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Judgment: approved by the Court for handing down
*(subject to editorial corrections)**

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2015/98217

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

BETWEEN:

SURESH DEMAN

Plaintiff

and

SUNDAY NEWSPAPERS LTD
and
JOHN CASSIDY and RICHARD SULLIVAN

Defendants

HORNER J

[1] This was an appeal by Dr Suresh Deman ("the plaintiff") against the order made by Master Bell on 10 November 2016 when he set aside a judgment dated 8 December 2015 obtained by the plaintiff against Sunday Newspapers Ltd, John Cassidy and Richard Sullivan ("the defendants"). For reasons which have not been satisfactorily explained to me, the hearing of this appeal from Master Bell took place before me on 3 October 2019. Accordingly I gave an ex tempore judgment shortly thereafter given the delay that there had been to date. I affirmed the order of Master Bell when he set aside the judgment obtained by the plaintiff in default of defence against the defendants. The plaintiff's claim will now proceed in the normal way and there will be a trial on the merits.

[2] However the plaintiff now seeks to appeal my decision to affirm the Master's order to the Court of Appeal. I gave both parties leave to make written submissions on:-

(a) Whether leave to appeal was required from this Court or the Court of Appeal; and

(b) If leave was required from this Court, whether it should give the necessary leave.

[3] Section 35(1)(g) of the Judicature Act provides at Section 35(2)(g):-

> "No appeal to the Court of Appeal shall lie –
>
> (g) without the leave of the judge or of the Court of Appeal, from any interlocutory order or judgment made or given by a judge of the High Court …"

Accordingly if the order made by Master Bell and affirmed by me is an interlocutory order, leave to appeal to the Court of Appeal is required either from me or from the Court of Appeal. If it is a final order, then leave is not required and the plaintiff can appeal as of right.

[4] Valentine's commentary on Section 35(2)(g) states:-

> "*An order is only final if made on an application which must determine the action however it is decided*. Thus an order is interlocutory if the application has been or could have been decided in such a way that the action continues: *R(Curry) v National Insurance Commissioners (1974) NI 102 CA; Re Darley (1997) NI 384 CA; White v Brunton (1984) QB 570; Re McNamee & McDonnell (Leave Stage) (2011) NICA 40 …*
>
> Accordingly in relation to interlocutory orders which are not orders as to costs only, both this Court and the Court of Appeal can grant leave to appeal. A final order is one made on such application or proceeding that, for whichever side the decision is given, it will, if it stands, finally determine the matter in litigation."

[5] In *Salter R & Co v Ghosh [1971] 2 QB 597* Lord Denning said at 60(g):-

> "There is a note in the Supreme Court Practice 1970 under RSC Order 59, r4, from which it appears that different tests have been stated from time to time as to what is final and what is interlocutory. In *Standard Discount Co v Lagrange* and *Salaman v Warner [1891] 1 QB 734 and 735* Lord Esher MR said the test was the nature of the *application* to the Court; and not the nature of the *order* which the Court eventually made. But in *Bozson v Altrincham Urban District Council [1903] 1 KB 547* the Court said that the test was the nature of the *order* as

made. Lord Alverstone CJ said that … `the test is whether the judgment or order ***as made*** finally disposed of the rights of the parties'. Lord Alverstone CJ was right in logic but Lord Esher MR was right in experience. Lord Esher's test has always been applied in practice. For instance, an appeal from a judgment under Order 14 (even apart from the new rule) has always been regarded as interlocutory: and Notice of Appeal has to be lodged within 14 days. An appeal from an order striking out an action as being frivolous or vexatious, or as disclosing no reasonable cause action, or dismissing it for want of prosecution - every such order is regarded as interlocutory: see *Hunt v Allied Bakeries Ltd* [1956] 1 WLR 1326".

