
STATUTORY INSTRUMENTS

1981 No. 1687

The County Court Rules 1981

ORDER 37

REHEARING, SETTING ASIDE AND APPEAL FROM REGISTRAR

Rehearing

1.—(1) In any proceedings tried without a jury the judge shall have power on application to order a rehearing where no error of the court at the hearing is alleged.

(2) Unless the court otherwise orders, any application under paragraph (1) shall be made to the judge by whom the proceedings were tried.

(3) A rehearing may be ordered on any question without interfering with the finding or decision on any other question.

(4) Where the proceedings were tried by the registrar, the powers conferred on the judge by paragraphs (1) and (3) shall be exercisable by the registrar and paragraph (2) shall not apply.

(5) Any application for a rehearing under this rule shall be made on notice stating the grounds of the application and the notice shall be served on the opposite party not more than 14 days after the day of the trial and not less than 7 days before the day fixed for the hearing of the application.

(6) On receipt of the notice, the proper officer shall, unless the court otherwise orders, retain any money in court until the application had been heard.

Setting aside judgment given in party's absence

2.—(1) Any judgment or order obtained against a party in his absence at the hearing may be set aside by the court on application by that party on notice.

(2) The application shall be made to the judge if the judgment or order was given or made by the judge and in any other case shall be made to the registrar.

Setting aside on failure of postal service

3.—(1) Where in an action or matter the originating process has been sent to the defendant or inserted in his letter-box in accordance with Order 7, rule 10(2) or (3) or 13(2) or (3), and after judgment has been entered or given or an order has been made it appears to the court that the process did not come to the knowledge of the defendant in due time, the court may of its own motion set aside the judgment or order and may give any such directions as the court thinks fit.

(2) The proper officer shall give notice to the plaintiff of the setting aside of any judgment or order under this rule.

Setting aside default judgment

4.—(1) Without prejudice to rule 3, the court may, on application or of its own motion, set aside or vary any judgment entered in a default action pursuant to Order 9, rule 6.

(2) An application under paragraph (1) shall be made on notice.

Non-compliance with rules

5.—(1) Where there has been a failure to comply with any requirement of these rules, the failure shall be treated as an irregularity and shall not nullify the proceedings, but the court may set aside the proceedings wholly or in part or exercise its powers under these rules to allow any such amendments and to give any such directions as it thinks fit.

(2) No application to set aside any proceedings for irregularity shall be granted unless made within a reasonable time, nor if the party applying has taken any step in the proceedings after knowledge of the irregularity.

(3) Where any such application is made, the grounds of objection shall be stated in the notice.

(4) The expression “proceedings” in paragraph (1) and where it first occurs in paragraph (2), includes any step taken in the proceedings and any document, judgment or order therein.

Appeal from registrar

6.—(1) Any party affected by a judgment or final order of the registrar may, except where he has consented to the terms thereof, appeal from the judgment or order to the judge, who may, upon such terms as he thinks fit,—

- (a) set aside or vary the judgment or order or any part thereof, or
- (b) give any other judgment or make any other order in substitution for the judgment or order appealed from, or
- (c) remit the action or matter or any question therein to the registrar for rehearing or further consideration, or
- (d) order a new trial to take place before himself or another judge of the court on a day to be fixed.

(2) The appeal shall be made on notice, which shall state the grounds of the appeal and be served within 14 days after the day on which judgment or order appealed from was given or made.

Setting aside arbitrator's award

7. An application by a party to the judge to set aside the award of an arbitrator to whom proceedings have been referred under section 92 of the Act shall be made on notice stating the grounds of the application, and the notice shall be served within 14 days after the day on which the award was entered as the judgment of the court.

Imposition of terms and stay of execution

8.—(1) An application to the judge or registrar under any of the foregoing rules may be granted on such terms as he thinks reasonable.

(2) Notice of any such application shall not of itself operate as a stay of execution on the judgment or order to which it relates but the court may order a stay of execution pending the hearing of the application or any rehearing or new trial ordered on the application.

(3) If a judgment or order is set aside under any of the foregoing rules, any execution issued on the judgment or order shall cease to have effect unless the court otherwise orders.