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**(1973) 06 CAL CK 0011**

**In the Calcutta High Court**

**Case No :** Appln. in Appeal No. 128 of 1972 and Suit No. 1466 of 1969

Rajputana Trading Co. Pvt. Ltd.

APPELLANT

Vs

Malaya Trading Agency

RESPONDENT

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**Date of Decision :** 01-06-1973

**Acts Referred:**

Calcutta High Court Rules, 1914 — Rule 21, 22

**Citation :** AIR 1974 Cal 116 : 77 CWN 834

**Hon'ble Judges :** S.K. Mukherjea, J;S.K. Datta, J

**Bench :** Division Bench

**Advocate :** Kapur, for the Appellant;

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## **Judgement**

S.K. Mukherjea, J.—This is an application for an order that the appeal be dismissed for non-prosecution, the appellant Dot having filed the paper book in time or at all. The application was made on April 25, 1973. It is not in dispute that the paper book was due to be filed on November 16, 1972, the day the Court reopened after the long vacation. On November 16, 1972 the appellant's Solicitors applied to the Deputy Registrar for extension of time to file the paper book till January 3, 1973. An order was made as prayed for. Thereafter further applications for extension of time were made on January 2, 1973 and February 26, 1973. On the last application the Deputy Registrar extended the time to file the paper book till March 31, 1973. All these applications were presumably made under Rule 21 of Chapter XXXI of the Original Side Rules.

2. It appears from the record that on March 31, 1973, the appellant's Solicitors again applied in writing requesting the Deputy Registrar to extend the time to file the paper book till April 30. 1973. It further appears from a note at the foot of the application that the application was sent on March 31, 1973 but as the day happened to be a Saturday, the letter was not received by the department. It was delivered on April 2, 1973 in the morning, April 1 having been a holiday. The note is signed by the appellant's Solicitor Mr. A. N. Mitter. It is recorded in the note-sheet on the file that this note was subscribed by Mr. A. N. Mitter on May 7,

1973. Strangely enough, the Deputy Registrar appears to have taken no action on this application. He neither granted the prayer for extension nor did he refuse it. It may be added that the application made on March 31, 1973 was made ex parte without notice to the other side as was also the case in the earlier applications.

3. The appellant not having filed the paper book within the extended time which expired on March 31, 1973, the respondent made the present application on April 25, 1973 under Rule 22 of Chapter XXXI of the Original Side Rules. By this application, the respondent is asking for an order for dismissal of the appeal for want of prosecution. The Notice of Motion was served on the appellant's Solicitors on the same date. On April 28, 1973, the appellant's Solicitors again applied to the Deputy Registrar asking for extension of time till May 31, 1973. Although the respondent had, by then, made the application for dismissal of the appeal, no notice of the application before the Deputy Registrar for extension of time was served on the respondent nor was the attention of the Deputy Registrar drawn to the fact that an application for dismissal of the appeal under Chapter XXXI, Rule 22 was pending in the Appellate Court. The Deputy Registrar, in ignorance of that application, granted extension of time to file the paper book till May 31, 1973 by an order made on May 14, 1973. Pursuant to that order the appellant filed the paper book on May 30, 1973.

4. Mr. Kapur, appearing on behalf of the petitioner, that is to say, the respondent in this appeal, submitted that the appellant not having filed his paper book by March 31, 1973, the appeal should be dismissed for non-prosecution. He contended that the paper book has been filed pursuant to an order made by the Deputy Registrar after the respondent had made the application for dismissal of the appeal. In disposing of this application, Mr. Kapur contended, the Court should only consider the situation as it existed on the date of the application and proceed on that basis. On that date there was non-compliance with the order to file the paper book on or before the stipulated date and the respondent was, therefore, fully within his rights to apply for dismissal of the appeal under Rule 22 of Chapter XXXI. He further submitted that in any event, the fact that the paper book has been filed by the appellant pursuant to the order made by the Deputy Registrar on May 14, 1973 is of no consequence for the purpose of this application and no notice should be taken of the same. First, he contended that when an application was pending in Court for dismissal of the appeal under Rule 22 of Chapter XXXI of the Original Side Rules the Deputy Registrar had no power or jurisdiction to extend the time to file the paper book under Rule 21. Even if the Registrar had such power or jurisdiction which he disputed, Mr. Kapur contended that the order of the Deputy Registrar having been made after the cause of action in his application had ripened and the application had been made, the paper book must be treated for the purpose of this application as not having been filed at all. The order which the Court makes under Rule 22 of Chapter XXXI is a discretionary order and in the facts and circumstances of this case, the discretion should not be exercised in favour of the appellant. It should not be so

exercised, Mr. Kapur submitted, having regard to the fact that the appellant had suppressed in his application for extension of time that an application for dismissal of the appeal was pending in the Appellate Court. The Deputy Registrar, he said, could not and would not have made any order extending the time to file the paper book had it been brought to his notice that an application had already been made by the respondent in the Appellate Court for dismissal of the appeal. The non-disclosure of the fact of the respondent's application in the appellant's application for extension of time to file the paper book was characterised by Mr. Kapur as sharp practice. In our opinion, and the opinion is shared by Counsel on either side, the fact that an application was pending before the Appellate Court for dismissal of the appeal should certainly have been brought to the notice of the Deputy Registrar by the Solicitor for the appellant and the non-disclosure of that material fact is, to say the least, highly unfortunate.

