The District Courts Rules provide that that Court may order such costs – r 47C(1)(b). So may this Court on an appeal. Such costs can be made where the party against whom costs are ordered has acted vexatiously, frivolously, inappropriately or unnecessarily in commencing or continuing the proceeding.

[7] For the reasons I have explained in my substantive decision, it is my clear view that Mr Prasad's proceedings in the District Court were misconceived from the outset. The matters which he seeks to litigate have already been before the Courts on a number of occasions. Indeed they have been to the Supreme Court. It is hard to escape the conclusion that Mr Prasad is simply seeking to re-litigate what has already been decided. The only difference in the present proceedings is the name of

the plaintiff. Whether that makes any difference remains to be seen when Mr Prasad's proceedings in this Court are heard. In any event, it is clear that the proceedings commenced by Mr Prasad in the District Court were unnecessary. He unilaterally elected to discontinue the proceedings at the very last moment. The respondents were put to considerable expense in resisting the proceedings which in the event went nowhere.

[8] The respondents' actual costs totalled \$14,931. I have examined the invoices, and there does not appear to be anything inappropriate in the same. I make an order that Mr Prasad pay to the respondents the sum of \$14,931 by way of costs in relation to the discontinuance of the proceedings in the District Court.

[9] I record that paragraph 12 of Mr Prasad's memorandum stated as follows:

Should any Costs be awarded to the Respondents which would be out of jurisdiction, the Appellant also seeks Leave of High Court to Court of Appeal to be argued out there.

[10] If Mr Prasad wishes to seek leave to appeal against this costs order, he will have to file the appropriate application in this Court. If the respondents oppose that application, then the matter will proceed to a hearing in this Court in the normal way.

Costs on appeal

[11] In my substantive decision I indicated my preliminary view that costs should lie where they fall. The respondents accept that view.

[12] Mr Prasad has sought costs in the sum of \$7,345. This comprises an amalgam of filing fees, solicitor's costs, and incidentals. According to Mr Prasad's memorandum, he has claimed costs on a Category 2 basis. It is however not obvious to me how the costs claimed by him can come within Category 2. Two of the disbursements are invoices from legal advisers. How the amounts on those invoices have been calculated is unclear. I suspect that it is unlikely that those costs have been be invoiced on a Category 2 basis.

[13] It is clear that in general, a lay litigant is not entitled to recover costs, although the Court has a discretion to allow disbursements to a lay litigant – see *Re Collier (A Bankrupt)* [1996] 2 NZLR 438.

[14] In my judgment Mr Prasad should not receive an award of costs and notwithstanding that his appeal succeeded. As I have noted the proceedings in the District Court were misconceived. Mr Prasad did not file a notice of discontinuance in the appropriate form. Nor did he appear when the matter came before the Court. The advice of discontinuance was given very late in the day. In my view there is no proper basis for an award of costs against the respondents. Nor should Mr Prasad be entitled to recover his disbursements. They should never have been incurred because the proceedings should have not been commenced in the District Court. Mr Prasad must accept responsibility for what occurred.

[15] I decline to make any order for costs or disbursements in favour of Mr Prasad.

Wylie J