

1972
Jan. 25

[TRIANTAFYLIDIS, P., HADJIANASTASSIOU, MALACHTOS, JJ.]

MUSTAFA
HALIL
IBRAHIM
v.
MUSTAFA
SHAKIR
KASAB

MUSTAFA HALIL IBRAHIM,
Appellant-Applicant,

v.

MUSTAFA SHAKIR KASAB,
Respondent.

(Application in Civil Appeal No. 4982).

Civil Procedure—Appeal—Dismissed for want of prosecution—Civil Procedure Rules, Order 35, rules 6, 21 and 22—Reinstatement—Grounds upon which it may be granted—Discretion of the Court—Court of Appeal not satisfied in the light of all relevant considerations, that it is fit to exercise its discretion in applicant's favour—Application for reinstatement refused.

Civil Appeal—Dismissal for want of prosecution—Reinstatement.

Reinstatement of appeal—See supra.

Civil Procedure—Time—Stipulations as to time in procedural matters laid down in the Rules of Court—Must be observed unless justice clearly indicates that they should be relaxed.

Time in procedural matters—When relaxation allowed—See supra.

The Court refused this application for reinstatement of an appeal dismissed for want of prosecution. In the light of the circumstances of this case—fully set out in the judgment of the Court, *post*—the Court took the view that it was not fit to exercise its discretion in the applicant's favour. The Court further held that stipulations as to time in procedural matters laid down in the Rules of Court should be observed, unless justice clearly indicates that they should be relaxed.

Cases referred to :

Kyriacou v. Georghiadou (1970) 1 C.L.R. 145.

Application.

Application for the reinstatement of Civil Appeal No. 4982 which was dismissed by virtue of the application of rule 22 of Order 35 of the Civil Procedure Rules.

A. Dana, for the appellant-applicant.

M. Aziz, for the respondent.

The judgment of the Court was delivered by :—

TRIANAFYLIDIS, P. : The applicant applies for the reinstatement of civil appeal No. 4982, which was dismissed by virtue of the application of rule 22 of Order 35 of the Civil Procedure Rules, in view of the failure of the applicant, as an appellant, to lodge in time in Court the sum necessary for the preparation of the record of the proceedings, so that the appeal could be fixed for hearing.

As it was stated rather recently, after a review of relevant case-law, in *Kyriacou v. Georghiadou* (1970) 1 C.L.R. 145, “the stipulations as to time in procedural matters laid down in the Rules of Court are to be observed unless justice clearly indicates that they should be relaxed”.

In the present instance the notice of appeal was filed on the 8th May, 1971 ; and it must be observed that—as in the *Kyriacou* case, *supra*—the grounds of appeal were not framed in compliance with the provisions of rule 4 Order 35, because the reasons in support of such grounds were not set out fully in the notice of appeal.

On the 31st May, 1971, the Chief Registrar requested in writing counsel for the appellant—the present applicant—to lodge in Court the sum of £5 for the preparation of the record of the proceedings ; the Registrar did so because the appellant had failed to comply, in this respect, with rules 6 and 21 of the Order concerned.

No action for this purpose was taken by the appellant for nearly six months and then—as it appears from an affidavit which was filed as a supplementary affidavit in support of this application—the clerk of counsel for the appellant came, on the 25th November, 1971, to the Registry of the Court, with the files of this appeal and another three appeals in order to lodge the sums necessary for the preparation of the records of the proceedings ; because, however, he was in a hurry to return to his office he omitted to lodge the amount for the preparation of the record of the proceedings of the present appeal. Nothing was done to remedy the position and on the 17th December, 1971, the parties were notified that the appeal stood dismissed under rule 22 of Order 35.

The present application, for the reinstatement of the appeal, was filed on the 30th December, 1971.

An appeal which has been dismissed under rule 22 of Order 35 can be reinstated if the Supreme Court “so deems fit”.

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In the light of all relevant considerations, which are mentioned in this judgment, we are of the opinion that the applicant—the appellant—has not satisfied us that it is fit to exercise our discretion in his favour.

We, therefore, dismiss this application. As counsel for the respondent has not claimed costs we shall make no order in that respect.

*Application dismissed.
No order as to costs.*