

IN THE HIGH COURT OF FIJI
AT SUVA
APPELLATE JURISDICTION

HIGH COURT CIVIL APPEAL NO: HBA 01 of 2016
MAGISTRATE'S COURT NAUSORI CIVIL APPEAL NO: 3 of 2015
NAUSORI SMALL CLAIMS TRIBUNAL CASE NO: 784 of 2014

BETWEEN : **NARAYAN C. SAMI**

APPELLANT

A N D : **DIRECTORS RUPS BIG BEAR**

RESPONDENT

BEFORE : Justice Riyaz Hamza

APPEARANCES : The Appellant in Person.
: Mr. Sheran Kumar, Director Rups Big Bear, appeared on behalf of the Respondent.

Date of Hearing : 30 May 2016

Date of Ruling : 29 July 2016

JUDGMENT

Introduction

- [1] This is an Appeal against the Judgement made by the learned Magistrate, Magistrate's Court Nausori, on 30 November 2015.
- [2] The Magistrate was hearing an Appeal filed by the Appellant, against the Award made by the Referee, Small Claims Tribunal Nasouri, on 5 February 2015.
- [3] The facts of this case can be ascertained from the proceedings of the Small Claims Tribunal Nasouri.

The Appellant's Case

- [4] The Appellant claims that around June 2014, his wife, Padma Wati, purchased three dressing tables from the Nausori Branch of Rups Big Bear, at a cost of \$1,207.00. Around October 2014, it was noticed that termite residue (white ants dust) was falling from two of the three dressing tables. He complained to the Manager of the Nausori Branch of Rups Big Bear, but no action was taken.
- [5] On 30 October 2014, the Appellant had made a complaint to the Consumer Council of Fiji. The Consumer Council had contacted the Respondent's Branch Manager and advised the Appellant to take the defective drawers to the Respondent for appropriate action, i.e. whether to repair, replace or refund. However, when the Appellant went to the Respondent's store the Branch Manager informed that he knew nothing about the matter and refused to honour the deal.
- [6] As such, the Appellant referred the matter to the Small Claims Tribunal, pursuant to Section 34 of the Small Claims Tribunal Decree 1991.

The Respondent's Case

- [7] The Respondent had sent one of its staff members to the Appellant's house to check the dressing tables. This was done after calling the Appellant's wife to advise that a staff member would be visiting their home. However, it is alleged that the Appellant had chased that person away.

- [8] Again on 14 January 2015, one Vimal Singh, a staff member of the Respondent, had inspected the dressing tables at the Appellant's residence and had confirmed that it had white ants. The defective dressing tables looked to be the Respondent's products. However, they appeared to be about two years old.
- [9] The Respondent had requested the Appellant to provide them with a copy of the purchase invoice. However, the Appellant had stated that the invoice could not be located.
- [10] The Respondent had checked their records for the months of February and March 2014, but no invoices could be found issued in the name of either the Appellant or his wife, Padma Wati. On the advice of the Referee, the Respondents had gone through its invoices from September 2013. However, no invoices could be found issued in the name of either the Appellant or his wife, Padma Wati.

The Award made by the Nausori Small Claims Tribunal

- [11] The Tribunal was of the opinion that the Appellant's claim held no merit and was therefore dismissed. In the view of the Tribunal, the hearing was conducted in an impartial manner where procedural fairness was maintained. Hearing was adjourned to allow the Respondents to check its records which were done three times so as to give the Appellant every opportunity to establish that the dressing tables were purchased from the Respondent Company. The dressing tables were also inspected by a staff member of the Respondent Company.

The Appeal filed in the Magistrates' Court of Nausori

- [12] Aggrieved by the award of the Referee of the Nausori Small Claims Tribunal, the Appellant filed an appeal before the Magistrates' Court of Nausori, claiming that the Referee was biased.
- [13] The Magistrate observed that the primary concern of the Court is whether the Appellant has met the threshold set out in Section 33(1) (a) or (b) of the Small Claims Tribunal Decree 1991.

He held further as follows:

“The Court has noted the grounds of appeal submitted by Appellant. The main issue raised by the Appellant is that the Referee was biased. The Court from the records before it finds that the Appellant was given an opportunity by the Referee to be heard and all that he submitted was considered.

The Appellant’s submission that the Referee was biased has no basis. The Referee fairly dealt with the matter. A number of times the Referee granted adjournment to verify issue with respect of the claim. Proper verifications were carried out and it showed that neither the Appellant nor his wife had any invoices in their names from the Respondent. The Referee properly and fairly dealt with the matter. He did all he could do and accorded the Appellant all the time and facilities to prove his claim. The claim was found to lack merit. The Referee held so correctly having evaluated all factors.

The Appellant has not met the threshold set out in section 33(1)(a) and (b) of the Small Claims Tribunal Decree 1991. For the reasons given above, the appeal fails. Any party aggrieved with the Ruling has the right to appeal to the High Court within 30 days.”

[14] Accordingly, the Learned Magistrate dismissed the Appeal.

