

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

CIVIL ACTION NO. HBC 154 OF 2013

**BETWEEN** : **ATISH KUMAR SEN** of Stage 2, Natabua Housing, Lautoka,  
Businessman.

**PLAINTIFF**

**AND** : **SEN BROTHERS TRANSPORT COMPANY** having its registered  
office situated at 145 Vitogo Parade, Lautoka.

**DEFENDANT**

**Appearances** : Mr V. Sharma for the plaintiff  
Mr S. Krishna for the defendant

**Date of Hearing** : 29 March 2019

**Date of Ruling** : 29 March 2019

## **R U L I N G**

[01] The plaintiff has filed a notice of motion dated 27 November 2018 (filed 28 November 2018) supported by the affidavit of Atish Kumar Sen, the plaintiff (*'the application'*) to set aside the consent orders delivered by this Court on 20 April 2016. The application seeks the following orders:

1. *That the defendant pay off any pending fines and/or due to the relevant authorities to enable the plaintiff to utilize the vehicle in his possession pursuant to the agreement dated 14<sup>th</sup> of February 2012 OR the defendant transfer the vehicles under the name of the plaintiff or under his nominee.*
2. *That the consent order dated the 20<sup>th</sup> of April 2016 be wholly set aside and the matter be fixed for trial.*
3. *That the defendant do pay costs.*
4. *That the defendant do pay for any losses incurred by the plaintiff during the period in which he was not able to utilize the vehicles.*

[02] The consent orders made on 20 April 2016 reads as follows:

1. *That the matter is now settled.*
2. *That the parties hereby agree to use only one Accountant namely Nirbhay C. Rekha & Associates.*
3. *That either party in this action will buy other party's share after the valuations are done by the appointed Accountant, Nirbhay C. Rekha & Associates.*

[03] I am of the opinion that a court judgment or order cannot be set aside on an application like a setting aside of a default judgment.

[04] A consent judgment is the final judgment of the Court for all purposes. A consent judgment or order which is a final order may be set aside on the ground of fraud or mistake. In order to set aside a consent judgment or order on that ground a fresh action would be required (see *de Lasala v de Lasala* [1980] AC 546 at 561).

[05] The consent judgment entered in this action would not be set aside on an application of this nature without any grounds relevant for the setting aside of a consent judgment or order.

[06] Another order the plaintiff seeks in this application is that the defendant pay off any pending fines and/or due to the relevant authorities to enable the plaintiff to utilize the vehicle in his possession pursuant to the agreement dated 14 February 2012 OR the defendant transfers the vehicles under the name of the plaintiff or under his nominee. This order does not arise out of the judgment by consent. After entering a judgment by consent, the court may make further order for the purpose of enforcement of that consent judgment. The order the plaintiff seek does not appear to be necessary for enforcement of the consent judgment and does not arise out of the consent judgment. I would, therefore, refuse to make the order the plaintiff is asking for.

[07] This application is a misconceived one. I would, therefore, strike this application out but without costs.

**Final orders:**

1. Plaintiff's application to set aside the consent judgment is struck out and dismissed.
2. No order as to costs.

*M.H. Mohamed Ajmeer*

*29/3/19*

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**M.H. Mohamed Ajmeer**  
**JUDGE**

**At Lautoka**  
**29 March 2019**



**Solicitors:**

For the plaintiff: M/s Vijay Naidu & Associates, Barristers & Solicitors  
For the defendant: M/s Krishna & Company, Barristers & Solicitors