

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 302 of 2011

BETWEEN : **RAJ MATILAL** of Lot 4, Kanace Road, Valelevu, Suva, Bank Manager.
PLAINTIFF

AND : **BANK OF BARODA** a body duly incorporated under Banking Act Cap 212
having its principal place at Mark Street, Suva in Fiji.
DEFENDANT

BEFORE : **Acting Master Thushara Rajasinghe**

COUNSEL : **Ms. Lata A.** for the Plaintiff
Mr. O’Driscoll G. for the Defendant

Date of Hearing : **19th November, 2013**

Date of Ruling : **7th February, 2014**

RULING

A. INTRODUCTION

1. This Summons was filed by the Defendant in pursuant of Order 18 rule 18 (1) (a) of the High Court Rules and section 4 (1) of the Limitation Act, seeking following orders inter alia;
 - i. That the Writ of Summons and Statement of Claim filed by the Plaintiff on 21st of March 2013 be dismissed as beyond the time limited for personal injury actions pursuant to section 4(1) of the provisions of the Limitation Act,
 - ii. Alternatively, that the claim be dismissed as disclosing no reasonable cause of action,
 - iii. That the cost of this application be paid by the Respondent,
 - iv. Any further or other orders this honourable court deems just,

2. The Defendant states that this Summons is founded on following grounds,
 - i. The Plaintiff in her claim states that the incident occurred on 23rd of October 2008, but failed to file her claim before 23rd of October 2011 as would be the time limited under the Limitation Act for a personal injury claim,
 - ii. The action is numbered 302 of 2011 and appears to have been issued on 21st of March 2013 after more than 12 months in the court registry with the statement of claim having being only signed on 19th of March 2013 by the Plaintiff in person.
3. This Summons was set down for hearing on the 19th of November 2013 where both counsel made their respective oral arguments and submissions. During the hearing, the learned counsel for the Defendant sought permission to withdraw the first Order sought under section 4 (1) of the Limitation Act in this Summons, which was granted accordingly. Subsequently the hearing was proceeded only on the issue of no reasonable cause of action.

Defendant's Submissions,

4. The learned counsel for the Defendant submitted that the Defendant bank is a legal person and there is no claim against the Defendant based on servant/ agent relationship in the Statement of Claim. He further submitted that no plea of vicarious liability in the Statement of Claim in order to bring the Defendant bank in to this action. The learned counsel emphasized that being a legal person, the Defendant bank was not in a position of throwing of any object and causing of injuries on the Plaintiff as it is pleaded in the Statement of Claim. The Defendant further submitted that there is a pending action before the Employment tribunal on the same cause of action which prevents the Plaintiff to proceed with this action pursuant to section 25 of the Workman's Compensation Act.

Plaintiff's Submissions,

5. The learned counsel for the Plaintiff sought permission to amend the statement of claim. She stated that the Plaintiff was unrepresented at the time of filing this Writ of Summons

together with the statement of claim. The Plaintiff admits the existence of an action based on the same cause of action before the Employment Tribunal, however, denies the Defendant's objection under section 25 of the Workman's Compensation Act.

B. THE LAW ON STRIKING OUT.

6. Order 18 rule 18 (1) (a) states that

“the court at any stage of the proceedings order to be struck out or amend any pleading or the indorsement, on the ground that –

a. It discloses no reasonable cause of action or defence as the case may be,

And may order the action be stayed or dismissed or judgment to be entered accordingly, as the case may be.

7. Order 18 rule 18 (2) provides the scope of the hearing of applications made under O 18 r 18 (1) (a) where it states that

“No evidence shall be admissible on an application under paragraph (1) (a)”.

8. **Justice Byrne** held in **Timber Resource Management Limited v The Minister for Information, The Minister for Agriculture, Fisheries and Forests, The Attorney General of Fiji and others** (HBC 0212 of 2000) that

“Time and again the court have stated that the jurisdiction to strike out proceedings under Order 18 rule 18 should be very sparingly exercised and only in exceptional cases where legal questions of importance and difficulty are raised – per Marsack J.A. in Attorney General v Shiu Prasad Halka (1972) 18 FLR 210 at page 215

In Hubbuck & Sons Ltd v Wilkinson, Heywood & Clark Ltd (1899) 1 Q.B.86 at page 96 Lindley M.R. said “the ...Procedure is only appropriate to cases which are plain and obvious, so that any master or judge can say at once that the statement of claim as it

stands is insufficient even if proved to entitle the plaintiff to what he asks. The use of the expression “reasonable cause of action” shows the summary procedure.... Is only intended to be had recourse to in plain and obvious cases”.