[15] Aggrieved by the Judgment of the Magistrate, the Appellant filed his Notice of Intention to Appeal, on 7 December 2015, and subsequently the Grounds of Appeal.

Grounds of Appeal

[16] The Grounds of Appeal the Appellant was relying on are the following:

1) RESPONDENT (RUPS BIG BEAR) AGREES FURNITURE WAS MADE BY THEM

That the Learned Magistrate erred in law and fact by not taking into consideration the fact that the Respondents had, after inspection, agreed that the furniture was

made at their factory. In support the Appellant has filed document marked as Annex A (The proceedings of the Small Claims Tribunal dated 22 January 2015 and 5 December 2015).

2) RESPONDENTS AGREES TO REPAIR AT MINIMAL COST TO CUSTOMER

That the Learned Magistrate erred in law and fact by not taking into consideration the fact that the Respondents had agreed to repair the infected furniture at a minimal cost to Customer (Appellant). In support the Appellant has filed document marked as Annex B (Letter sent to the Appellant, by the Consumer Council of Fiji, dated 14 November 2014).

3) RESPONDENT AGREES TO CONSUMER COUNCIL FOR REPAIR OR REPLACEMENT OR REFUND

That the Learned Magistrate erred in law and fact by not taking into consideration the fact that the Respondents had agreed to Consumer Council for Repair, Replace or Refund. In support the Appellant has filed documents marked as Annex C1 (The proceedings of the Small Claims Tribunal dated 15 December 2014 and 8 January 2015) and Annex C2 (The Consumer Advice Form issued by the Consumer Council of Fiji, dated 7 November 2014).

4) PRODUCT MANUFACTURER (RESPONDENT) FAILS TO PUT ADEQUATE OWNERSHIP STAMP TO IDENTIFY DATE OF MANUFACTURE

The onus was on Manufacturer (Respondent) to put adequate ownership and date of manufacturer of labels or stamps. Failure on his part gives the Claimant the benefit of the doubt.

5) TERMITE INFECTION A NATIONAL CONCERN

That the Learned Magistrate erred in law and fact by not taking into consideration the fact that the Respondents had agreed to the fact that termite infection is a

serious issue of national concern. To properly handle this type of case consultation and expert opinion of Border Pest Control and the Forestry Department etc. should have been solicited. In support the Appellant has filed document marked as Annex D (Letter sent by the Appellant to the Managing Director of the Respondent Company dated 15 June 2015).

Legal Provisions and Analysis

[17] Section 33(1) of the Small Claims Tribunal Decree 1991 provides:

“(1) Any party to proceedings before a Tribunal may appeal against an order made by the Tribunal under section 15(6) or section 31(2) on the grounds that:

(a) the proceedings were conducted by the Referee in a manner which was unfair to the appellant and prejudicially affected the result of the proceedings; or

(b) the Tribunal exceeded its jurisdiction.”

[18] Section 33(2) and 33(3) of the Small Claims Tribunal Decree 1991 are also reproduced below:

“(2) An appeal brought pursuant to subsection (1) shall be made:

(a) if against an order made by a Resident Magistrate exercising the jurisdiction of a Tribunal to the High Court; and

(b) in any other case, to the Magistrates' Court.

(3) An appeal shall be brought by a party by the filing of a notice of appeal in Form 6 of the First Schedule to this Decree, together with the fee prescribed in the Second Schedule in the High Court or any Magistrates' Court (as the case may be) within 14 days of the Tribunal's order.”

[19] From a reading of Section 33(1) of the Small Claims Tribunal Decree it is clear that the scope of appeals from the Orders made by the Small Claims Tribunal is extremely

limited and is restricted to two grounds. Firstly that the proceedings were conducted by the Referee in a manner which was unfair to the appellant and prejudicially affected the result of the proceedings or secondly that the Tribunal exceeded its jurisdiction. There is certainly no right of appeal in respect of any error of law or any factual error.

[20] This position has been clearly elaborated in the cases of *Sheet Metal & Plumbing (Fiji) Ltd v Deo* [1999] FJHC 26 and *Aaryan Enterprise v Mehak Unique Fashion* [2011] FJHC 727.

[21] Considering all the facts and circumstances of this case, it is abundantly clear that the proceedings before the Small Claims Tribunal were conducted by the Referee in a fair and just manner. There is no basis to establish that the proceedings were conducted by the Referee in a manner which was unfair to the Appellant and prejudicially affected the result of the proceedings. Furthermore, the Tribunal has acted well within its jurisdiction.

[22] Therefore, the Learned Magistrate was justified in ruling that the Appellant has not met the threshold set out in Section 33(1)(a) and (b) of the Small Claims Tribunal Decree 1991.

Conclusion

[23] This Court finds no reason to vary the Order made by the Learned Magistrate, Magistrate's Court Nausori. Accordingly, I uphold the Judgment of the learned Magistrate, dated 30 November 2015.

[24] Accordingly, I make the following Orders:

ORDERS

1. The appeal is dismissed.
2. I make no Order for costs.

Dated this 29th day of July 2016, at Suva.


Riyaz Hamza

JUDGE

HIGH COURT OF FIJI

