IN THE HIGH COURT OF FIJI
AT LABASA
CIVIL JURISDICTION
CIVIL ACTION NO. HBC 40 OF 2020

BETWEEN: **CREDIT CORPORATION (FIJI) LTD**

PLAINTIFF

AND: **MOHAMMMED SHAMSHOOD aka MOHAMMED SAMSOOD**

DEFENDANT

Appearance: Plaintiff - Ms. Lagonilakeba J.
No Appearance for the Defendant

Date of Hearing : 15th October, 2020

Date of Judgment : 16th October, 2020

JUDGMENT

Introduction

[1] This is an application seeking leave to appeal against Master's interlocutory decision delivered on 22.7.2020. This action was instituted in Suva for recovery of debt pursuant to loan agreement where some securities were pledged, and Plaintiff could not recover the entire amount of debt through sale of some of the securities. Some of the securities were not sold due to alleged tampering of them, that had led to a police complaint and criminal prosecution. Plaintiff had disclosed their list of documents consisting 163 items under Part 1 of Schedule 1 in their affidavit verifying list of documents on 2.3.2017.

Defendant did not file affidavit verifying list of documents, but had filed summons on 2.6.2017 for specific discovery of 'loan file containing the dealing between the Plaintiff and Defendant and further and in alternatively that the action be transferred to Labasa. Master had made an order for specific discovery of 'contents of the lone files relating to the Defendant' and also transferred the matter to Labasa High Court. Aggrieved by the decision of Master, Plaintiff is seeking leave to appeal.

Facts

[2] Plaintiff instituted this action in the jurisdiction of Suva by way of writ of summons on 5.2.2016. According to the statement of claim annexed to the writ of summons claim is based on the loan granted to the Defendant secured by Bill of Sale on for a sum of $595,633.92.

[3] Abovementioned loan was granted on or about 21.12.2011 and several securities were obtained to secure payments.

[4] Plaintiff was served with the default notice of the said loan on or about 14.3.2012 due to non-payment and repossession notice following day and again on 6.6.2012.

[5] Defendant had failed and or refused to return some of the securities and three of the securities were repossessed and sold and one vehicle could not be sold as the chassis was tempered with.

[6] The alleged tampering was reported to the Police and subject of criminal litigation.

[7] Plaintiff had instituted this action for recovery of the outstanding loan balance.

[8] Defendant in the statement of defence had not admitted providing securities for the alleged loan, though had admitted receipt of 'certain sums of money' from Plaintiff.

[9] Plaintiff filed a reply to the defence and denied that Consumer Credit Act 19991 which was pleaded in the statement of defence did not apply Loan Account Nos. 172007 and or 312487 as they were for business purposes.

[10] Plaintiff had filed summons for directions and in terms of that their summons filed Plaintiff's affidavit verifying list of documents on 6.3.2017 upon the said being served on 2.3.2017

[11] Defendant did not file any affidavit verifying list of documents , instead summons seeking specific discovery , further and in the alternative this action be transferred to Labasa.

[12] Master in the decision delivered on 22.7.2020 stated:

> "Plaintiff within 21 days to make an affidavit pursuant to Order 24 rule 7 regarding the contents of the loan files relating to the Defendant.
>
> Inspection of all documents can be done at the Plaintiff's branch office at Labasa (if any) either wise inspection to be done at the Plaintiff's solicitors office
>
> Copies of documents so requested by the Defendant to be supplies upon payment of reasonable photocopy costs.
>
> Matter is transferred to the Labasa High Court."

[13] On 5.8.2020 Plaintiff filed summons seeking leave to appeal above interlocutory decision of Master. In the affidavit in support had annexed proposed grounds of appeal and the main contention was that Master had not specified documents or class of documents to be discovered in the decision delivered on 22.7.2020.

Analysis

[14] There is no qualm as to decision pronounced on 22.7.2020 being an interlocutory decision. In terms of Order 59 rule 11 of High Court Rules 1988 within 14 days an application for leave needs to be filed and served.

[15] There is no affidavit of service, but summons was filed on 5.8.2020 and there was no affidavit in opposition filed to state that there was late service and or any non-compliance.

[16] At the hearing no appearance was made on behalf of the Defendant.

[17] The counsel who appeared on instruction sought order in terms of the summons seeking leave in the absence of any affidavit in opposition or submission at the hearing.

[18] Plaintiff's counsel was granted opportunity to make any oral or written submission. A written submission was filed and that written submission had annexed certain documents marked Tab 1 and Tab 2 which are relating to the facts which I reject. Any relevant document to be considered needed to be filed through an affidavit and according to Plaintiff they were aware of the facts stated therein on 14.9.2020 but did not bring to the notice of the court. The facts relate to Defendant being issued with a receiving order.

[19] Plaintiff concedes that they require leave in terms of Section 9 of Bankruptcy Act 1944, but unfortunately no such application was made. So the Applicant lacks *locus standi* and the summons seeking leave to appeal required to be struck off *in limine*.

