

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 253 of 2016

BETWEEN : ASHOK PRASAD
AND : VIKASH RAJ Plaintiff/Appellant
AND : ASHWANT SINGH First Defendant/Respondent
AND : VIREN SINGH Second Defendant/Respondent
AND : AJAY BAHADUR SINGH Third Defendant/Respondent
AND : RAJENDRA PRASAD Fourth Defendant/Respondent
AND : RAM ROOP Fifth Defendant/Respondent
AND : ATTORNEY GENERAL OF FIJI Sixth Defendant/Respondent
Coram : The Hon. Mr Justice David Alfred
Counsel : Mr S. Kumar for the Plaintiff
Mr S. Singh for the First, Second, Third and Fifth
Defendants
Date of Hearing : 11 October 2017
Date of Decision : 27 October 2017

DECISION

1. This is an Inter-Partes Summons by the Plaintiff for a stay of a Ruling by Riyaz Hamza J made on 17 July 2017 on an application heard by him on 25 January 2017. Hamza J had refused to grant an interim injunction and had ordered the Plaintiff to pay the First, Second, Third and Fifth Defendants costs summarily assessed at \$2,500.
2. By his Summons, the Plaintiff seeks leave to appeal to the Court of Appeal against that Ruling and also a stay of execution of all proceedings. The Summons is supported by the affidavit of the Plaintiff wherein he deposes that his removal as President of the Mandali was unconstitutional, that there was a question of public importance here, that if a stay is not granted his appeal will be rendered nugatory, and there were good grounds for appeal.
3. The affidavit in opposition was sworn by the Second Defendant, Aswant Singh. In it he deposes that he is the present President of the Mandali, that the Plaintiff is not the President of the Mandali, but was only an interim one, that he was not removed from the organization and that there is no question of public importance here.
4. In his affidavit in answer, the Plaintiff states that he is the Respondent/Plaintiff and that the Respondent plotted with the Treasurer to delay the Annual General Meeting, that he was not suspended but was removed from the Presidency and that the Respondent was wrong to state there was no question of public importance.

5. At the hearing, Counsel for the Plaintiff said the constitution of the temple was breached.
6. Counsel for the Defendants made the following submission:
 - (1) There was nothing of general importance involved.
 - (2) No issue of law about which there were differing decisions.
 - (3) None of the Plaintiff's substantive rights were affected.
 - (4) The Plaintiff is not asking for reinstatement.
 - (5) This is an interlocutory decision for which leave is required.
7. Counsel for the Plaintiff in his reply said he was appealing against the decision to dissolve the interim injunction that had been granted.
8. At the conclusion of the arguments I informed I would take time to consider my decision. Having done so I now deliver my decision.
9. This is an application for :
 - (1) Leave to appeal to the Court of Appeal
 - (2) For a stay of the Ruling.
10. I shall first deal with (1). It is trite law that the appellate court is not inclined to allow an appeal against an interlocutory decision. What more here when that decision was arrived at by the judge in the exercise of his discretion not to grant an interim injunction. Further the court should not attempt to resolve complex issues at the interlocutory stage but allow them to proceed to resolution at a full hearing where both sides may call witnesses and produce documentary evidence to enable the primary judge to reach a final decision.

11. The Plaintiff has failed to convince me that he has any reasonable prospect of success if leave were to be granted. He does not seek reinstatement as President. He merely seeks in the Originating Summons, remedies which do not pertain to him qua President but are properly the province of all the members of the Mandali.
12. This matter surely cannot be escalated into a matter of public importance merely by how it is projected by the Plaintiff. Office-bearers or members of societies or organisations should not think that every time they feel peeved by the collective decision of the body concerned, they could resort to litigation when other remedies are available under the constitution of that body
13. The Supreme Court Practice 1995 (the White Book) states at 59/1/56 that many of the cases in the area of appeals against exercise of discretion are decisions refusing to interfere with a judge's discretion in making some interlocutory order e.g the grant or refusal of an interlocutory injunction.
14. I now turn to (2). It is again trite law that the Plaintiff has to show that if no stay is granted, the appeal will be nugatory. The Plaintiff also has to show that novel or important questions are involved and there is a public interest in the proceedings (see *Natural Waters of Viti Ltd v Crystal Clear Mineral Water (Fiji) Ltd* (Court of Appeal Civil Appeal No. ABU 0011 .04S, 18 March 2005). None of these are present here.
15. I have come to the conclusion that the Plaintiff has failed to satisfy me that his circumstances are exceptional so as to warrant a stay, pending appeal, being granted.

16. In fine, I dismiss the Inter-Partes Summons for leave to appeal and for a stay of execution, with costs summarily assessed at \$500 to be paid by the Plaintiff/Appellant to the First, Second, Third and Fifth Defendants/Respondents.

Delivered at Suva this 27th day of October 2017.



David Alfred

JUDGE of the High Court of Fiji