THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No. S284 OF 2024

Claim No. CV2014-02540

TINA CHANCE

Appellant

AND

SABITA RAMNARINE

Respondent

Panel: **V. Kokaram, J.A.**

E. Donaldson-Honeywell, J.A.

Appearances: **Mustapha Mushim Khan for the Appellant**

Delivered in Chambers: Thursday 30th January, 2025

RULING-PROCEDURAL APPEAL

I have read the judgment of V Kokaram JA and I agree.

.....

Eleanor Donaldson-Honeywell JA

1. This procedural appeal is being determined without an oral hearing, upon reading the written submissions of the appellant, pursuant to rule 64.13 Civil Proceedings Rules (1998) as amended (CPR). There were no submissions filed by the Respondent.

2. This appeal is against the decision of the trial judge setting aside a default judgment made against the Respondent and making consequential directions to manage the claim. The Appellant contends that the trial Jude wrongly exercised his discretion to set aside that default judgment under rule 13.3 CPR. Principally, the appellant contends that there was no realistic prospect of success in defending the claim and furthermore the defendant did not act as soon as reasonably practicable after she became aware that there was a judgment against her.

3. On an appeal challenging the exercise of the Court's discretion in setting aside judgment and thereby managing the claim, the trial judge should be afforded some latitude or a margin of deference in the exercise of his powers to set aside a default judgment. The Court of Appeal will only interfere if the judge was shown to be plainly wrong. Whether this Court would have exercised its discretion differently by dismissing the Respondent's application is not the task involved on this appeal. The Appellant must demonstrate that the trial judge acted on an erroneous principle or exercised his discretion in so unreasonable a manner no reasonable tribunal would have so exercised it.

See **The Attorney General of Trinidad and Tobago v Miguel Regis** Civil Appeal No.79 of 2011.[1]

4. I am also mindful in that task of exercising a discretion of the critical value of procedural justice underpinning the overriding objective, promoting the values of voice, respect, trust and neutrality within the confines of the CPR.[2] Implicit in the principle of maintaining parties on an equal footing and securing proportionate responses to a defendant's inaction in the face of a claimant's claim, the judge will always have to finely balance the need to give voice to litigants, that is, to have their respective cases ventilated on the one hand, with on the other, the need to orderly manage the shape and pace of the litigation within the new ethos of instilling discipline in civil litigation. They are both important components of a parties right to a fair hearing and access to justice.

5. In our view it was open to the trial judge to hold as he did that there was both a realistic prospect of success in defending the claim and that the Respondent acted as soon as reasonably practicable when she found out that judgment had been taken up against her. For the reasons set out in this judgment the appeal will be dismissed.

---

[1] In **The Attorney General of Trinidad and Tobago v Miguel Regis** Civil Appeal No.79 of 2011, it was noted:

> "11. The law as to the reversal by a Court of Appeal in Trinidad and Tobago of an order made by a trial judge in the exercise of his discretion is well-established. The appellate court will generally only interfere if it can be shown that the trial judge was plainly wrong. Thus, we may say that unless it can be demonstrated, for example, that the trial judge disregarded or ignored or failed to take sufficient account of relevant considerations or regarded and took into account irrelevant considerations or that the decision is so unreasonable or against the weight of the evidence or cannot be supported having regard to the evidence or that the judge omitted to apply or misapplied some relevant legal principle or that the decision is otherwise fundamentally wrong, the Court of Appeal will not generally interfere with the exercise of a court's discretion."

[2] **Exploring the Role of the CPR Judge**, Justice Peter Jamadar JA and Kamla Jo Braithwaite

Rule 13.3 general principles

6. At paragraphs 2 to 4 of his judgment, the trial judge outlined the conditions in which a judgment may be set aside pursuant to rule 13.3 CPR. There was no error in his consideration nor application of those general principles.

7. CPR 13.3 provides as follows

   13.3 (1) The court may set aside a judgment entered under Part 12 if—

   (a) the defendant has a realistic prospect of success in the claim; and

   (b) the defendant acted as soon as reasonably practicable when he found out that judgment had been entered against him.

8. The Defendant must satisfy both of those two pre-conditions in rule 13.3 before the court can exercise a discretion to set aside a "default judgment". The First Pre condition is to demonstrate that there is a realistic prospect of success in the claim. While a realistic prospect of success is said to be one that is better than merely arguable it is to be distinguished from prospects that are fanciful. See **CA P163 OF 2013 Antony Ramkissoon v Mohanlal Bhagwansingh**.

9. The second pre-condition that the defendant acted as soon as reasonably practicable when she found out that judgment had been entered against her incorporates the notion of delay on the part of the defendant. There is no time frame prescribed by this rule. Therefore, each case is to be assessed having regard to all of the circumstance measured against the backcloth of the overriding objective. The critical time period of activity that is under investigation however is the date from which the defendant found out that judgment had been entered against her and not from the actual date of judgment.

