

IN THE SEYCHELLES COURT OF APPEAL

CEDRIC PETIT

APPELLANT

versus

MARGHITA BONTE

RESPONDENT

Civil Appeal No: 9 of 1999

[Before: Ayoola, P., Pillay & Matadeen, J.J.A]

Mr. P. Boulle for the Appellant

Mr. F. Elizabeth for the Respondent

JUDGMENT OF THE COURT

(Delivered by Matadeen, J.)



This is an appeal against a decision of the Supreme Court granting an application to set aside a judgment dismissing a plaint entered by the respondent by reason of the non-appearance of the respondent and her counsel on the day of the hearing.

The application to set aside the judgment was purportedly made pursuant to Section 69 of the Seychelles Code of Civil Procedure. Although learned Counsel for the appellant objected to the application as made under Section 69, the learned Judge brushed aside his objection, considered the application as properly made under that Section and granted the application.

The appellant is now challenging the decision of the learned Judge essentially on the ground that the application was improperly grounded on Section 69. We agree with the learned Counsel for the appellant that the application could not have been made under Section 69.

It is not disputed that on the day fixed for the hearing of the case in which the respondent was suing the appellant and after pleadings had been filed and the appellant had come all the way from South Africa to depone at the trial, both the respondent and her counsel failed to appear in Court, with the result that the case was dismissed, pursuant to Section 133 coupled with Section 67 of the Code of Civil Procedure.

These two sections read as follows –

“Section 133.

If on the day to which the hearing of the suit has been adjourned by the court ...the parties or any of them fail to appear, the court may proceed to dispose of the suit in one of the manners directed in that behalf by sections 64, 65 and 67 or may make such order as it thinks fit.”

“Section 67

If on the day so fixed in the summons, when the case is called on, the defendant appears and the plaintiff does not appear or sufficiently excuse his absence, the plaintiff's suit shall be dismissed...”

It is clear therefore that when Section 133 refers to Sections 64, 65 and 67, those sections will apply mutatis mutantis.

The respondent has chosen to challenge the dismissal of her plaint by an application under Section 69. That Section, however, is of limited application. It does not apply to non-appearance at an adjourned hearing, but is limited only to non-appearance of a party on the day fixed in the summons served after a plaint is filed. That Section reads as follows:-

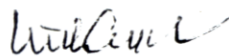
“Section 69

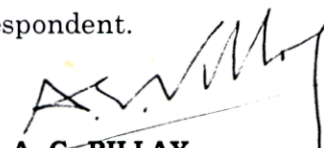
If in any case where one party does not appear on the day fixed in the summons, judgment has been given by the court, the party against whom judgment has been


given may apply to the court to set it aside by motion made within one month after the date of the judgment if the case has been dismissed, or within one month after the execution has been effected if judgment has been given against the defendant, and if he satisfies the court that the summons was not duly served or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the court shall set aside the judgment upon such terms as to costs, payment into court or otherwise as it thinks fit and shall order the suit to be restored to the list of cases for hearing. Notice of such motion shall be given to the other side."

We are of the view, therefore, that Section 69 could not have been of help to the respondent in those circumstances. Section 69 can only apply to a case where the party invoking it has not appeared on the day fixed in the summons for appearance before Court under Section 63 - Vide: Bianchardi v Electronic Alarm S.A (1975) SLR No. 31. It would have been open to the respondent to apply for a new trial under Section 194(c) of the Seychelles Code of Civil Procedure, but this she has failed to do.

In the circumstances we allow the appeal and quash the order of the learned Judge setting aside the judgment of dismissal of the respondent's plaint, with costs against the respondent.


E. O. AYoola
PRESIDENT


A. G. PILLAY
JUSTICE OF APPEAL


K. P. MATADEEN
JUSTICE OF APPEAL

Delivered at Victoria, Mahe this 17 day of December 1999.