

SUPREME COURT OF QUEENSLAND

CITATION: *Ghosh & Anor v NBN Limited & Ors* [2014] QCA 53

PARTIES: **RATNA GHOSH**
(first appellant)
BHASKAR BANDYOPADHYAY
(second appellant)
v
NBN LIMITED
ACN 000 232 486
(first respondent)
NEWS LIMITED
ACN 007 871 178
(second respondent)
GOLD COAST PUBLICATIONS PTY LTD
ACN 009 696 511
(third respondent)
KERRY ANKER
(fourth respondent)

FILE NO/S: Appeal No 6628 of 2013
SC No 13616 of 2010

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 21 March 2014

DELIVERED AT: Brisbane

HEARING DATE: 10 March 2014

JUDGES: Holmes and Muir JJA and Douglas J
Separate reasons for judgment of each member of the Court,
each concurring as to the order made

ORDER: **Appeal dismissed with costs.**

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL – PRACTICE AND PROCEDURE – QUEENSLAND – TIME FOR APPEAL – GENERALLY – where the appellants filed a claim and statement of claim in which they alleged that, the first and second respondents had published matter defamatory of them, the third respondent had published other matter defamatory of them and that the fourth respondent had published other matter defamatory of them – where the only step in the proceedings taken after the filing and service of the claim and statement of claim was the filing by the appellants of an application seeking that the proceedings be transferred to the

District Court of New South Wales – where the primary judge dismissed the application – where r 389(2) of the *Uniform Civil Procedure Rules 1999* (Qld) provides that if no step has been taken in a proceeding for two years from the time the last step was taken, a new step may not be taken without an order of the court – where no application under r 389(2) was made – whether the *Uniform Civil Procedure Rules 1999* (Qld) prohibited the appellants’ application

APPEAL AND NEW TRIAL – APPEAL – GENERAL PRINCIPLES – RIGHT OF APPEAL – WHEN APPEAL LIES – OTHER CASES – where the appellants applied to transfer proceedings to the District Court of NSW – where under s 13 of the *Jurisdiction of Courts (Cross-vesting) Act 1987* (Qld), no appeal lies from a decision of the Court in relation to a decision whether or not to transfer a proceeding – where s 13 provides only for transfers of matters from one state supreme court to another – whether the application to transfer should be allowed

Jurisdiction of Courts (Cross-vesting) Act 1987 (Qld), s 13
Uniform Civil Procedure Rules 1999 (Qld), r 5, r 389(2)

COUNSEL: The appellants appeared on their own behalf
R J Anderson for the first, second and third respondents
No appearance for the fourth respondent

SOLICITORS: The appellants appeared on their own behalf
Johnson Winter & Slattery for the first respondent
Bennett & Philp Lawyers for the second and third respondents
No appearance for the fourth respondent

- [1] **HOLMES JA:** I agree with the reasons of Muir JA and the order he proposes.
- [2] **MUIR JA:** The appellants filed a claim and statement of claim in the Supreme Court of Queensland on 20 December 2010 in which they alleged that, the first and second respondents had published certain matter defamatory of them, the third respondent had published other matter defamatory of them and that the fourth respondent had also published other matter defamatory of them.
- [3] The only step in the proceedings taken after the filing and service of the claim and statement of claim was the filing by the appellants of an application on 30 May 2013 seeking that the proceedings:

“...be transferred to the Sydney Registry Defamation List and heard by Her Honour Gibson DCJ as Case 2013/88183 Dr Ghosh vs Ninemsn and Ors at 86 Goulburn Street, Sydney NSW 2000.

District Court of NSW ...”

- [4] The application came on for hearing before the primary judge on 21 June 2013. No affidavit of service or any other evidence was placed before him. A solicitor representing the first respondent and a solicitor representing the second and third

respondents appeared, as did the female appellant. Each of the solicitors informed the primary judge of the reason why his firm's clients had not filed a notice of intention to defend and defence. In the course of the hearing, the male appellant appeared by telephone.