5. Mr. A. N. Mitter himself made certain submissions before us. His case is that in a fit of absence of mind he failed to point out to the Deputy Registrar that an application under Rule 22 of Chapter XXXI for dismissal of the appeal was pending in Court at that time. He was the first to deplore the non-disclosure. There was no intention, he assured us, on his part or on the part of his client to overreach the Court. What happened, highly regrettable though it was, was not deliberate. Mr. Kapur drew our attention to the fact that the note at the foot of the application dated 31st March, 1973 was inserted on 7th May, 1973 long after the notice of motion had been served upon the appellant's Solicitors. He submitted that the appellant's Solicitor who was at pains to point out the date on which the application was delivered to the Department should have been alive to his responsibility to point out to the Deputy Registrar that an application before the Appellate Court was pending. In our judgment, even if we accept all that has been said in extenuation of non-disclosure, we cannot help feeling, that the proceeding before the Deputy Registrar has been vitiated by an unusual sharpness of procedure. Be that as it may, the non-disclosure of the application if not deliberate, should not, in our opinion, weigh with us in using our discretion but nevertheless the fact that an application under Rule 22 of Chapter XXXI was pending when the Deputy Registrar made an order for extension of time to file the paper book has important legal consequences. In our opinion, on a proper reading of Rule 21 and Rule 22 of Chapter XXXI of the Original Side Rules as also on a consideration of the basic principles of jurisdiction and procedure, once an application is made under Rule 22, the Registrar can have no further power or jurisdiction to extend the time to file the paper book under Rule 21. This construction is the only one which will bring harmony between the two Rules. Rules 21 and 22. Moreover, in the absence of a clear statutory provision, an inferior tribunal cannot make an order which will have the effect of stultifying a proceeding pending before a superior tribunal. An inferior tribunal is not competent to make any order which will have a direct impact on proceedings pending before a superior tribunal on the same subject-matter. The fact that the Deputy Registrar made the order in ignorance of the application which was

pending before the Court can make no difference to the legal position. In that view of the matter, we must hold that the order, of the Registrar made on May 14, 1973 extending the time to file the paper book till 31st May, 1973 is, so to say, non est in the eye of law and the filing of the paper book is invalid. It remains for us to point out that it is desirable that in all applications made before the Registrar or the Deputy Registrar for extension of time to file the paper book, an averment should be made that no application is pending for dismissal of the appeal. Furthermore, it seems to us that all applications for extension of time to file the paper book should be made on notice to the respondents or at least to the principal respondents. Any other course is likely to land the Department in difficulties and breed situations like the one with which we are concerned in this appeal. Having said the least that we could have said on matters of propriety, and the power and jurisdiction of the Registrar under Rule 21, it only remains for us to pronounce the order.

6. On an anxious consideration of the entire matter, we feel that there is no particular reason why we should not accept the statement made by Mr. Mitter from the Bar. In disposing of this application we therefore proceed on the basis that there was no deliberate attempt on the part of the appellant to overreach the Court and stultify the present application by presenting a fait accompli in the shape of the Deputy Registrar's order extending the time to file the paper book. We have further taken into consideration the fact that the application dated 31st March 1973 was not disposed of by the Deputy Registrar at all. To say the least, it seems very strange to us that the Deputy Registrar did not deal with or dispose of this application when he disposed of so many applications made in the past for extension of time. It is easy to raise questions on the authenticity of this application or on how it found its way into the file but there is no evidence that it was not made in the regular course and therefore, it will not be fair to pursue one's doubts in that direction. Be that as it may, we cannot help feeling that there has been a great deal of laxity on the part of the appellant in complying with directions. He has not been diligent.

7. We have by another judgment dismissed the appellant's application for extension of time to file the paper book in a connected appeal because the appellant was out of time by eight or nine months in filing the paper book. We feel that the interest of justice will be served in the facts of the present case if we grant leave to the appellant to file the paper book in this appeal within a week from date. As the paper book has already been filed and we are granting leave by this order to the appellant to file the same, we do not make an order for taking the paper book off the file. We express our disapproval of the conduct of the appellant in not disclosing before the Deputy Registrar the material fact of the pendency of this application, by making payment of costs of this application a condition precedent to the grant of leave to file the paper book. We assess such costs at 50 gold mohurs which the appellant is directed to pay to Messrs. G. More and Co., Solicitors for the petitioners within a fortnight from date, irrespective of the result of the appeal.

8. In default of payment of the said sum within the stipulated date, the appeal will stand dismissed and the paper book filed by the appellant will be taken off the file and all ad interim orders which remain in force will stand dissolved. If the said sum is paid in the manner aforesaid, the appeal will appear on the hearing list of appeals on July 2, 1973 with liberty to the parties to apply for an early hearing.

9. We make it clear that in any event, the applicant is entitled to costs of this application which we have assessed at 50 gold mohurs.

10. Let a copy of the judgment be transmitted to the Registrar, Original Side, for necessary action.

S.K. Datta, J.

11. I agree.