9. Master Tuilevuka (as he then was) having observed Justice Kirby’s findings in **Len Lindon v the Commonwealth of Australia** (No 2) S. 96/005 held in **Sugar Festival Committee 2010 v Fiji Times Ltd (2012) FJHC 1404;HBC78.2010 (1 November 2012)** that

“Court rarely strike out a proceedings on this ground. It is only in exceptional cases where, on the pleaded facts, the plaintiff could not succeed as a matter of law or where the cause of action is so clearly untenable that it cannot possibly succeed will the court act to strike out a claim. If the facts as pleaded do raise legal questions of importance, or a triable issue of fact on which the rights of the parties depend, the court will not strike out the claim.

C. THE LAW ON THE ISSUES OF REASONABLE CAUSE OF ACTION

10. I now turn to review the laws pertaining to the issues of reasonable cause of action and abuse of court process.
11. **Justice Jitoko** in **“Prasad v Home Finance Company Ltd [2003] FJHC 322; HBC0116D.2002S (23 January 2003)”** extensively discussed the issue of reasonable cause of action where his lordship held that

“what constitutes a reasonable cause of action or defence does not mean that the Court should delve into whether the claim or defence is likely to succeed. As Lord Pearson stated in Drummond Jackson v. British Medical Association [1970] 1 WLR 688, [1970] 1 ALL ER 1094 CA at P.1101: No exact paraphrase can be given, but I think a reasonable cause of action means a cause of action with some chance of success, when (as required by r.19 (2)) only the allegations in the pleading are considered.....

The Courts view and many decisions on this matter is clear: As long as the statement of claim or the particulars (Davey v. Bentinck: (1893) 1 QB 185) disclose some cause of action, or raise some question fit to be decided by a Judge or a jury, the mere fact that the case is weak, and not likely to succeed is no ground for striking it out. (Supreme Court Practice 1985 Vol. 1 p.306).....

It is therefore very clear that in both the exercise of its powers under O.18 r.18 and under its inherent jurisdiction, a Court may only strike out a Statement of Claim and dismiss the action if in the words of Lord Blackburn, in Metropolitan Bank v. Pooley (1885) 10 App. (As 210 at p.221, if and when required by the very essence of justice to be done”.

12. The authorities discussed above have affirmed that the discretion of striking out pleadings should be exercised sparingly and only in exceptional cases. The court is required to consider the right of the litigant to access the proper and complete judicial process while keeping in mind the fact that the Defendant should not get unnecessarily involve in an action which is plainly and obviously has no cause of action or abuse of process of the court. If the court found that the facts as pleaded do raise legal questions of importance or a triable issue on which the rights of the parties could be determined finally, the court must not strike out the claim under O 18 r 18 of the High Court rules.

D. ANALYSIS,

13. Bearing in mind the factual background of this application and the laws pertaining to the issue of striking out, I now turn to analyse the arguments and submissions adduced by the parties with the relevant legal principles and provisions.
14. The first contention of the Defendant is that the Defendant bank is a legal person. There is no agent/servant relationship was pleaded in the Statement of claim, hence it is not possible under the ordinary circumstances the Defendant commits such an act of throwing of an object on the Plaintiff and causing of such injuries as alleged in the statement of claim.

15. However, I find that the Plaintiff had precisely pleaded in the second paragraph of the Statement of Claim that she was injured by the negligent act of the Defendant, its servant and/ or agents during the course of her employment with the Defendant. This undoubtedly suffices to disclose the agent/servant relationship. Accordingly, I dismiss the first contention of the Defendant.
16. The second contention of the Defendant is that there is a concurrent pending action between these two parties before the Employment Tribunal which is also founded on the same cause of action. The learned counsel of the Defendant submitted that pursuant to section 25 of the Workman's Compensation Act, the Plaintiff is not allowed to institute and proceed with this civil claim, when she has already invoked the jurisdiction under the Workman's Compensation Act.
17. Section 25 (1) of the Workman's Compensation Act states that

"Where the injury was caused by the personal negligence or willful act of the employer or of some other person for whose act or default the employer is responsible, nothing in this Act shall prevent proceedings to recover damages being instituted against the employer in a civil court independently of this act".
18. In view of section 25 of the Act, I do not find any merit in the second contention of the Defendant. The Defendant did not provide any facts or information that this action falls within the meaning of proviso (b), or (c) of the section 25 of the Act.

E. CONCLUSION

19. Having considered the reasons set out above, I am satisfied that the facts pleaded in the statement of claim sufficiently disclose a reasonable cause of action. Hence, I do not find the existence of any exceptional ground where the pleaded facts in the pleadings of the Plaintiff is insufficient or untenable to constitute a reasonable cause of action against the Defendant.

20. In Conclusion, I make following orders that;

- i. The Defendant's Summons for strike out the Statement of claim of the Plaintiff made in pursuant of Order 18 rule 18 (1) (a) of the High Court rules is therefore refused and dismissed.
- ii. The Defendant is allowed to file an amended Statement of Claim if needed within fourteen days from this order,
- iii. The Plaintiff is granted a cost of \$ 400 assessed summarily

Dated at **Suva** this 7th day of **February, 2014**.

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R.D.R Thushara Rajasinghe
Acting Master of High Court, Suva