[6] In *Ritchie v McComb [2014] NIQB 125* Stephens J said at [11]:

> "The *application approach* to the distinction between a final and an interlocutory order requires to the Court to consider the nature of the application or proceedings giving rise to the order and not the order itself. A final order is one made on such an application or proceeding that, for whichever side in whose favour the decision is given, it will, if it stands, finally determine the matter in litigation. That test was adopted in this jurisdiction by the Court of Appeal in *R(Curry) v National Insurance Commissioner [1974] NI 102.* So if the order was not an order as to costs only then on the basis of that test this was clearly an interlocutory order. The nature of the application could not result in the final disposal of the matter regardless of whichever side in whose favour the decision was given. There was no question of this litigation being determined by the plaintiff's appeal to this Court."

[7] As can be seen from the above extracts, the law on this subject is well settled. In this case it is clear that both the Master and this Court found in favour of the defendant and have set aside the judgment given in default of appearance. Clearly in those circumstances the order cannot be final as it did not finally dispose of the dispute between the plaintiff and the defendants. The proceedings must now proceed to a hearing on the merits. Therefore it is an interlocutory order and leave of this Court, or the Court of Appeal, is required before an appeal can be made to the Court of Appeal.

[8] The second issue which has to be addressed is whether this Court should give the necessary leave to appeal. Mr Coghlin BL on behalf of the defendant says that the Court must be satisfied that the point to be canvassed before the Appellate Court is of sufficient importance to justify the grant of permission. He says that that test is not satisfied in the present case because the order simply sets aside "a judgment obtained irregularly and requires the entitlement to a judgment to be assessed in the ordinary way."

[9] The reasons put forward by the plaintiff as to why I should not grant leave to appeal were replete with both gratuitously offensive comments and egregious errors. For example it stated:

> "Justice Horner's well-known anti women judicial philosophy on abortion where he gave a pro-life judgment to appease Roman Catholic fundamentalists against the United Kingdom established a Pro-Choice Law which is subject to appeal in the Court of Appeal."

This is wrong on every ground as even the most modest of research would have revealed.

[10] The written submissions put forward by the plaintiff appeared to be made by CEM Co-ordinators and the email address was racialbias@yahoo.co.uk. I asked the Central Office to query whether these were the submissions of the plaintiff. I made it clear that CEM Co-ordinators did not have a right of audience nor did they have a right to conduct proceedings on behalf of the plaintiff. CEM Co-ordinators replied stating that inter alia they had sent the email as "McKenzie's Friend" (sic) on behalf of Dr Deman. But CEM Co-ordinators are not Dr Deman's McKenzie Friend. The procedure for appointing a McKenzie Friend is set out in Practice Note 3/2012. It has not been followed and there has been no appointment of CEM Co-ordinators as a McKenzie Friend in this case. In any event a McKenzie Friend is not entitled to conduct litigation on a party's behalf, and this would include making written submissions or corresponding with the Court. More importantly the abusive and offensive language used by CEM Co-ordinators makes it clear that they are particularly unsuited to provide the limited support a McKenzie Friend can give. The plaintiff has subsequently confirmed by email that the submissions were made with his consent and I am at this stage prepared to assume he has adopted them.

[11] The test for granting leave to appeal is that set out by McCloskey J in *In the Matter of an Application by McNamee and McDonnell LLP for leave to apply for Judicial Review [2010] NIQB 29* and followed by Stephens J in *Ritchie v McComb [2014] NIQB 125,* where McCloskey J stated:

> "[39] I would add the following observation. In cases where leave to appeal to any appellate court is a pre-requisite, the Court below will almost invariably be

> required to be satisfied that the point to be canvassed before the Appellate Court is of sufficient importance to justify the grant of permission. The first instance Court acts as a filter, and clearly, the legislative intention is that there is a threshold to be overcome. The grant of leave to appeal will never be a formality."

[12] While the grounds of appeal might be considered to be both insulting and abusive, they certainly do not give rise to any doubt that my decision to uphold the Master's order was correct. In the circumstances I refuse leave to appeal. The plaintiff can therefore renew his application for leave to appeal to the Court of Appeal. The parties can send written submissions to the court on the issue of what costs order I should make by close of business on the 23rd October. I will rule on this issue on the following day.