

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No.: HBC 339 of 2014

BETWEEN : **GANGULAMMA aka GANGALLAMMA aka GONGLAMMA**
aka GANGALAMMA REDDY aka GANGULLAMMA aka
GANGULAMMAL REDDY aka BELLA REDDY aka
GANGULAMMA REDDY of 301 Heatherway, South Francisco,
California 94080, United States of America, Widow, as Administratrix
of the Estate of **RAJANA REDDY aka RAJA REDDY aka RAJANA**
aka SHIU NARAYAN aka SHIU NARAYAN REDDY aka S. N
REDDY

PLAINTIFF

AND : **YANKTESH PERMAL REDDY** of Waterfront Hotel, Marine Drive,
Lautoka, Company Director,

FIRST DEFENDANT

AND : **REDDY CONSTRUCTION COMPANY LIMITED** a company
duly incorporated in Fiji and having its registered office at 35
Ravouvou Street, Lautoka.

SECOND DEFENDANT

Counsel : Plaintiff: Mr. M.A.Khan
Defendant: Mr. V.Singh and Mr. S.Parshotham

Date of Hearing : 20.5.2019

Date of Ruling : 22.5.2019

RULING

(Leave to appeal against interlocutory decision of Master)

INTRODUCTION

1. The Plaintiff in this action is suing first Defendant inter alia for equitable relief based on verbal promises as to the profits and or interests of an entity that started as a family business more than five decades ago. The action started in 2014 did not proceed to hearing and there were two interlocutory applications before Master. They were, summons for striking out of the statement of claim by the Defendant and summons for

amendment of the second amended statement of claim by Plaintiff. Master on 20.3.2019 had struck off the action and had also did not allow application for third amendment to statement of claim and held that the amendment was sought in *mala fide*

2. Order of Master dated 30.3.2019 was an interlocutory order in line with Fiji Court of Appeal decision of *Goundar v Minister for Health* [2008] FJCA 40; ABU0075.2006S (9 July 2008)(unreported). So, leave is required for an Appeal

3. Order 59 rule 11 of the High Court Rules of 1988, requires leave to appeal when impugned order is an interlocutory decision and states as follow:

Application for leave to appeal (O 59, R 11)

"11. Any application for leave to appeal an interlocutory order or judgment shall be made by summons with a supporting affidavit, filed and served within 14 days of the delivery of the order or judgment."

4. Sir Moti Tikaram, then President Fiji Court of Appeal in *Kelton Investments Limited and Tappoo Limited v. Civil Aviation Authority of Fiji and Motibhai & Company Limited* [1995] FJCA 15; ABU 34d of 1995s (18 July 1995) held;

*"I am mindful that Courts have repeatedly emphasised that appeals against interlocutory orders and decisions will only rarely succeed. As far as the lower courts are concerned granting of leave to appeal against interlocutory orders would be seen to be encouraging appeals (see *Hubball v Everitt and Sons (Limited)* [1900] 16 TLR 168).*

*Even where leave is not required the policy of appellate courts has been to uphold interlocutory decisions and orders of the trial Judge - see for example *Ashmore v Corp of Lloyd's* [1992] 2 All ER 486 where a Judge's decision to order trial of a preliminary issue was restored by the House of Lords."*

5. So, in order to grant leave against interlocutory order there should be merits on the grounds of appeal. For that proposed grounds of appeal needs to be considered.

6. In Court of Appeal decision of *The Fiji Public Service Commission v Manunivalagi Dalituicama Korovolavula* FCA Civil Appeal No. 11 of 1989 held,

"Whilst I am inclined to agree that Air Canada's case appears to be distinguishable, I must bear in mind that I am dealing with an application for leave to appeal and not with the merits of an appeal. It will therefore not be appropriate for me to delve into the merits of the case by looking into the correctness or otherwise of the Order intended to be appealed against. However if prima facie the intended appeal is patently unmeritorious or there

are clearly no arguable points requiring decision then it would be proper for me to take these matters into consideration before deciding whether to grant leave or not.

However as matter stand I am clearly of the opinion that the Appellant has raised a number of arguable legal issues of some importance which call for further arguments from both sides leading to an authoritative decision of the Fiji Court of Appeal."

