

IN THE HIGH COURT OF FIJI AT LAUTOKA

CIVIL JURISDICTION

CIVIL ACTION NO. HBC 78 OF 1995L

BETWEEN : **CHANDRA DEO** and **SURUJ WATI** both of Johnson Road,
Lautoka.

PLAINTIFFS/APPLICANTS

A N D : **VIJAY KUMAR**, President **KAMLA PRASAD**, Sirdar **UMESH CHAND** Secretary, **BISUN DEO**, **PRASANJIT NARAYAN** Committee Members of Teidamu LT 31 Cane Harvesting Gang sued on behalf and as representing all members of the said gang Except the Plaintiffs

DEFENDANTS/RESPONDENTS

Appearances : Mr K. Patel for Plaintiff/Applicants
No appearance for the Defendants/Respondents

Date of Hearing : 09 February 2017
09 February 2017

R U L I N G

Introduction

1. This is an *ex parte* application seeking to make charging order on the fourth defendant's property which is sufficiently described in the application. The application is supported by evidence on affidavit of Chandar Deo, the first named plaintiff. The application is made under

O.52, Rule 1 of High Court Rules 1988 (*the HCR*) and section 32 (1) of the High Court Act (*the HCA*).

The Background

2. The plaintiffs obtained judgment in their favour against the defendants. By its orders dated 17 July 2008 and 4 November 2008 (judgment against fifth defendant), the court (Finnigan J.) entered judgment against the defendants in the sum of \$50,951.02 and also awarded costs to be taxed. There was an appeal against this judgment by the third named defendant. The court dismissed that appeal on 20 July 2015. The judgment is yet to be executed. In that process the plaintiffs apply for an order to make imposing a charge on property of the judgment debtor.

The Law

3. The applicable law in this application is Order 50, Rule 1 of the HCR and section 32 (1) of the HCA.
4. O.50, r. 1 of the HCR so far as relevant provides:

ORDER 50

CHARGING ORDERS, STOP ORDERS, ETC

Order imposing charge on land, etc. (O.50, r.1)

1.-(1) This rule shall apply to any order which by virtue of any enactment the Court is empowered to make imposing a charge on any land or interest in land of a judgment debtor or levying execution thereon.

(2) Any such order shall in the first instance be an order to show cause, specifying the time and place for further consideration of the matter and imposing the charge until that time in any event.

(3) An application for an order to which this rule applies may be made ex parte.

(4) *There may be joined with an application for an order to which this rule applies an application for the appointment of a receiver to enforce the charge imposed by the order.*

(5) *The application must be supported by an affidavit-*

(a) *identifying the judgment or order to be enforced, and stating the name of the judgment debtor on whose land or interest it is sought to impose a charge and the amount remaining unpaid under the judgment or order at the time of the application;*

(b) *specifying the land on which, or an interest in which, it is sought to impose a charge; and*

(c) *stating that to the best of the information or belief of the deponent the land or interest in question is the judgment debtor's and stating the sources of the deponent's information or the grounds for his belief*

(6) *Unless the Court otherwise directs, a copy of the order must at least seven days before the time appointed for the further consideration of the matter be served on the judgment debtor and if the judgment debtor does not attend on such consideration proof of service must be given.*

(7) *On the further consideration of the matter the Court shall, unless it appears (whether on the representation of the judgment debtor or otherwise) that there is sufficient cause to the contrary, make the order absolute with or without modifications.*

(8) *Where on the further consideration of the matter it appears to the Court that the order should not be made absolute, it shall discharge the order.*

(9) *This rule shall have effect subject to the provisions of any enactment whereunder any such order as aforesaid may be made.*

5. Section 32 (1) of the HCA empowers the court to make charging order on the Judgment Debtors' property, which states:

Power to impose charge on land of judgment debtor

32.-(1) The Court may, for the purpose of enforcing any judgment or order for the payment of money, by order impose on any land, or any estate of interest therein, of the debtor as

may be specified in the order, a charge for securing the payment of any moneys due or to become due under the judgment or order.

Discussion

6. The plaintiffs apply for an order that a charge to be imposed on the land of the third defendant, Umesh Chand who is the registered proprietor of the land the order sought relates. The Certificate of Title annexed in the supporting affidavit establishes that the fourth defendant is the registered owner of the property on which the charge is sought. Such an application may be made *ex parte* (see O.50, r.3).
7. The court is empowered to make imposing charge on the land of the Judgment Debtor. This power derives from section 32 (1) of the HCA.
8. The plaintiffs had obtained judgment against the first to third defendants. The judgment dated 17 July 2008 and 4 November 2008, wherein the court entered a monetary judgment against the defendants. The judgment is yet to be satisfied.
9. The charging order relates to the property of the third defendant who is one of the judgment debtors.
10. The judgment to be enforced is being identified stating the name of the judgment debtor on whose land it is sought to impose a charge and the amount remaining unpaid under the judgment at the time of the application as required in O.50, r. 1 (5a).
11. The land, which is sought to impose a charge, is specified in the notice of motion as required in O.50, r. 1 (5b).
12. Having been satisfied that the judgment sum is still to be satisfied and that the property belongs to the 4th defendant, one of the judgment debtors and that the application is made for the purpose of execution of the judgment, I make the following orders:

- 1) A conditional charging order on the fourth defendant's land to be valid till 16 March 2017.
- 2) This order is to be served on the fourth defendant 14 days before the day appointed for the further consideration of the matter enabling him to show cause why this conditional order should not be made absolute.
- 3) The matter is now adjourned for the further consideration at 9.30AM on 16 March 2017.

M. H. Mohamed Ajmeer
9/2/17

M. H. Mohamed Ajmeer

JUDGE

At Lautoka

09.02.2017

