

IN THE FIJI COURT OF APPEAL
CIVIL JURISDICTION
CIVIL APPEAL NO. 67/90

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IN THE MATTER of an
application by REDDYS
ENTERPRISES LIMITED for
an order of certiorari

AND

IN THE MATTER of a
decision dated 8 June
1989 made by the
Governor of the Reserve
Bank of Fiji

BETWEEN:

REDDYS ENTERPRISES LIMITED

Appellant

AND

THE GOVERNOR OF THE RESERVE
BANK OF FIJI

Respondent

Mr Bhupendra Patel for the Appellant
Mr Michael Scott for the Respondent

(IN CHAMBERS)

Preliminary application that an application by
the Appellant to extend the Stay Order made
by the Resident Justice of Appeal be
heard before another Judge

R U L I N G

This is a preliminary application by the Respondent that another judge should hear the Appellant's application to extend the Stay Order pending appeal made by me on the 9th of August, 1991 and which Order now expires on the 16th of December, 1991.

Both Counsel have made written submissions which I have read and also oral submissions which I have considered.

Mr Scott has made it clear right from the outset that the basis of his application is the possibility of unconscious bias arising out of predetermination. He emphasized that there was no suggestion whatsoever of any personal bias relating to

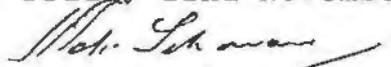
integrity or probity. He submitted that since the parties were identical and the issues were the same the danger of unconscious prejudging was greater because of prior determination of the issues by the same judge.

Mr Patel opposed the preliminary application on a number of grounds. I agree with him that Courts ought not to permit "judge shopping" and further that Courts ought not to abdicate their judicial functions or appear to do so unless there are cogent reasons for doing so. He also submitted that since I was seized of the matter it was desirable, from a practical point of view, that I deal with the substantive application.

There is no doubt that one of the primary grounds on which I made the Stay Order on 9th August, 1991 was that I was of the opinion that to refuse the application would render nugatory or substantially nugatory the Appellant's appeal. That being so I would find it difficult, if not impossible, to refuse to extend the Stay Order now that it is clear that there is no prospect of a Court of Appeal sitting before the end of this year. Since an objection has been taken to my hearing the substantive application it is possible that an appearance of prejudging may be created if I were nevertheless to hear and allow the application. I have therefore reluctantly come to the conclusion that it would be advisable (though not imperative) in the interest of both the reality as well as the appearance of fairness that if possible I should not hear the substantive application.

The Chief Justice has agreed that in the event I decide not to hear the application to extend the Stay Order he would release Mr Justice Michael Scott of the High Court to hear the application in his capacity as an ex officio Judge of Appeal.

The substantive application is therefore adjourned for hearing before Mr Justice Michael Scott at 9.30 am in his chambers tomorrow morning, i.e. Friday 22nd November, 1991.


Sir Moti Tikaram
Resident Justice of Appeal

Suva
21st November, 1991.