

IN THE COURT OF APPEAL, FIJI
ON APPEAL FROM THE HIGH COURT

CIVIL APPEAL NO. ABU 0035 of 2022
(High Court Civil Appeal HBE: 03 of 2021)

BETWEEN : 1. **AHMED BEGG**
2. **MAQSUM BEGG**
3. **HAZRA KHATOON**

Appellants

AND : 1. **ABDUL AZIZ BEGG**
2. **FEROZ BEGG**
3. **FAIAZ BEGG**

Respondents

Coram : **Dr. Almeida Guneratne, P**

Counsel : **No appearance for the Appellants**
Mr A Kohli and Ms S Naidu for the Respondents

Date of Hearing : **6 January, 2023**

Date of Ruling : **18 January, 2023**

RULING

[1] When this matter was taken for hearing the Appellant was absent and unrepresented though noticed. There being no application seeking an adjournment, Mr Kohli submitted on behalf of the Respondents that, the least the Appellants' lawyers could and ought to have done

was to communicate with him about any difficulty they might have had in appearing on the scheduled hearing date. In the absence of that, he having travelled from Labasa to appear on behalf of his clients out of deference to Court, he was compelled in his forensic duty to move that, the Appellants' application, in seeking "a stay" of the High Court Orders (pending no doubt a timely appeal filed against the said orders) be struck out.

- [2] While I could not find any reason to fault Mr Kohli's said submissions, having perused the written submissions filed by both parties, (taken together with the affidavits filed of record), and on the principles governing the grant of "a stay pending a timely appeal," in the light of the precedents cited by both parties in their written submissions, I indicated to Mr Kohli that, while I was not inclined to grant "a stay" as sought by the Appellants, nevertheless, whether he would agree to an order I was having in my mind to make in the interest of justice.
- [3] Mr Kohli, submitted that he would give ear to any suggestion I might be having in mind (a quality I have seen in Mr Kohli, as Counsel and a ward of Court).
- [4] This Court's suggestion to him was in the context of and in view of the "final orders" made by the learned High Court Judge.

The said final Orders made by the High Court

"FINAL ORDERS"

- a. *Present Accountants are given six months to complete annual reports for years 2018, 2019, 2020 and 2021.*
- b. *The company shares to be valued by a reputed accounting firm and the option is given to Respondents or Petitioners to buy whole or part of the shareholding from the other if the other party consent to sell, at valued price of share.*

- c. *If the parties are unable to purchase the shares of the Company is to be sold to highest bidder through competitive bidding process and minimum price is the value of the price determined.*
- d. *Parties are at liberty to appoint a reputed accounting firm other than accountants of the company for the valuation of shares.*
- e. *If the parties cannot reach an agreement on (d) above an application can be to the court for appointment.*
- f. *Company Secretary is directed to call an extraordinary meeting for the appointment of a Director. All parties are directed to appoint a suitable person for the retired Director (Aziz) in terms of the Articles of Association. As it is a family company priority should be given to family members of the retired Director or his nominee, provided such nominee is otherwise not disqualified.*
- g. *Respondents are restrained from blocking appointment of a Director in terms of (f) above.*
- h. *Liberty to apply.*
- i. *No order as to costs considering circumstances of the case.*

[5] The suggestion made by this Court was in view and in the light of the well considered and analysed provisions of the Companies Act by the learned High Court Judge striking as he did an effective balance as reflected in his said final orders.

[6] I say that, because while orders (a), (b), (c) (arguably that had some potential to operate to the Appellants' prejudice), orders (d) and (e) have not been availed of and order (f) not complied with. Order (g), stands in favour of the Appellants.

[7] Consequently, on a balance, while I could not find a viable basis to grant the stay order that has been sought, my suggestion to Mr Kohli was in relation to order (e) made by the High Court which I felt could be a basis for me to act on, in terms of Section 20(1) of the Court of Appeal Act particularly, under Section 20(1)(k) of the said Act.

[8] Mr Kohli, having agreed to my suggestion, I proceed to make the following orders.

Orders of Court

- 1) *The application for “a stay” in terms of the Appellants’ summons for the same is refused and/or dismissed subject to Order (2) below.*
- 2) *That is, the Appellants may make an application within 30 days of notice of this Ruling as contemplated in Order e of the High Court Orders for the learned High Court Judge to make appropriate orders as His Lordship may deem fit..*
- 3) *I make no order as to costs and the same shall be in the final cause of the determination of the substantive appeal.*



A handwritten signature in black ink, which appears to read "Almeida Guneratne".

Hon. Justice Almeida Guneratne
PRESIDENT, COURT OF APPEAL

Solicitors:

No appearance for the Appellants

Kohli & Singh Labasa for the Respondents