

IN THE COURT OF APPEAL, FIJI  
[APPELLATE JURISDICTION]

Civil Appeal No. ABU 0087 of 2019  
(HBC No. 162 of 2019)

<u>BETWEEN</u>	:	<u>JOHN LAL</u>	<i>1<sup>st</sup> Appellant</i>
	:	<u>VIRENDRA KUMAR</u>	<i>2<sup>nd</sup> Appellant</i>
	:	<u>NILA RAO</u>	<i>3<sup>rd</sup> Appellant</i>
<u>AND</u>	:	<u>KALA WATI</u>	<i>1<sup>st</sup> Respondent</i>
<u>AND</u>	:	<u>SANDHYA KRISHNA</u>	<i>2<sup>nd</sup> Respondent</i>
<u>AND</u>	:	<u>URMILA DEVI</u>	<i>3<sup>rd</sup> Respondent</i>
<u>Coram</u>	:	Almeida Guneratne, JA	
<u>Counsel</u>	:	Mr. N. R. Padarath for the Appellants Ms. B. Qioniwasa for the Respondents	
<u>Date of Hearing</u>	:	14 May 2020	
<u>Date of Ruling</u>	:	02 June 2020	

**RULING**

[1] This is an application to vary certain orders made by a single Judge in the course of hearing an application for an interlocutory injunction filed by the Appellants pending their Appeal.

- [2] I do not propose to record the background history of this case separately.
- [3] The nature of the dispute, as between who the dispute had arisen and the resulting litigation flowing therefrom would to the extent they need to be ascertained for the purpose of making a determination in this matter would stand revealed from what and how I propose to record them.

#### **Original Application by the Appellants (Applicants in the High Court)**

- [4] The Appellants sought a declaration that:
- (a) the Respondents (Defendants in the High Court) had no right or power to dissolve the Executive Board of the organization called Ra Naari Parishad (RNP- a charitable organization);
  - (b) by taking such an act, the defendants are in breach of the adopted constitution and the executive board can move to remove the defendants from the position of Trustees pursuant to clauses of the said Constitution.

#### **Orders of the High Court**

- [5] After hearing, the High Court by its Orders dated 13 September, 2019 refused the said declaration and the Appellants appeal against the said orders of the High Court.

#### **Grounds of Appeal**

- “1. The learned Judge erred in law in paragraph 5 under the heading discussion and at paragraph 2 under the heading conclusion by holding that the Constitution adopted on 3<sup>rd</sup> August 2018 was of no effect because of lack of registration when:

1.1 Section 4 of the Charitable Trust Act did not make any specific requirement to register any changes made to a document which contained the rules and regulations of any charitable organization.

1.2 The ambit of section 4 was limited to making of an application in writing, to the satisfaction of the Registrar for the purpose of creating a body corporate pursuant to section 3 of the Charitable Trust Act, the provision did not required that all changes made to any document be re-submitted to the Registrar.

2. The learned Judge erred in law by holding that the constitution adopted on 3<sup>rd</sup> August 2018 was of no effect, when the entire membership of Ra Naari Parishad accepted the constitution as its annual general meeting held on 31 January 2018.
3. The learned Judge erred in law by holding that the management Board is required to file with the Registrar of Titles any changes to the existing constitution, when the Charitable Trust Act does not provide for any such provision or requirement.
4. Such further grounds of appeal as may be added upon receipt of the record.”

#### **The Application for an Interlocutory Injunction by the Appellants**

- [6] Pending that appeal the Appellants sought an interlocutory injunction in the following terms viz:

*“1. That the Respondents and/or their servants and/or their agents be restrained from calling a meeting dated 24<sup>th</sup> October 2019 to appoint three*

*new executive board members pending the determination of this application and/or appeal.*

2. *That the Respondents and/or their servants and/or agents be restrained from interfering and/or disrupting the running of Ra Naari Parishad until further order of the court.*
3. *That the Appellants and the executive Board created on 30<sup>th</sup> May 2017 be allowed to run the day to day affairs of Ra Naari Parishad until final determination of this application or Appeal.*
4. *That the status quo be maintained prior to the orders of 13<sup>th</sup> September 2019.*
5. *That there be abridgement of Time for filing and service of this Application.*
6. *The Respondents to pay costs of this Application."*

**The ensuing responses to the said application by a single Judge (The Hon) President, Court of Appeal**

[7] After some interim orders made on that application of the appellants the single Judge of this Court on 11 December, 2019 delivered the following Orders, viz:-

