

**IN THE SUPREME COURT OF SEYCHELLES**

**Miscellaneous Application: MA 332/2017**

**Arising in Commercial Cause 16 of 2017**

[2018] SCSC 343

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**INTERNATIONAL SCHOOL SEYCHELLES**  
Petitioner

versus

**1. ANNA JEANNE- D'ARC MARZOCCHI**  
**2. INTERNATIONAL SCHOOL TUCK SHOP**  
Respondent

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Heard:

Counsel: Mr Rouillon for the Petitioner

Mr. Elizabeth for respondent

Delivered: 4<sup>th</sup> of April 2018

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**RULING**

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**Nunkoo J**

[1] The plaintiff has brought action for damages before the Supreme Court. This action it is being alleged was entered on three previous occasions and dismissed on all those occasions owing to the absence of Plaintiff's counsel.

- [2] The Defendant took a plea in limine in litis, to the effect that this constituted to an abuse of process and prayed for the plaint to be dismissed.
- [3] The Court rejected the plea in limine.
- [4] The Defendant is seeking leave to appeal to the Court of Appeal.
- [5] The reasons advanced by the Applicant are averred in affidavit sworn by the representative of the Defendant, one Laura Valabhji. In essence what is being averred and urged is that the case being entered a fourth time constitutes an abuse of process. It is Deponent's contention that a case cannot be relitigated more than twice; even two times is the maximum allowable. As per the records provided to me this case was entered twice and dismissed twice and no hearing took place. So the issue of res judicata as rightly argued earlier does not apply.
- [6] However, the issue at present is this: is this court bound to grant leave or does it have a discretion to do or not do so.
- [7] In deciding whether to grant leave or not I am guided by Section 12 of the Courts Act which reads as follows:

**APPEALS IN CIVIL MATTERS:**

(1) Subject as otherwise provided in this Act or in any other law, the Court of Appeal shall, in civil matters, have jurisdiction to hear and determine appeals from any judgement or order of the Supreme Court given or made in its original or appellate jurisdiction.

(2) (a) In civil matters no appeal shall lie as of right-

(i) from any interlocutory judgment or order of the Supreme Court; or

(ii) 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.

(b) 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 an appeal.

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

[8] I accordingly decline to grant leave to appeal against my ruling given earlier

Signed, dated and delivered at Ile du Port on 4<sup>th</sup> of April 2018.



S Nunkoo

**Judge of the Supreme Court**