

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CIVIL JURISDICTION**

**Civil Action No: HBC 266 of 2017**

**BETWEEN:**                    **HANDY FINANCE LIMITED**

**Appellant/Plaintiff**

**AND:**                            **RAINA VAISHALI LAL PATEL & ORS.**

**Respondents/Defendants**

**Before:**                        **Hon. Acting Chief Justice Kamal Kumar**

**Counsel:**                      Ms L. Jackson for Plaintiff/Appellant

Ms R.D.S. Lal for Respondents/Defendants

**Date of Judgment:** 27 May 2020

**JUDGMENT**

**Introduction**

1. Pursuant to leave granted on 27 March 2018, Appellant (Original Plaintiff) on 3 April 2018, filed Notice of Appeal to appeal then Master's Order dated 20 November 2017, whereby Appellant's action was struck out.
2. On 29 August 2018, Appeal was adjourned to 31 August 2018, for mention.
3. On 31 August 2018, parties were directed to file Submissions and Appeal was adjourned to 11 October 2018, for hearing which date was vacated and Appeal was re-listed for hearing on 15 November 2018.

**Appeal**

4. On 15 September 2017, Appellant filed Writ of Summons and Ex-parte Application for Injunction.
5. On 15 September 2017, interim injunction was granted on following terms:-
  - “1. The Defendant, his Servants or agents are restrained from interfering or hindering in any way with the Plaintiff’s exercise of its right to take possession of the following vehicles:
    - (i) Mahindra Registration number HQ 254 engine number MME4F19841 chassis number MA1TY4MMNE6F71287.
    - (ii) Mahindra Registration number IB 505 engine number HSE4K18256 chassis number MA1TY2HSNF6073155.
  2. The Defendant by himself, his servants or agents do forthwith release to and deliver to the Plaintiff and/or its servants possessions of the vehicles identified in paragraph 1(i) and (ii).
  3. The Defendant, his servants, or agents are restrained from removing, dismantling any parts of the vehicles identified in paragraph 1(i) and 1(ii) or reducing its value in any manner or form.
  4. The Defendants are directed to pay all cost or charges associated with the conveying of the above mentioned vehicles to the Plaintiff’s premises.
  5. That the Police Officers do act and render all assistance required by the Plaintiff in the enforcement of the Orders.
  6. Matter is to be called before Master for Mention.”
6. On 25 September 2017, this matter was called before then Master who adjourned this matter to 16 November 2017, to enable Appellant to serve Injunction Order and Writ of Summons on the Defendants. On this day Thirdnamed Respondent appeared.

7. On 16 November 2017, Thirdnamed Respondent appeared for the Respondents and informed Court that they have not been properly served and due to non-appearance of the Appellant or its Counsel, the then Master struck out Appellant's claim on the ground it is an abuse of Court process.
8. This Court finds that then Master's decision to strike out the proceedings against the Respondents was plainly wrong and he acted in total disregard to Rules of Court and Appellant's interest for the following reasons:-
  - (i) On 20 November 2017 Thirdnamed Respondent informed Court that Order and Writ was not properly served;
  - (ii) There was no evidence before the then Master as to how the documents were served on the Respondents;
  - (iii) The then Master could have determined whether service was proper or not if Respondents filed Affidavit stating how documents were served on them;
  - (iv) If the then Master was of the view that the Appellant was delaying the proceedings then he should have issued show cause notice on the Appellant under Order 25 Rule 9 of High Court Rules which he failed to do;
  - (v) The then Master also failed to take into consideration that pursuant to Order 6 Rule 7 of High Court Rules 1998, Writ for purpose of service is valid for twelve months;
  - (vi) In this instance Writ was struck out due to "no proper service" without any evidence as to how it was served just after two months from date of issuance.
9. This Court also finds that there was no abuse of court process by the Appellant which attracts the principle in **Govitt & Ors. v Doctor & Ors.** [1997] 1 ALL ER 417.

### **Costs**

10. This Court takes into consideration that parties filed Submissions and made brief oral Submissions.

**Orders**

11. I make the following Orders:-

- (i) Appeal is allowed;
- (ii) Master's decision of 20 November 2017 is set aside;
- (iii) This action is re-instated;
- (iv) Each party to bear their cost of the Appeal.



Kamal Kumar

**Acting Chief Justice**

At Suva  
27 May 2020

**Jackson Bale Lawyers for Appellant/Plaintiff**

**Lal|Patel|Bale Lawyers for Respondents/Defendants**