

**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: 27 November 2009

Appearances: R Prasad in Person  
G M Harrison for Respondents

Judgment: 2 December 2009 at 10:00am

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**JUDGMENT OF WYLIE J**

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This judgment was delivered by Justice Wylie  
on 2 December 2009 at 10:00am  
pursuant to r 11.5 of the High Court Rules

Registrar/Deputy Registrar  
Date:

Solicitors: *Parshotam & Co, P O Box 27079, Mount Roskill*  
Counsel: *G M Harrison, P O Box 4338, Auckland*

[1] Mr Prasad has sought leave to appeal my costs decision of 9 October 2009 to the Court of Appeal. In that decision I ordered that Mr Prasad pay to the respondents the sum of \$14,931.00 by way of costs following the discontinuance of the proceedings in the District Court. Further, I declined to make orders for costs or disbursements in favour of Mr Prasad in relation to the judgment in his favour, which is dated 3 August 2009.

[2] Mr Prasad seeks leave to appeal to the Court of Appeal so that he can argue as follows:

- a) That my costs decision be reversed;
- b) That an order be made that costs be awarded to him in the sum of \$7,345.00;

He also seeks a stay pending the outcome of any Court of Appeal proceedings.

### **Submissions**

[3] Mr Prasad raised three issues in support of his application - first *res judicata*, secondly double dipping, and thirdly judicial review.

[4] As I understand his submissions, he argued that the application made by the respondents seeking summary judgment in the District Court was “unauthorised” and that the District Court had no jurisdiction to rule on his proceedings until the same were heard. He said that the proceedings were discontinued, and that the bulk of the costs that I awarded in favour of the respondents on this discontinuance were incurred in relation to the respondents’ summary judgment application. Therefore, he said, he should not have to pay the same. He also argued that the respondents sought summary judgment against him in this Court when he commenced proceedings in this jurisdiction, and that there were therefore two summary judgment applications outstanding against him, neither of which has been determined. On this basis he asserted that the respondents are “double dipping”. Finally, he asserts that he will shortly be filing proceedings by way of judicial review against all Judges

who have made decisions in some sixteen proceedings going back to 2003 in which he has been involved. He advised me that as part of the review, he will be seeking to set aside an earlier judgment given by Judge Blackie in the District Court. He said that he should be granted leave to appeal to the Court of Appeal, and a stay, until his proposed review proceedings have been concluded.

[5] Mr Harrison opposed the application.

### **Basis of application**

[6] Mr Prasad is seeking leave pursuant to s 67 of the Judicature Act 1908. The applicable test is well established. Any prospective appeal must raise some question of law or fact capable of *bona fide* and serious argument, in a case involving some interest, public or private, of sufficient importance to outweigh the cost and delay of the further appeal – *Waller v Hider* [1998] 1 NZLR 412 at 413.

### **Analysis**

[7] I deal first with the costs awarded on the discontinuance.

[8] As I understand it, there is no question of fact raised. Further, in my view, there is no question of law capable of *bona fide* and serious argument. As noted in both my substantive judgment, and in my costs judgment, r 480C of the then applicable District Court Rules 1992 provided that a plaintiff who discontinued a proceeding against a defendant had to pay costs to the defendant up to and including the discontinuance. That rule applied to the present situation. The respondents' application for summary judgment was not an abuse of process nor was it unauthorised. The respondents were entitled to apply for the same – r 152(2). A District Court Judge had the power to award costs on the discontinuance in the District Court. Costs could have been awarded on an indemnity basis – r 47C(1)(b). There can be no question but that a High Court Judge has that power on appeal – s 76(1)(c) of the District Courts Act 1947.

[9] In the circumstances, I cannot see that there is any question of fact or law capable of *bona fide* and serious argument.

[10] I now turn to the costs on the appeal.

[11] Mr Prasad succeeded in the substantive proceedings. Costs, while they normally follow the result, are in the discretion of the Court – r 14.1, High Court Rules. I particularised my reasons for declining to award costs in favour of Mr Prasad in my costs judgment. In exercising my discretion, I declined to award costs in his favour.

[12] Mr Prasad does not take issue with any of the particulars I set out in my costs judgment. There is no question of fact arising, and in my view no question of law capable of *bona fide* or serious argument.

[13] Nor in my judgment does either matter raise some interest, public or private, of sufficient importance to outweigh the cost and the delay of a further appeal.

[14] Mr Prasad's application for leave to appeal is declined. As a result, there is no basis for a stay of the proceedings, and that aspect of the application is also declined.

[15] The respondents are entitled to their costs and reasonable disbursements in relation to this application. Costs are to be calculated on a 2B basis. If there is any dispute regarding the same that dispute is to be referred to me by way of written memorandum. Any memorandum from the respondents is to be filed within ten working days from the date of this decision. Any memorandum in response from Mr Prasad is to be filed within five working days thereafter. I will then deal with costs on the papers, unless I require assistance.

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Wylie J