

IN THE HIGH COURT OF FIJI  
AT SUVA  
CIVIL JURISDICTION

Civil Action No. HBC 116 of 2017

**BETWEEN** : SRIDHAR NIMMAGADDA aka SHIRIDHAR NIMMAGADDA of Waila Road,  
Nausori, Self-employed.

PLAINTIFF

**AND** : DEO RAJ of unknown address.

DEFENDANT

**BEFORE** : Master Vishwa Datt Sharma

**COUNSEL** : Mr. Valenitabua - for the Plaintiff  
In Person - Defendant

Date of Hearing: 19<sup>th</sup> September, 2017

Date of Ruling: 25<sup>th</sup> October, 2017

**DECISION**

*(Summons for leave to enter judgment against the Defendant pursuant  
to Order 13 Rules 6 of the High Court Rules, 1988)*

**A. INTRODUCTION**

1. The Plaintiff filed **Summons** together with an **Affidavit in Support** and sought for the following orders:
  - a) That leave be granted to the Plaintiff to enter Judgment against the Defendant in default of Acknowledgment of Service.
  - b) That such further Orders as this Honourable Court deems just.
2. The application is made pursuant to the *Order 13 Rule 6 of the High Court Rules, 1988*.

**B. PLAINTIFF'S CASE**

3. The Plaintiff's filed its Affidavit in Support and in summary stated as follows-
  - (i) *That the Plaintiff is aware that the Defendant was served with the Statement of Claim on 28<sup>th</sup> April, 2017. The server filed an affidavit of service to this effect.*
  - (ii) *The Defendant failed to file and serve the Plaintiff's Solicitors with his Acknowledgment of Service which was due on 12<sup>th</sup> May, 2017.*
  - (iii) *The Plaintiff prays for an order in terms of the Summons; enter judgment against the Defendant for which the Plaintiff is entitled to on his Statement of Claim with costs to be summarily assessed by the Court at \$3,000.*

**C. DEFENDANT'S CASE**

4. The Defendant submitted as follows-
  - (i) *That he received the summons.*
  - (ii) *That he has filed the Acknowledgment of Service.*
  - (ii) *14 days' time not sufficient.*
  - (iii) *No formal application or draft defence filed.*
  - (iv) *That he wished to defend.*
  - (v) *Summons for leave to enter judgment against me will not be fair to me.*

**D. THE LAW**

4. **Order 13 Rule 6 of the High Court Rule, 1988 deals with other claims and states as follows;-**

*6.-(1) Where a writ is indorsed with a claim of a description not mentioned in rules 1 to 4 then, if any defendant fails to give notice of intention to defend, the plaintiff may, after the prescribed time and, if that defendant has not acknowledged service, upon filing an affidavit proving service of the writ on him and, where the statement of claim was not indorsed on or served with the writ, upon serving a statement of claim on him, proceed with the action as if that defendant had given notice of intention to defend.*

*(2) Where a writ issued against a defendant is indorsed as aforesaid, but by reason of the defendant's satisfying the claim or complying with the demands thereof or any other like reason it has become unnecessary for the plaintiff to proceed with the action, then, if the defendant fails to give notice of intention to defend, the plaintiff may, after the prescribed time, enter judgment with the leave of the Court against that defendant for costs.*

*(3) An application for leave to enter judgment under paragraph (2) shall be by summons which must, unless the Court otherwise orders, and notwithstanding anything in Order 65, rule 9, be served on the defendant against whom it is sought to enter judgment.*

5. **Order 13 Rule 2 deals with Claim for unliquidated damages and states as follows**

*2. Where a writ is indorsed with a claim against a defendant for unliquidated damages only, then, if that defendant fails to give notice of intention to defend, the plaintiff may, after the prescribed time, enter interlocutory judgment against that defendant for damages to be assessed and costs, and proceed with the action against the other defendants, if any.*

**E. ANALYSIS and DETERMINATION**

14. The only **issue** for this court to determine is as follows-
- (i) **Whether leave be granted to the Plaintiff to enter Judgment against the Defendant in default of Acknowledgment of Service?**
15. The **Defendant does not dispute** that he was **served** with the Plaintiff's applications.
16. The **Defendant was served** with the Plaintiff's Writ of Summons and the Statement of Claim on 28<sup>th</sup> April, 2017. The Affidavit of Service filed confirms the same.
17. Subsequently, the **Defendant was required** to file and serve his **Acknowledgment of Service** within 14 day's timeframe on or before the 12<sup>th</sup> May, 2017.

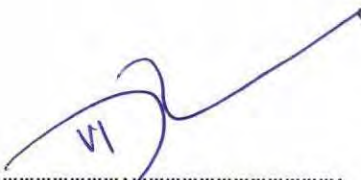
18. The Defendant instead filed his Acknowledgment of Service on 18<sup>th</sup> May, 2017, some Five (5) days later. He explained that 14 days' time allowed by Law and/or Rules is not a sufficient timeframe.
19. The delay on the part of the Defendant in filing his Acknowledgment of Service thus prompted the Plaintiff to file a Summons and seek an order for "Leave to enter Judgment" against the Defendant in default of "Acknowledgment of Service."
20. The Defendant's contention was that he had filed his Acknowledgment of Service.
21. Order 13 Rule 6 of the High Court Rules deals with "Other Claims" not mentioned in Rules 1 to 4."
22. The Plaintiff's Statement of Claim has "Defamation" as the Cause of Action.
23. Claim for "Defamation" will fall within the ambits of Order 13 Rule 2 of the High Court Rules, 1988 which deals with Claims for unliquidated Damages" and provides as follows-  
  
*"Where a writ is indorsed with a claim against a defendant for unliquidated damages only, then, if that defendant fails to give notice of intention to defend, the plaintiff may, after the prescribed time, enter interlocutory judgment against that defendant for damages to be assessed and costs, and proceed with the action against the other defendants, if any.*
24. Therefore, the Plaintiff should have brought his application in terms of Order 13 Rule 2 and sought an order to enter interlocutory judgment against the Defendant for Damages to be assessed and costs as prayed for within the Plaintiff's Statement of Claim.
25. "Leave to enter Default Judgment" as currently proceeded with by the Plaintiff before this Court is not the answer, if the Defendant has failed to file and serve an "Acknowledgment of Service" or filed the same out of time.
26. In Conclusion, the Plaintiff's Summons seeking an order for Leave to enter Judgment against the Defendant in default of Acknowledgment of Service is fatal in the circumstances and will be accordingly dismissed.
27. It is for the Parties to this proceedings to make a decision what appropriate Cause of Action must be taken henceforth.
28. Since the Plaintiff's Summons is dismissed and that the Defendant has not acted diligently to ensure that he filed his Acknowledgment of Service in time within the Rules and subsequently filed his Statement of Defence, I will not make any orders as to costs.
29. For the abovementioned rational I make the following orders:

**FINAL ORDERS**

- (a) That the Plaintiff's Summons seeking Leave to enter Judgment against the Defendant in default of Acknowledgment of Service fails and is accordingly dismissed.
- (b) That there will be no order as to costs and each party to bear their own costs.
- (c) Matter stands adjourned to 22<sup>nd</sup> November, 2017 @ 9 am.

Dated at Suva this 25<sup>th</sup> Day of October, 2017



  
.....  
MR VISHWA DATT SHARMA  
Master of High Court, Suva

cc. *Toganivalu & Valenitabua, Suva.*  
*Deo Raju- In Person.*