[20] Without prejudice to above, I consider the merits of this application seeking leave to appeal from Master's decision.

[21] Court of Appeal in ***Parshotam Lawyers v Dilip Kumar (trading as Bianco Textiles)*** [2019] FJCA 176; ABU13.2019 (decided on 25 .9. 2019), Calanchini P held,

> "The matters that should be considered in an application for leave to appeal the interlocutory decision delivered on 23 January 2017 are well-settled. In ***Totis Incorporated, Spor (Fiji) Limited and Richard Evanson –v- Clark and Sellers*** (unreported ABU 35 of 1996, 12 September 1996) at page 15 Tikaram P observed:
>
> *"It has long been settled law and practice that interlocutory orders and decisions will seldom be amenable to appeal. It is for this reason that leave to appeal against such orders is usually required.*
>
> ***Courts have repeatedly emphasised that appeals against interlocutory orders and decisions will only rarely succeed****.*
>
> *The Fiji Court of Appeal has consistently observed the above principle by granting* ***leave only in the most exceptional circumstances****."*
>
> *[10] In* ***Kelton Investments Ltd –v- Civil Aviation Authority of Fiji*** *[1995] FJCA 15; ABU 34 of 1995, 18 July 1995 Tikaram P had cause to visit this issue and in doing so referred to the reasoning of Murphy J in* ***Nieman –v- Electronic Industries Ltd*** *[1978] V.R. 431 who stated at page 441:*
>
> *"_ _ _ the Full Court (of the Victorian Supreme Court) held that leave should only be granted to appeal from an interlocutory judgment or order in cases where substantial injustice is done by the judgment or order itself. If the order was correct, then it follows that substantial injustice could not follow.* ***IF the order is deemed to be clearly wrong, this is not alone sufficient. It must be shown, in addition to affect a substantial injustice by its operation."***
>
> *[11] In the Kelton Investments Ruling (supra) Tikaram P also noted that:*
>
> *"If a final order or judgment is made or given and the Applicants are aggrieved they would have a right of appeal to the Court of Appeal against such order or judgment. Therefore no injustice can result from refusing leave to appeal."*
>
> *[12] More recently this Court observed in* ***Shankar –v- FNPF Investments Ltd*** *and Anr. [2017] FJCA 26; ABU 32 of 2016, 24 February 2017 at paragraph 16:*
>
> *"The principles to be applied for granting leave to appeal an interlocutory decision have been considered by the Courts on numerous occasions.* ***There is a general presumption against granting leave to***

> ***appeal an interlocutory decision*** *and that presumption is strengthened when the judgment or order does not either directly or indirectly finally determine any substantive right of either party. The interlocutory decision must not only be shown to be wrong it must also be shown that an injustice would flow if the impugned decision was allowed to stand. (**Nieman –v- Electronic Industries Ltd** [1978] V.R. 431 and **Hussein –v- National Bank of Fiji** (1995) 41 Fiji L.R. 130)."*(emphasis is mine)

[22] In the affidavit in support main contention of the Plaintiff was that Master had not specified the documents or class of documents.

[23] In the final order Master had directed Plaintiff to disclose content of the loan files relating Defendant. If one look at summons filed by Defendant, it sought dealings between Plaintiff and Defendant.

[24] Specific discovery in terms of Order 24 rule 7 (3)of the High Court Rule required the applicant under said order to file an affidavit in support to the effect a specific document or class of document to be described and that '*it relates to the one or more of the matters in question in cause or matter'*

[25] Master had in her decision at paragraph 16 observed as follows:

> 'In his affidavit in support he has failed to outline why is it necessary for the court to make order for discovery for the loan file neither has the Plaintiff outlined reasons why it is not prepared to disclose the loan file.'

[26] It is the applicant who is required to specify document or class of document and relate the relevance to the action in terms of Order 24 rule 7(3) of the High Court Rules 1988. Master had made a finding that this had not been done by the Applicant, and Defendant had also not stated the difficulty in disclosing the documents where parties had dealt.

[27] As stated in the Court of Appeal decision it is not sufficient to show that the orders made by Master was wrong, there should be evidence that there is substantial injustice to the Plaintiff from this order.

[28] Plaintiff's affidavit in support does not even contain how the order made by Master has an effect that substantially injustice them.

[29] Plaintiff's affidavit in support had not stated that the said order of Master had finally determined their rights and or had injustice cased to them by revealing documents contained in the loan file.

Conclusion

[30] Interlocutory decisions are seldom varied. Plaintiff is required to establish not only that the decision was wrong but the effect of that would cause injustice to them so that intervention of the court is needed. In this instance Plaintiff had failed to do so. Leave to appeal is refused.

Final Orders

a. Summons filed on 5.8.2020 is struck off.

b. No cost.

Deepthi Amaratunga

Judge