

IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA
CIVIL JURISDICTION

CIVIL ACTION NO. HBC 144 OF 2018

BETWEEN : THEN INDIA SANMARGA IKYA SANGAM a duly incorporated company with special dispensation to not use Limited after its name having its registered office at Vonovou Lane, Park Street, Nadi, Fiji.

PLAINTIFF/RESPONDENT

AND : NASINU LAND PURCHASE & HOUSING CO-OPERATIVE LIMITED a duly incorporated company and/or society duly registered under the Co-operatives Societies Act and having its registered office at 6 ½ miles, Nasinu, Suva.

DEFENDANT/APPLICANT

Appearances : Ms S. Devan for the defendant/applicant
Mr R. Gordon with Mr W. Pillay for the plaintiff/respondent

Date of Hearing : 14 August 2018

Date of Ruling : 14 August 2018

R U L I N G

[on preliminary objection]

- [01] This is an application for dissolution of the *ex parte* injunctive orders I granted in favour of the plaintiff on 20 July 2018.
- [02] By way of notice of motion filed on 13 August 2018 (yesterday), the defendant/applicant (*'the defendant'*) applies for discharge of the injunction I made against the defendant on *ex parte* basis (*'the application'*). The application is supported by an affidavit of Satya Narayan, the Chief Executive Officer and Company Secretary of the defendant. The application does not state the Rules or law which the application is made under.
- [03] Today (14 August 2018), the application for interim application filed by the plaintiff/respondent (*'the plaintiff'*) is coming on for hearing, *inter partes* after I

granted the injunction *ex parte* on 20 July 2018. The defendant did not file any response to the plaintiff's application for interim injunction. Instead, they have filed the application for dissolution of the injunction granted on *ex parte* basis.

[04] When the defendant's application was taken up for hearing, Mr Gordon of counsel for the plaintiff moves the dismissal of that application raising a preliminary issue. He makes such an application on 2 grounds:

1. It is a chambers application and must be by way of summons, not by way of notice of motion. They have filed a notice of summons. He relies on O 32, R 1 of the High Court Rules 1988, as amended ('HCR').
2. The application was served on us yesterday (13 August 2018). There were no two clear days between service and the hearing thereof. He cites the HCR, O 32, R 3.

[05] Admittedly, Ms Devan of counsel for the defendant submits that it is a mere irregularity and it can be amended and re-served. She relies on the HCR, O 2, R 2.

[06] The HCR, Order 32, R 1, deals with the mode of making application, which provides:

"1. Except as provided by Order 25, Rule 7, every application in chambers not made ex parte must be made by summons." (Emphasis supplied).

[07] Rule 3 of Order 32 states:

"3. A summons asking only for the extension or abridgment of any period of time may be served on the day before the day specified in the summons for the hearing thereof but, except as aforesaid and unless the Court otherwise orders or any of these Rules otherwise provides, a summons must be served on every other party not less than 2 clear days before the day so specified." (Emphasis supplied).

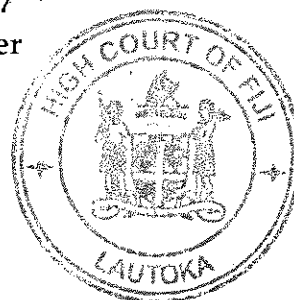
[08] This is a chambers application for discharge of the injunction granted *ex parte* and it must be made by way of a summons as required by O 32, R 1, and not by way of notice of motion. This application has been filed only yesterday. It was not made *ex parte*. The defendant has failed to give 2 clear-day notice before the

hearing as mandated by O 32, R 3. The application has been filed in breach of O 32 RR 1 and 3. The defendant cannot seek assistance of O 2, R 2 for rescue. I would, therefore, strike out the notice of motion filed by the defendant with summarily assessed costs of \$500.00 payable to the plaintiff by the defendant within 21 days.

The result

1. The application for dissolution of injunctive orders is struck out.
2. The defendant shall pay summarily assessed costs of \$500.00 to the plaintiff within 21 days.

H. H. Mohamed Ajmeer
14/8/18
.....
M. H. Mohamed Ajmeer
JUDGE



At Lautoka
14 August 2018

Solicitors:

For the defendant/applicant: M/s Neel Shivam Lawyers, Barristers & Solicitors
For the plaintiff/respondent: M/s Gordon & Co, Barristers & Solicitors