

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

HBA No.: 13 of 2015

BETWEEN : **UMESH PRASAD** Sawani, Naitasiri

CLAIMANT/PLAINTIFF

AND : **BIJEND PRASAD** Khalsa Road, Valelevu, Nasinu

DEFENDANT

Counsel : **The Appellant In person**
The Respondent In person

Date of Hearing : **24th June, 2015**

Date of Judgment : **27 July 2015**

JUDGMENT

INTRODUCTION

1. This is an appeal from the order of the learned Resident Magistrate relating to judgment debtor summons. The learned Resident Magistrate had ordered to pay \$100 per month with effect from 10th April, 2015 after an inquiry as to the means of the Respondent-Appellant (hereinafter referred to as Respondent).

FACTS

2. The Plaintiff- Respondent filed a claim in the Small Claim Tribunal (SCT) against the Respondent for unpaid debt of \$1,000. The SCT ordered the Respondent to pay the said amount after hearing evidence. The said decision of the SCT was appealed to the Magistrate's Court and the appeal was dismissed.

3. The Plaintiff filed Judgment Debtor Summons against the Respondent in the Magistrate's Court on 26th May, 2014.

4. On 24th March, 2015, the learned Resident Magistrate after an inquiry had ordered as follows

“Judgment Debtor has means to clear the debt. Order made for him to pay \$100 per month with effect from 10th April, 2015 until \$1,042.50 is fully paid.

5. This is an appeal against the said order.

6. The Notice of Intention to Appeal was filed on 27th March, 2015, and the Grounds of Appeal was filed on 30th March, 2015.

7. The grounds of appeal are as follows

1. *That the Learned Resident Magistrate erred in Law when she proceeded to hear the case and to allowing the Respondent /Appellant to hear my side of the case.*
2. *That the Plaintiff/Claimant was my Driver in 2006 and damaged my Minivan which he repaired at his own cost (Reg. LM81)*
3. *That the said case is brought out of time as the Plaintiff/Claimant is trying to recover the money he paid for the damage to the minivan.*
4. *That the Plaintiff/Claimant stated that I own Taxi LT 4805 which I was only driving in 2011.*
5. *That I the Respondent/Claimant reserved my right to argue and or add or amend the Grounds of Appeal.’*

ANALYSIS

8. The both parties were unrepresented by a legal counsel, but the Respondent had filed the Notice of Appeal and Grounds of Appeal within stipulated time.

9. The order of the Resident Magistrate can be appealed in terms of Section 36(1) of the Magistrate’s Court Act (Cap 14) to the High Court, thus there is jurisdiction for this matter.

10. The Plaintiff has filed summons in terms of Order XXXVI rule 9 of the Magistrate' Court Rules. The learned Resident Magistrate had examined the Respondent under oath and was satisfied as to the means. The Respondent has admitted that he could pay S 40/50 per month. He had stated his children are studying. One child is at the USP and the other is in kindergarten. In the circumstances I cannot see a reason to interfere with the order of the learned Magistrate. Considering the expenses for the education of the children, I am convinced that he has means to settle the debt ordered by the Resident Magistrate.

Appeal Grounds

11. Ground 1 - The learned magistrate has tested the means of the Respondent properly by asking questions relevant to the means. So there are no merits in the said ground.
12. Ground 2 - In the summons to proceedings relating to Order XXXVI the said issue of claimant's employment is not a relevant issue as already that issue was dealt by the Referee's decision and also in the Appeal to the said decision.
13. Ground 3 - This again is not relevant in the present proceedings. Same reasoning as above.
14. Ground 4 - Not relevant to this appeal.
15. Ground 5 - No other grounds were adduced at the hearing.

CONCLUSION

16. The appeal is dismissed. The order of Resident Magistrate affirmed. The Plaintiff is granted a cost of \$100 assessed summarily.

Dated at **Suva** this 27th day of **July, 2015**.



Amulya
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Justice Deepthi Amaratunga
High Court, Suva