1. *The office premises are to open between 8.30am to 4.30pm Monday to Friday.*
2. *The office administrator, Ms Famiza Mohammed alone is permitted in the office premises to attend to the day to day functioning of the registered office of RNP.*
3. *All projects are stayed.*
4. *The trustees and the management board are to ensure that the office manager is not in any way prevented from performing her day to day duties.*
5. *The trustees (respondents) and the three members of the board as appellants are restrained from entering the office premises.*
6. *The trustees are restrained from taking any measure or adopting any procedure aimed at removing or terminating the appointment of the members of the management board.*

7. *The management board is restrained from taking any measure or adopting any procedure aimed at removing or terminating the appointment of the trustees named as respondents herein.*
8. *These orders are to remain in force until the determination of the appeal herein.*
9. *Each party is to pay its own costs”.*

**The Present Application of the Appellants seeking to have the said orders varied**

[8] Those are the orders of 11 December, 2019 the Appellants are seeking to have varied specifically Orders 2 and 3 thereof.

- “1. *That the interim orders granted on 11 December 2019m be varied and/or amended to the following:*
  - a) *That the Finance officer along with all staff be permitted in office premises to attend to the day to day functioning of the registered office along with various projects.*
  - b) *That stay on all aspects be removed and Ra Naari Parishad undertake and continue with all projects.*
2. *That there be abridgement of Time for filing and service of this Application.*
3. *The Respondents to pay costs of this Application.*

**The Basis on which the Appellants are seeking a variation Order**

[9] In the background of the Affidavits filed on behalf of the Appellants and the opposing affidavits filed on behalf of the Respondents read together with the respective written submissions tendered in consequence, the principal basis on which the variation sought is that, there have occurred changed circumstances.

**The Questions that arose for consideration in that regard**

- [10] (i) The first question is whether there surfaced changed circumstances after the issuance of the interlocutory injunction of 11 December, 2019.
- (ii) The second is even if there arose changed circumstances as alleged, whether they are sufficient to vary the terms of the said interlocutory injunction.
- (iii) Thirdly, whether the Appellants themselves having obtained the said interlocutory injunction on terms whether they could have the said terms varied.
- (iv) And lastly, whether I, sitting as a single Judge is possessed of jurisdiction to make a variation order as sought having regard to (i) to (iii) above.

[11] I shall now proceed to address the said questions as follows.

[12] Deriving support from the Affidavits filed on the facts and in the circumstances as averred therein, learned Counsel for the Appellant adverting to the what he has submitted in his initial written submissions on the issue dated 22<sup>nd</sup> April, 2020 and re-iterated in his oral submissions submitted (which in summary I recap as follows):

“1. That, he was seeking an amendment “specifically” on Orders 2 and 3”. (supra)

**My Reflections thereon**

[13] The application under consideration being one to have an interlocutory injunction varied, to begin with, I am not inclined to address the other orders granted by the aforesaid Single Judge’s order of 11 December, 2019. A Court cannot consider any “variation” in general form, which I formulate and opine as a preposition of law.

[14] Next, learned Counsel brought it to the notice of this Court that Ms. Famiza Mohammed who alone had been permitted to visit the office premises to attend to the day's functioning of the registered office of RNP, has since then resigned. She has been referred to as the "Office Administrator".

[15] In that regard, in the variation application for relief sought in (a) of the Appellants application for variation, I could not see a connection before Ms. Famiza Mohammed "Official Administrator" and "Finance Officer" referred to therein.

[16] For the said reason, I could not see any basis for the Appellants (Applicants) to have the order 2 in the 11 December, 2019 ruling varied and maintain relief a, sought in their summons for variation.

**Re: Order 3 in the 11 December 2019 determination vis a vis "relief b" sought in the Appellants (Applicants) summons for a variation Order**

[17] For purposes of elucidation I shall reproduce the said "Order 3" and "relief b":

**"Order 3:** All projects are stayed"

**"Relief b:** That stay on all projects be removed and Ra Naari Parishad (RNP) undertake and continue with all projects."

**My Reflections Thereon**

[18] I was struck by the consideration that, if I were to vary the said Order 3 and grant the said relief b, in effect I would be pre-empting a determination in the main appeal of the Appellants against the Ruling of the High Court dated 13 September, 2019.

