

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 53 OF 2005

BETWEEN : **HABIB BANK LIMITED** a limited liability company incorporated under the laws of Fiji and having its registered office in Suva, Fiji

PLAINTIFF

AND : **MEHBOOB RAZA,** f/n Tazim Raza of 17 Howell Road, Suva, Barrister and Solicitor / businessman

FIRST DEFENDANT

AND : **MOHAMMED SAHID ALI** f/n Mohammed Ali of 31 Sawani Street, Suva (last known address), Businessman

SECOND DEFENDANT

AND : **MEHBOOB RAZA & ASSOCIATES** Barristers and Solicitors, Commissioners for Oath and Notary Public and having its registered office at 176/184 Renwick Road, Suva, Fiji Islands

THIRD DEFENDANT

AND : **HORIZON TRAVELS LIMITED** a limited liability company incorporated under the laws of Fiji and having had its registered office in Suva.

FOURTH DEFENDANT

BEFORE : **Hon. Justice Kamal Kumar**

COUNSEL : Mr V. Maharaj for the First and Third Defendants/Intended Appellant

DATE OF RULING : 1st November 2013

RULING

1. On 16th October 2013 the First Defendant filed Summons for Leave for Appeal against the Judgment of His Lordship Justice Balapatabendi delivered on 27th September 2013 and also seeking a stay of the execution of judgment and the proceedings until determination of the appeal.
2. The Summons for Leave for Appeal was referred to me by the Registry on 29th October 2013 when I caused the Summons to be listed to be called today.
3. Mr V. Maharaj appearing for the intended appellant informed the court that the Summons could not be served on the Solicitors for the Respondent/Plaintiff as they are under receivership and the Summons will need to be served on the receivers.
4. I then pointed out to Mr Maharaj that the appeal may be out of time and as such the intended appellant will need to seek leave of the Fiji Court of Appeal to file appeal out of time.
5. Mr Maharaj then requested for a brief ruling on this matter.
6. Rule 16 of Court of Appeal Rules provides:-

“16. Subject to the provisions of this rule, every notice of appeal shall be filed and served under paragraph (4) of rule 15 within the following period (calculated from the date on which the judgment or order of the Court below was signed, entered or otherwise perfected), that is to say-

(a) in the case of an appeal from an interlocutory order, 21 days;

(b) in any other case, 6 weeks.”

7. Rule 27 of Court of Appeal Rules provides as follows:-

“27. Without prejudice to the power of the Court of Appeal, under the Supreme Court Rules as applied to the Court of Appeal, to enlarge the time prescribed by any provision of these Rules, the period for filing and serving notice of appeal under rule 16 may be extended by the Court below upon application made before the expiration of that period.”

8. Rule 16 requires notice of appeal from an interlocutory order to be filed within 21 days of the Order which obviously means that the intended appellant has to

obtain leave and file the notice of appeal within 21 days from the date of the order.

9. In this instance even though the leave to appeal was filed within the 21 day period and leave not having been granted the time for filing Notice of Appeal expired on or about 18th October 2013.
10. Whilst the registry has to take some blame for not issuing and releasing the Summons for Leave to Appeal expeditiously the Solicitors for the intended appellant should take the blame for not attempting to have the Summons issued and released to enable them to obtain leave and file Notice of Appeal within the timeframe.
11. Accordingly, I hold that since the time for filing of the notice of appeal has expired I have no discretion/jurisdiction to deal with the Summons for Leave to Appeal and Stay.
12. Hence Summons for Leave to Appeal and Stay of Proceedings and Execution of Judgment filed on 16th October 2013 is dismissed and struck out with no order as to cost.

KAMAL KUMAR
JUDGE

At Suva

1st November 2013