

IN THE HIGH COURT OF FIJI AT SUVA

CIVIL JURISDICTION

CIVIL ACTION No. HBC 114 OF 2019

BETWEEN : **VIJENDRA PRAKASH** of Lot 1 Omkar Road, Narere, Nasinu and Waidravo, Vunidawa in the Republic of Fiji, Famer.

PLAINTIFF

AND : **ANIL PRATAP** of Lot 6 Dilkusha Road, Nausori, **RAM NARAYAN** of Lot 27 Dio Street, Varandoli, Ba, **SUSHILA RAMESH** Nakavu Nadi, **PT. BASWA N. SHARMA** of Tunalia, Nadi **JAYWANT PRATAP** of Koroqaqa, Baulevu Road, Nausori and **DEO RAJ SINGH** of Tuatua Road, Labasa jointly as the Board of Trustees of Shree Sanatan Dharam Pratinidhi Sabha of Fiji a religious body incorporated under the Religious Bodies Registration Act of Fiji Chapter 68.

1st DEFENDANTS

AND : **SARJU PRASAD** of Delailabasa, Labas, **VGYAN CHAND SHARMA** (deceased), **RAMESH PRASAD SHARMA** of Caubati Road, Nasinu, **CHANDAR SHEKHAR SINGH** of House number 664 Cuvu Road, Sigatoka, **SHANTI DEVI SHARMA** of Kula Place, Lautoka, **KESHWAS PRASAD SHARMA** of 2 Janu Road, Lautoka, **ROVIL SINGH** of Singh's Budget Center, Cuvu Sigatoka, **RAVIKESH GOPAL** of Lot 1 Duna Place, Valelevu, Nasinu, **MAHENDRA PRASAD** Rice Mill Road, Wailevu Labasa, **SURESH CHAND** of Delailabas Labasa, **PT BASWA NAND SHARMA** of Tunalia Nadi, **SAMBHU LAL** Savusavu Labasa, **PRAVIN SINGH** of Korovuto Nadi and **SALENDRA SINGH** (resigned) all of National Executive Council members.

2nd DEFENDANTS

Counsel : Plaintiff: **Mr. Chand A.**

Date of Hearing : 12.08.22

Date of Judgment : 18.08.2022

JUDGMENT

INTRODUCTION

1. Plaintiff is seeking to file contempt proceedings against the Defendants for the alleged violation of an order of the court made on 7.6.2019. The order granted with the consent of the parties was that he be allowed to be nominated and stand for any position in 2019 National Executive Council Election in Shree Sanatan Dharam Pratinidhi Sabha of Fiji (The Religious Body). Plaintiff must file an *ex parte* application seeking leave of the court to issue leave to make such an application for contempt. Plaintiff had filed 'Ex parte Notice of Motion for Committal for Contempt of Court', which had not sought orders for leave of the court. So the *ex parte* motion filed on 4.8.2022 is struck off *in limine*. Without prejudice to the above, Plaintiff's alleged contempt cannot be considered as a direct breach of an orders of the court. There was no order to hold elections in year 2019 and whether failure to hold an election for National Executive Council of the Religious Body, in that year amounts to contempt is a matter that needs court's consideration judiciously. There was no order sought to compel Defendants to conduct any election in the orders made on 7.6.2019. Plaintiff obtained an injunction *ex parte* to stop the election being conducted, in 2019. If Plaintiff wanted such an order to conduct elections he could have sought. In the grounds for violation, it is alleged that constitution of the Religious Body was violated and clearly it is not a reason to issue contempt proceedings. The purpose of seeking leave of the court, is not to be a rubber stamp for any application for contempt by an applicant, but to consider judicially whether there is a *prima facie* case to issue contempt proceedings. If not, court process can be abused to issue contempt proceedings may be used for a purpose other than its intended purpose. **If the Defendants had not conducted elections in the Religious Body, in violation of the constitution of the said body that is a separate issue which can be dealt in an appropriate action.** So this *ex parte* application is stuck off due to non-compliance of HCR.