[19] In that regard, the written submissions made on behalf of the Respondents dated 30 April, 2020 weighed with me which read thus:

*“...e) The funders of RNP being AVIO (Australian Volunteers Institute) and Habitat for Humanity Fiji withdrew their funding leaving RNP in limbo with no staff and office closed for now for several months.*

*f) It is erroneous of the Appellants in items 11 and 26 of its submissions to point to order number 3 and the injunction orders generally as the reasons for the funding to stop when the reason given by AVI, the major funder, to terminate the grant with Ra Naari Parishad was due to the organization being wound up in legal proceedings which has had adverse effects on its ability to implement the project.*

*g) No amount of variation of any of the orders will make the funders of RNP return until final resolution of the court proceedings when an attempt can be made to renege with them with a view to start funding again. Until such time orders made on 11 December 2019 must remain intact.*

*h) Going forward, proper organizational structure must be put in place and all decisions made must be based on consensus rather than by one person acting unilaterally. In fact, the entire current Board should be dissolved and election of new Board members ordered.*

*5) Notwithstanding the Appellant's submissions to the contrary the Executive Board is not intact as it is split in two factions 3 to 2, has had no meeting since 28 May 2019 and is for all practical purposes, defunct.*

*Under the current situation it makes little sense to allow the Appellants as suggested in item 34 of its submissions, to secure*



*funding when the funders have decided not to, and to advertise for staffing when there are no funds to pay wages.*

*RNP needs to put its house in order first.*

- 6) *All projects have been stayed for good reason to preserve the status quo and the Respondents do not see why this should be varied as any variation will only cause more confusion to an already messy situation”.*

[20] I am in agreement with the said submissions.

[21] Accordingly, I provide answers to the questions I have raised for myself to answer at paragraph [10] (i) to (iv) as follows:-

Re: Questions raised at paragraph [10] –

- (i) Answer – “Yes”
- (ii) Answer – “No”
- (iii) Answer – “(Dependent on (i) and (ii) above”
- (iv) Answer – “Yes” (but subject to (i) to (iii) above”.

[22] I provide my reasons for the said answers in the light of precedents and legal principles in the ensuing paragraphs.

[23] The Jurisdiction to vary an order is not a Rear Door for re-arranging a case but could be reviewed only upon changed circumstances. (Vide: **DPP v Geraghty** [2000]NSW SC 228 and **Hillston v Bar-Mordecal** [2002] NSW SC 477.

[24] What are those changed circumstances?

[25] Learned Counsel for the Appellants contended, *inter alia*, that:

- (a) the staying of the projects has stopped the organization from functioning;
- (b) majority of the staff who were employed have now resigned since the organization is unable to pay their salaries.
- (c) The injunction of 11 December, 2019 has caused the termination of grant agreement between the organization and its various donor agencies.

[26] Consequently, if this Court looks at those contentions, it is clear that (a) and (c) above stand established. No doubt (b) is a “changed circumstance”.

[27] But, that “changed circumstance” (which was inevitable) cannot permit a basis to revisit an order given by a Court of competent Jurisdiction.

[28] Counsel for the Applicants argued that, the Stay orders have to be removed which will then allow the board to re-negotiate with the donor agencies and secure commitments for funding.

[29] If I were to do that, I would be setting at naught the “specific order 3” made on 11 December 2019, and not merely “varying it”.

[30] I did pay attention to Reddy’s Case which Mr. Padarath cited. That is a decision pertaining to an amendment of a statement of Claim. In the facts of that case, different considerations were involved. While noting that some principles by way of analogy stood extractable the instant case being for a variation of injunction orders, the governing criterion being “changed circumstances” to re-visit the same as I have indicated above, though some circumstances had changed after the issuance of the order of 11 December, 2019, they do not amount to sufficient circumstances to re-visit the said order and vary the same.

[31] If I were to do that, I would be setting aside the said order and not merely varying it.

**Primacy of Principle in applying the Law**

[32] Indeed, the principle as articulated in paragraphs [30] and [31] above must predominate the application of any law.

**Conclusion**

[33] For the aforesaid reasons, while acknowledging the forensic efforts made by Mr. Padarath (Counsel for the Applicants), I am not inclined to make an order varying the order dated 11 December, 2019.

**Orders of the Court:**

1. The Application to have the order dated 11 December 2019, varied is refused and dismissed.
2. Costs of this application shall be in the main cause namely, the outcome in the Appeal (ABU/0087/2019).



*Almeida Guneratne*

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**Almeida Guneratne**  
**JUSTICE OF APPEAL**