10. Further, while consistent with the discipline instilled in civil litigation under the CPR the frames used the word “as soon as”, the question as to what is “reasonably practicable” is a measure also to be assessed upon considering all the circumstances of the case and there is no rigid standard by which to adjudge the action of one defendant in one case to another. Ultimately it will call for an assessment by the trial judge as to whether the actions of the defendant as explained by her were reasonable adopting a practical common-sense approach to her circumstances. I turn to those two pre-conditions to demonstrate how the trial judge was not plainly wrong in his assessment.

Realistic prospect of success

11. This was a claim for breach of an agreement for sale of land purportedly made between the Appellant and the Respondent as well as for a return of the deposit paid by the Appellant for the purchase of the Respondent’s property. The Appellant did not include the statement of case as part of the bundle of documents on this appeal however we have considered it as a matter of record. A great degree of emphasis was placed by the Appellant in the written submissions, that the Respondent was well aware of the proceedings long in advance and unreasonably delayed in making this application. This filtered into the Appellant’s written arguments on whether there was a realistic prospect of success in the claim at paras 12, 13 and 18 of the written submissions. However, these considerations do not feature in an assessment as to whether there is more than an arguable defence on the merits.

12. The Appellant raised very serious allegations in her affidavit on the merits. She contended that she never met the Appellant, she never signed any

agreement, no cheque for any purchase money for the subject property was received or en cashed by her and she never authorized the second defendant to act on her behalf. The latter allegation is a serious one as the second Defendant Mr. Daren Henry is alleged to have acted as her "attorney" however there appears to be no record of him being admitted to practice law. Furthermore, all the relevant transactions concerning the sale of the property appears from the Appellant's case to have been conducted between the Appellant and the second Defendant and not directly with the Respondent. If her allegations are proven to be true there could be no lawful agreement made for the sale of land and it will be open to a court to find that a fraud had occurred in cheating the Respondent of her property.

13. The trial judge identified three key triable issues that deserved further investigation: whether the defendant signed any agreement with the claimant at all; whether the second defendant had the first defendant's permission to conduct business on her behalf and whether the document relied on by the second defendant to enter into an agreement for sale duly authorized him to do so.

14. This could not be unraveled simply by reference to the affidavits, indeed there was no cross examination on them. It must be a matter to be determined at trial. If the respondent can indeed make good on her assertion that she did not sign the agreement nor authorized the second defendant to act on her behalf, the trial judge cannot be faulted for his analysis that on this basis there was a realistic prospect of defence on this claim.

Delay

15. It must be membered that the role of the appellate court is not to step into the shoes of the trial judge to make a determination as to whether there was unreasonable delay but to determine if the trial Judge was plainly wrong in his assessment. We cannot do so principally for the reason that it was open for the judge to accept as a good reason the handicap of the defendant in mounting a defence in a timely manner.

16. The Respondent's main explanation for her delay was primarily due to her lack of awareness of the initial claim, misinformation, lack of assistance from her first lawyer, difficulties in obtaining the relevant documents and then needing time to seek a second legal opinion. She received all the documentation in this case including the court's judgment in October 2023 and the application to set aside judgment was made approximately six months later on 12th March 2024.

17. The Appellant submitted that:

    a) The Defendant's assertion of illiteracy, was a recent claim as it had not been included in her affidavit during enforcement proceedings.
    b) They highlighted the five-month delay between when the Defendant became aware of the judgment and the filing of her application to set it aside as unjustifiable.
    c) The Defendant's daughter was successfully served at a known address (Hummingbird Avenue), suggesting that the Defendant should have been aware of the proceedings and that service by advertisement was adequate.
    d) The Defendant's evidence lacked credibility.

18. The trial judge noted at paragraphs 10 to 12 of his judgment:

"- 10. At paragraphs 4 to 7 of the affidavit in support of the instant application, the First Defendant outlined that upon being advised by the serving officer she went to her then Attorney at Law, Mr Subash Panday. In or around October 2023, the First Defendant received a copy of all the documents in the instant proceedings and kept them in a bundle.

11. The First Defendant changed her attorneys in February 2024 and a period of 5 months elapsed between the time she became aware of the judgment and when the notice of application for the setting aside of the judgment was filed.

12. In the circumstances, the Court formed the view that the First Defendant acted as soon as was reasonably practicable after she found out judgment was made against her and the 5 month period is understandable when one has regard to the factual matrix which operated in this case."

19. It is not unreasonable that the trial judge would afford this litigant a measure of latitude in circumstances where the litigant obtained poor legal advice and was left on her own to defend this matter. The period of time is not excessive having regard to these particular circumstances and it was open to the trial judge to conclude that she acted as soon as reasonably practicable after she found out that judgment was entered against her.

20. It is now a matter for the trial judge to manage the claim expeditiously.

21. The procedural appeal is dismissed with no order as to costs.

_____

V. Kokaram
Justice of Appeal