

IN THE HIGH COURT OF THE REPUBLIC OF FIJI
WESTERN DIVISION
AT LAUTOKA

CIVIL JURISDICTION

CIVIL ACTION NO. HBC 121 OF 2008L

BETWEEN : **SAROJINI DEVI** father's name Latla Prasad of Sabeto, Nadi
Businesswoman

PLAINTIFF

AND : **VISHWA NANDAN**, father's name Sitaiya of Qeleloa, Nadi

DEFENDANT

Before : A/Master M H Mohamed Ajmeer

Appearances:

Plaintiff appearing in Person

No appearance by or for the defendant.

Date of Hearing : 16th June 2014

Date of Ruling : 16th June 2014

R U L I N G

[1] This motion has been filed on 21 May 2014 by the Plaintiff pursuant to Order 33, Rule 5 of the High Court Rules, 1988 for the recovery of costs ordered in favour of the Plaintiff by the High Court after trial.

[2] Order 33 Rule 5 deals with spilt trial: offer on liability. That rule provides:

"5.-(1) This rule applies where an order is made under rule 4(2) for the issue of liability to be tried before any issue or question concerning the amount of damages to be awarded if liability is established.

(2)after the making of an order to which paragraph (1) applies, any party against whom a finding of liability is sought may (without prejudice to his defence) make a written offer to the other party to accept liability up to a specified proportion.

(3) Any offer made under the preceding paragraph may be brought to the attention of the Judge after the issue of liability has been decided, but not before”.

[3] On 27 May 2011 the High Court at Lautoka decided the matter in favour of the plaintiff after trial and accordingly made orders that:

i. The defendant is to pay a sum of \$5000.00 as punitive damages to the plaintiff;

ii. The defendant is to pay a sum of \$500.00 as costs of this action to the plaintiff; and

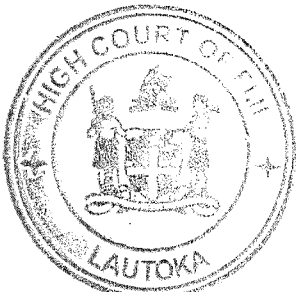
iii. Claim for special and general damages against the defendant are dismissed.

[4] The plaintiff as well as the defendant appealed against that judgment to the Fiji Court of Appeal (FCA) and on 3 October 2013 the FCA held (Civil Appeal No. ABU 0031 of 2011) that:

“The appeal of the appellant fails and the appeal of the respondent regarding the grant of punitive damages succeeds and the awarding of the \$5000.00 as punitive damages is set aside. The costs awarded in the High Court shall remain but there shall be no costs to either party in the present appeal”.

[5] The defendant has failed to pay until date the costs of \$500.00 ordered by the High Court and confirmed by the FCA. So, in these proceedings the plaintiff tries to recover that costs.

- [6] It will be noted that orders for costs have the same effect as judgments and may be enforced in the same manner as the judgments are enforced.
- [7] The current notice of motion has been improperly filed under Ord.33, r.5, which deals with split trial upon offer on liability. That rule has no application to the plaintiff's case.
- [8] The summons has been filed under inappropriate Order.
- [9] Perhaps the Plaintiff may take out writ of *Fieri Facias* or a JDS Summons to recover the costs ordered by the Court.
- [10] I therefore would dismiss and strike out the current notice of motion filed by the plaintiff, but without costs.



At Lautoka

16/06/14

M H Mohamed Ajmeer

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M H Mohamed Ajmeer
A/Master of the High Court