7. So at the stage of granting leave what I need to consider whether intended appeal is patently unmeritorious or there are strong arguable appeal grounds that require determination. There is no need to determine success of proposed grounds of appeal in detail. If they are doomed to fail, leave must be refused. This is to curtail unnecessary appeals from clogging the system as well as to stop abuse of process.
8. If the proposed appeal grounds indicate that determination of appeal is not frivolous and it needs to be determined leave to appeal should be allowed. The court that grants leave should also be mindful of the prejudice to parties and delay in the process when leave is granted against an interlocutory decision.
9. The Plaintiff's claims as stated in second amended statement of claim are as follows:

"RELIEF

Where fore the Plaintiff seeks from the First and/or Second Defendants jointly and severally the following relief:-

1. *An account of profits of the Relationship;*
2. *Damages for such sum as is determined as a result of an account of profits;*
3. *Appointment of an accountant approved by the Court to carry out the account;*
4. *A declaration that the Plaintiff as the Administratrix of the Estate of the Plaintiff's said deceased husband, namely, Shiu Narayan Reddy is entitled to seek and have access to all the records of the Second Defendant company in the same manner in which a shareholder is permitted to do so under common law, articles of association and the Companies Act;*
5. *A declaration that the Defendants jointly or severally are liable to account to the Estate for such sums as this Honourable Court may deem*

fit and just and that the said sum or sums be accordingly ordered to be paid to the Estate;

- 6. Interest at the commercial lending rate, whether or not the same be compounded, on all the sums found to be due to it, pursuant to the Court's equitable jurisdiction and/or under the Law including the Law Reform (Miscellaneous Provisions) (Death and Interest) Act (Cap 27) from the time the sums become due and payable;*
- 7. Costs on the solicitor/client basis and such further other relief this Honourable Court may think fit, just and expedient;*
- 8. And such further and other orders and reliefs as this Honourable Court may deem just and equitable in the circumstances of this case.*

Or in the alternative

- 1. Damages in the sum of FJD \$12 million.*
- 2. Interest at the commercial lending rate, whether or not the same be compounded, on all the sums found to be due to it, pursuant to the Court's equitable jurisdiction and/or under the Law including the Law Reform (Miscellaneous Provisions) (Death and Interest) Act (Cap 27) from the time the sums become due and payable;*
- 3. Costs on the solicitor/client basis and such further other relief this Honourable Court may think fit, just and expedient;*
- 4. And such further and other orders and reliefs as this Honourable Court may deem just and equitable in the circumstances of this case.*

AND FOR FURTHER OR ALTERNATIVE CLAIM *the Plaintiff repeats the allegations set forth in paragraph 1.1 to 6 inclusive hereof and further says:-*

- 1. That the present day value of the property at 50 Nayavu Street, Samabula Suva, being Crown Lease No. 2336 is \$1 million.*
- 2. By not providing this property either permanently as a home to occupy or a house and property to own, the Plaintiff's said deceased husband namely Shiu Narayan Reddy has suffered loss at the breach of fiduciary duty by the Defendants or either of them in the sum of \$1 million.*

RELIEF

Whereof the Plaintiff seeks from the First and/or Second Defendants jointly and severally the following relief:-

- (a) Damages in the sum of \$1 million dollars;*
- (b) Costs on the solicitor/client basis and such further other relief this Honourable Court may think fit, just and expedient;*
- (c) And such further and other orders and reliefs as this Honourable Court may deem just and equitable in the circumstances of this case.*

AND FOR FURTHER OR ALTERNATIVE CLAIM *the Plaintiff repeats the allegations set forth in paragraphs 1.1 to 6 inclusive hereof and further says:-*

- 1. No part of the sum of £1796/12/9 (which is equivalent to FJ\$4,859.07 in today's rate) advanced by the Plaintiff's said deceased husband, namely, Shiu Narayan Reddy to the Second Defendant has ever been repaid to the Plaintiff's said deceased husband, namely, Shiu Narayan Reddy and the whole sum is still owing by the Second Defendant to the Plaintiff's said deceased husband, namely, Shiu Narayan Reddy;*
- 2. The other brother, especially including the First Defendant as Chairman of Directors of the Second Defendant breached their fiduciary duty to the Plaintiff's said deceased husband, namely, Shiu Narayan Reddy as part of the company/partnership and/or joint venture to see that this sum was repaid to the Plaintiff's said deceased husband, namely, Shiu Narayan Reddy.*

