

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CIVIL JURISDICTION

Civil Action No. 51 of 2015

BETWEEN : **VIMAL PRAKASH SINGH** of Sydney, Australia, Motor
Mechanic

PLAINTIFF

A N D : **PRABAL PRAKASH SINGH** of Melbourne, Australia,
Motor Mechanic

DEFENDANT

Counsel : Mr Anil J Singh for Plaintiff

Date of Hearing : 27 May 2015

Date of Ruling : 27 May 2015

EXTEMPORE RULING

1. This is an ex parte notice of motion filed 25.5.15 by plaintiff to have the ex parte notice of motion filed 7/4/15 reinstated ('the application'). The application is supported by an affidavit sworn by Mohammed Mofeed.
2. Plaintiff's ex parte notice of filed on 7/4/15 seeking grant of leave for service of Originating Summons (O/S) out of jurisdiction was struck out on 15/4/15 by the Court for default of appearance and for want of prosecution.
3. The plaintiff in the affidavit filed through Mr Mohammed Mofeed states that, Mr Singh (Solicitor for the plaintiff) instructed his Associate Solicitor Mr M.C. Young to appear on 15/4/15 and make necessary

application as Mr Singh was away overseas from 11/4/15 until 20/4/15 and also from 1/5/15 to 10/5/15.

4. The Plaintiff could have easily filed another application seeking for an order for service out of jurisdiction, but he has opted to file this reinstatement instead.
5. I have read the application and the supporting affidavit.
6. Having satisfied with the explanation given for default of appearance on 15/4/15, I set aside the striking out order made on 15/4/15 and reinstated the ex parte notice of motion filed 7/4/15 which was struck out for default of appearance and for want of Prosecution.
7. I now proceed to consider the ex parte notice of motion filed by the plaintiff seeking leave of the court to serve the originating summons out of jurisdiction. The application appears to have been made pursuant to O.11, r.2 of the High Court Rules 1998 as amended ('HCR'). That rule provides as follows:

'Application for, and grant of, leave to serve writ out of jurisdiction (O.11, r.2)

2.-(1) *An application for the grant of leave under rule 1(1) must be supported by an affidavit stating-*

- (a) the grounds on which the application is made,*
- (b) that in the deponent's belief the plaintiff has a good cause of action,*
- (c) in what place or country the defendant is, or probably may be found, and*
- (d) where the application is made under rule 1(1) (c), the grounds for the deponent's belief that there is between the plaintiff and the person on whom a writ has been served a real issue which the plaintiff may reasonably ask the Court to try.'*

8. By originating summons, the plaintiff seeks an injunctive relief which is mandatory in nature that the Trustees sell the estate of the testator and share the proceeds according to the Will of the testator within a reasonable time frame not exceeding three months or 90 days.

9. The supporting affidavit states the grounds on which the application is made and it also gives the defendant's address for service in Australia.
10. It sufficiently appears to me that this case is a proper one for service out of jurisdiction as the defendant resides in Australia.
11. Having satisfied with the application seeking grant of leave to serve originating summons out of jurisdiction and the supporting affidavit filed along with, I grant leave to serve the originating summons out of jurisdiction.



M.H. Mohamed Ajmeer

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M.H Mohamed Ajmeer
JUDGE

At Lautoka
27/5/2015