

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

CIVIL JURISDICTION

CIVIL ACTION NO. HBC 15 OF 2012

BETWEEN : **RAJENDRA PRASAD** of Kulukulu, Sigatoka, Retired in the Republic of Fiji Islands as the Executor and Trustee of the **ESTATE OF CHANDRA KIRAN** alias **CHAND KIRAN**

Plaintiff

AND : **BANS RAJI** of Nasau, Sigatoka, Domestic Duties in the Republic of Fiji Islands as the Executrix and Trustee of the **ESTATE OF BHAIBAHADUR**

Defendant

Appearances:

Mr J Singh for the Plaintiff
Ms Patricia for the Defendant

Date of Hearing : 11/11/14

Date of Interlocutory Ruling : 11/11/14

INTERLOCUTORY RULING

1. This is an application for reinstating the matter that was taken off the cause list for non-appearance of the Plaintiff. The application is supported by an affidavit. The application is made pursuant to Order 8 Rule 1 of the High Court Rules 1988 (HCR) and the inherent jurisdiction of the court. O.8, r.1 provides:

' The provisions of this Order apply to all motions subject, in the case of originating motions of any particular class, to any special provisions relating to motions of that class made by these Rules or by or under any Act.'

2. It is to be noted that O.8 of HCR is general provision in respect of originating and motions. In that context, O.8, r.1 cited by the plaintiff is a gateway section to file any originating or other motion. That rule does not deal with setting aside an order made by the court in default.
3. The plaintiff seeks to set aside an order made taking the matter off the cause list for non-appearance of the plaintiff. The order taking the matter off the cause list is made in the absence of the plaintiff. The plaintiff has invoked the court's inherent jurisdiction. For fair administration of justice, a court must have inherent jurisdiction to set aside its order made taking the matter off the cause list.
4. At hearing, Mr Singh counsel for the plaintiff submits that the non-appearance on 07/02/14 was not deliberate. It was due to confusion in obtaining the next mention date by the counsel who appeared on previous occasion.
5. The supporting affidavit explains the circumstances which led to the non-appearance. It states that counsel appeared has given 14/07/14 for next mention date instead of 7/02/14 see paragraph 5, 6 , 7 of the supporting affidavit.
6. Defendant opposes the application for reinstatement. Ms Patricia, counsel for the defendant submits that the mater has been taken off the cause list on number of occasions. This put the defendant in additional costs.
7. The defendant fails to appreciate the counterclaim he has made. When the matter was taken off the cause list, the counterclaim was also

washed off. When the matter was taken off the list, there was no application by the defendant's counsel in respect of the counterclaim.

8. The defendant did not say any specific prejudice that would be caused to him when the matter is reinstated back to cause list.
9. In any event, any prejudice that would be caused to the defendant may be compensated by cost.
10. The court has inherent jurisdiction to reinstate any matter that was taken off the cause list for non-appearance. The plaintiff explains for non-appearance which I accept.
11. The plaintiff undertakes to complete the PTCM in 7 days time.
12. I therefore exercise my discretion in favour of the plaintiff. I accordingly reinstate the matter that was taken off the cause list on 07/02/14 on the following conditions:

1. The plaintiff shall progress with the matter with due diligence.
2. Pre-Trial Conference Minutes shall be finalized in 14 days.
3. The plaintiff pay costs in the sum of \$500.00 to the defendant before the next mention date.
4. The matter is now adjourned to 26/11/14 for Mention only.
5. Orders accordingly.



M H Mohamed Ajmeer

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M H Mohamed Ajmeer
Puisne Judge

At Lautoka
11/11/2014

For plaintiff: Messrs S. S. Law, Barrister & Solicitors.

For defendant: Messrs Vasantika Patel, Barrister & Solicitors.