RELIEF

Wherefore the Plaintiff seeks from the First and/or Second Defendant jointly and severally the following relief:-

- (a) Damages in the sum of £1796/12/9 (which is equivalent to FJ\$4,589.07 in today's rate);*
- (b) Interest at the commercial lending rate, whether or not the same be compounded, on all the sums found to be due to it, pursuant to the Court's equitable jurisdiction and/or under the Law including the Law*

Reform (Miscellaneous Provisions) (Death and Interest) Act (Cap 27)
from the time the sums become due and payable;

(c) Costs on the solicitor/client basis and such further other relief this Honourable Court may think fit, just and expedient;

(d) And such further and other orders and reliefs as this Honourable Court may deem just and equitable in the circumstances of this case.

AND FOR FURTHER OR ALTERNATIVE CLAIM *the Plaintiff repeats the allegations set forth in paragraphs 1.1 to 6 inclusive hereof and further says and seeks relief that the Plaintiff's said deceased husband, namely, Shiu Narayan Reddy is entitled to in Law and/or in equity in the circumstances of this case and in the interest of justice."*

10. I reproduced the entire claims without summarization, due to the manner of pleading which was presented. A bad pleading will not necessarily be a sole ground for strike out without granting an opportunity to amend the same.
11. There was a pending application for amendment of the abovementioned claims and that needs to be determined before considering the summons for strike out of the claim.
12. Third proposed amendment sought to include a claim for fraud. Master had held that it was made mala fide, hence the amendment was refused. In my mind there are merits in the said appeal on this ground.
13. Master had held inclusion of claim for fraud was a new claim and it was proposed to defeat limitation (see paragraph 31 of Master's decision) and held that Plaintiff had not shown that material based on fraud was a discovery after second amendment.(see paragraph 30 of Master's decision). Master had held that Plaintiff was not 'confident' of the proper cause of action and held that amendment was for 'ulterior purpose' and it was mala fide.
14. Since Plaintiff had already claimed for breach of fiduciary duty as well as for claim on equity in the second amended statement of claim as quoted above, facts based on claim for fraud was also not materially different from the pleaded facts. There are merits in grounds 1, 2 and 3 in the proposed grounds as to the manner in which Master had held that the amendment sought was mala file.
15. There was no requirement in High Court Rules of 1988 that in order to allow a subsequent amendment, a party needs to establish newly discovered material. If the Plaintiff had omitted a claim that can be included subject to High Court Rules of 1988

and also subject to Limitation Act, 1971. The prejudice to other party can be compensated through an order of costs, as the matter had not proceeded to trial.

16. The proposed appeal ground 5 deals with the strike out of the claim and application of common law defence of "laches" to strike out a claim. I have not been provided with such a case where laches were considered at interlocutory stage to strike out a claim based on equity.
17. Master had considered laches without considering evidence and circumstances. There are merits in those grounds in order to grant leave. After hearing of this summons seeking leave Defendants provided Supreme Court decision Singh v Singh [2016] FJSC 48; CBV006.2015 (decided on 23 June 2016). This was not an appeal relating to interlocutory application for strike out. There is no quaim on application of laches in common law for a claim based on equity which the Supreme Court had affirmed. It was not an application of laches to dismiss a claim based on equity at interlocutory stage without considering all the circumstances of the case. HK Court of Appeal decision submitted in written submission is also not a decision on strike out of an action, at interlocutory stage.

CONCLUSION

18. The proposes grounds of appeal are not unmeritorious and not frivolous. They need to be fully argued and some issues such as application of common law defence of laches for a claim based on equity at interlocutory stage for strike out and requirement to have fresh materials for further amendment of pleading are novel issues: Leave for appeal against Master's decision of 20.3.2019 is allowed. Considering circumstances of the case and also legal importance of the issues to be determined, I shall not award any cost.

FINAL ORDERS

- a. Leave to appeal against Master's decision delivered on 20.3.2019 is allowed.
- b. No cost is awarded for this application.
- c. No costs.

Dated at Suva this 22nd day of May, 2019.



Justice Deepthi Amaratunga
High Court, Suva