- [5] The appellants sought to have the application adjourned in order to enable them to put appropriate evidence before the Court. The legal representatives of the first, second and third respondents, either expressly or implicitly, submitted that the application should be dismissed with costs. The primary judge dismissed the application and ordered that the appellants pay the costs of the third and fourth respondents to be assessed.
- [6] The appellants appeal against these orders.
- [7] The grounds of appeal are to the following effect:
1. The Queensland proceedings were not prosecuted because of the appellants' lack of available funds.
 2. Other defamation proceedings, in which the appellants are self-represented, have been on foot in New South Wales since 22 March 2013. Those proceedings were moved from Newcastle to Sydney with the agreement or at the behest of the defendants in those proceedings.
 3. The appellants cannot afford legal representation in the Queensland proceedings and are unable to conduct the proceedings themselves because of work commitments.
 4. The lawyers present at the hearing before the primary judge pretended that they were not served to attend the hearing and that they were unaware that "the case is running in NSW".
- [8] It is unnecessary to discuss these grounds or the arguments advanced by the appellants in support of them. Rule 389(2) of the *Uniform Civil Procedure Rules 1999 (Qld)* (the UCPR) provides that:
- "If no step has been taken in a proceeding for 2 years from the time the last step was taken, a new step may not be taken without the order of the court, which may be made either with or without notice."
- [9] No application was made for an order under r 389(2). Accordingly, the rules prohibited the appellants' application. In the absence of notice to all parties to the proceedings, it would have been inappropriate for the primary judge to make an order under r 389(2), even if he had been requested to do so. Moreover, even if all parties had been before the Court, the respondents would have been entitled to insist on the facts on which the appellants intended to rely in support of their application being put before the Court in admissible form so that they could give them due consideration and, if appropriate, file affidavits in reply.
- [10] Another insuperable problem facing the appellants is that, under s 13 of the *Jurisdiction of Courts (Cross-vesting) Act 1987 (Qld)* (the Act), no appeal lies from a decision of the Court in relation to a decision whether or not to transfer a proceeding. The primary judge's orders encompassed such a decision, as may be

seen from his Honour's careful attempt to preserve the appellants' rights to bring a further application for transfer on proper material. Additionally, as counsel for the first, second and third respondents pointed out, s 13 of the Act, in so far as state courts are concerned, provides only for transfers of matters from one supreme court to another.

- [11] The appellants should appreciate that litigation in superior courts is likely to prove expensive, particularly if a plaintiff elects to proceed against a number of defendants. Other disadvantages and risks may accompany defamation litigation. Lord Hoffman warned:¹

“What most plaintiffs want is the immediate publication of a correction with or without some modest compensation. What they get is three or four years of anxious and obsessional waiting, followed by a trial which, even if it ends in success, may reopen injuries everyone else had forgotten, and stamp them indelibly on the public mind.”

- [12] Another warning is appropriate. Defamation proceedings are fraught with legal complexities which create difficulties for practitioners experienced in the area. It is singularly hazardous for lay persons to conduct their own defamation litigation, particularly if they lack the time, will and aptitude to undertake careful, time consuming research.
- [13] Although self represented litigants are afforded a degree of licence, they have an obligation to comply with the rules of the Court in which they are litigating. Under the UCPR and under most other rules of their kind in Australia, there is an obligation to proceed expeditiously.² Failure to ascertain and observe procedural rules may result in dismissal of proceedings.
- [14] The appellants sought leave to rely on an affidavit of the female appellant sworn 16 July 2013. I would refuse leave. The matters in it, with the exercise of reasonable diligence, could have been placed before the primary judge. Exhibited to the affidavit is what is sworn to be page 8 of a submission to the District Court of New South Wales in Newcastle of a barrister acting for defendants in the New South Wales proceedings. It appears from the exhibit that two of the three defendants in those proceedings are not parties to these proceedings. The alleged defamatory matter is not identified. It is impossible to tell from the document whether it would be appropriate to transfer the Queensland proceedings to a court in New South Wales. There is nothing in the affidavit that would enhance the appellants' prospects of succeeding on this singularly unmeritorious appeal.
- [15] Accordingly, I would order that the appeal be dismissed with costs.
- [16] **DOUGLAS J:** I agree with Muir JA's reasons and the order he proposes.

¹ Adam Raphael, *My Learned Friends*, W H Allen, London, 1989 at 226.

² *Uniform Civil Procedures Rules 1999* (Qld), r 5.