ANALYSIS

2. Plaintiff by way of *ex parte* notice of motion is seeking the court to '**found guilty and fined or committed to prison for the contempt of court in failure to comply with order granted**' on 7.6.2019. This is irregular and in the first instance such orders cannot be sought in terms of Order 52 of HCR.
3. Plaintiff filed this application on 8.8.2022, and this application was brought to my notice on 11.8.2022 and *ex parte* hearing was conducted on following day. Applicant was directed to file written submissions.
4. Applicant had not complied with the mandatory requirements contained in order 52 rule 2 (1) of HCR. It reads,

“Application for order of committal (O.52, r.2)

2.-(1) No application for an order of committal against any person may be made **unless leave to make such an application has been granted** in accordance with this rule,”

5. This is a mandatory provision and non-compliance is fatal for this application. Plaintiff must seek leave of the court and Plaintiff had not done so in the motion filed. Without such leave no application for committal can be considered by court.

6. Apart from that Plaintiff must also comply with Order 52 rule 2(2) of HCR. Which reads,

“(2) An application for such leave must be made *ex parte* to a judge in chambers, and must be supported by a statement setting out the name and description of the applicant, the name, description and address of the person sought to be committed **and the grounds on which his committal is sought**, and by an affidavit, to be filed before the application is made, verifying the facts relied on”. (emphasis added)

7. Accordingly Plaintiff must state the ‘grounds on which his or her committal is sought’. In the statement filed it is not clearly stated.

8. In the alleged statement where the grounds are stated reads

‘That despite, the Defendants having knowledge of the said Orders and for defendants to convene the election in year 2019 as the constitution of the Sabha also expressly states that election is to be convened after 3 years as last election was held in year 2016, Defendants neglected and refused to comply with the Court Order and also follow the constitution of the Sabha.’ (Emphasis added)

9. On 7.6.2019 following order was made by the consent of the parties

“That Plaintiff is allowed to be nominated and stand for any position in 2019 National Executive Council Election in Shree Dharam Pratinidi Sabha of Fiji”

10. If the constitution of the Religious Body was violated that is not a ground for contempt. So it needs to be explained what was the alleged ground for the contempt. Noncompliance of constitution of the Religious Body is not a ground for contempt. It may be a separate cause of action for a different civil action.

11. So on what ground contempt is alleged needs to be stated. The grounds for contempt cannot be confused or vaguely stated. They should be clear and precise for the court to understand the grounds before leave is granted.

12. Alleged contempt had happened in 2019, and there was a delay of more than two years and eight months for this application. Delay is not a reason to reject this application, but the absence of any explanation for the delay is a consideration that court may take in to consideration.
13. Defendants should also know clearly the alleged act of them constituted a contempt. Lack of such clear grounds are a consideration of court when deciding to issue leave.
14. Halsbury's Laws of England (Vol 24) Contempt of Court ¹

'The power to order committal for civil contempt is a power to be exercised with very great care. The court will not order committal where the contempt is of a minor or technical nature' (foot notes deleted)
15. I do not wish to state more on this as this application is stuck off due to noncompliance of Order 52 rule 2(1) of HCR and Order 52 rule 2(2) of HCR as stated above. These are matters an applicant needs to consider before seeking leave of court.

CONCLUSION

16. Plaintiff must seek leave of the court in terms of Order 52 rule (2) (1) of HCR with sufficient particularity as laid down in Order 52 rule 2(2) of HCR. The grounds for alleged contempt needs to be stated clearly. Violation of the constitution of the Religious Body is not a ground for contempt. So the ground for contempt cannot couple with any alleged ground. It must be stated clearly without confusion. Any other cause of action that Plaintiff may have against Defendants cannot be a ground for contempt. *Ex parte* Notice of Motion for Committal filed on 8.8.2020 is struck off *in limine*.

FINAL ORDERS

- a. Ex parte Notice of Motion for Committal for Contempt of Court filed on 8.8.2022 is struck off
- b. No order as to cost.

Dated at Suva this 18th day of August, 2022.



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Justice Deepthi Amaratunga
High Court, Suva

¹ Procedure and Power of Court –Power of Court-(iv) Power of Court to Punish Offender (b) Civil Contempt