

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

CIVIL ACTION NO.: HBC 90 of 2017

BETWEEN : FINANCE PACIFIC CORPORATION LIMITED

PLAINTIFF

AND : BRIGHT STAR INVESTMENT LIMITED

DEFENDANT

APPEARANCES/REPRESENTATION

PLAINTIFF : Mr. Gosai [Prena Preetika Lawyers]
DEFENDANT : Mr. Haniff [Haniff Tuitoga]
RULING BY : Acting Master Ms Vandhana Lal
DELIVERED ON : 29 July 2022

INTERLOCUTORY RULING

Application

1. On 11th January 2019, the Plaintiff's solicitors filed an application seeking orders as follows:

*“**For an order** that the above matter was struck out on 02nd December 2018 due to non-payment of costs ordered on 30th July 2018 sealed on 14th August 2018 be re-instated.”*

The application is made pursuant to Order 2 Rule 2 and Order 13 Rule 10 of the High Court Rules.

Chronology of the File

2. The Plaintiff had made an application for striking out of the defence filed by the Defendant and after hearing the parties, on or about 30th July 2018 my predecessor had dismissed the Plaintiff's application for striking out of defence and ordered the Plaintiff to pay \$650 as cost within 14 days.
3. On 28th August 2018, the Plaintiff was directed to file/serve a reply to the defence and a summon for direction.
4. Later on, 18th October 2018 the order of 28th August 2018 was extended and the Plaintiff was reminded to pay cost in 07 days.
5. The Plaintiff filed a reply to defence, but no summon for direction was filed neither was the cost paid.
6. On 13th November 2018 orders were for Plaintiff to pay the \$650 cost in 14 days and an order was made that unless cost was paid matter will stand struck out.
7. On 03rd December 2018, the court was informed that the cost was not paid and hence the matter stood struck out.

Plaintiff's Contention

8. In the affidavit in support sworn by Arveen Anand on 11th January 2019, the deponent states that the non-payment of cost to the Defendant was not a considerable basis for the Plaintiff's claim to be struck out as there were other remedies that the Defendant could have employed to ensure cost was paid to the Defendants.

Ample notice of non-payment of cost was not given.

The Plaintiff has a valid claim which ought to be heard on merits. The striking out of the matter has not caused prejudice to the Defendant.

According to the Plaintiff, the pleadings are closed and there was no delay by Plaintiff in filing their pleadings.

The application for reinstatement could not be filed earlier as the Plaintiff's solicitor's firm was closed for business for 2 weeks due to judicial vacation.

Defendant's Argument

9. The Defendant's counsel submitted as follows:

No consent explanation has been provided by the Plaintiff to explain non-compliance of court orders. They were given 4 months to pay cost.

The application for reinstatement was made only after a month of the matter being struck off.

Determination

10. The matter stood struck out as at 27th November 2018 by which date the cost was to be paid.
11. The Plaintiff had time since 27th November 2018 to make application for extension of time of the unless orders and reinstatement of the matter.
12. The excuse of judicial vacation is not acceptable as judicial vacation commenced on 17 December 2018 (refer to Fiji Gazette Volume 19 No. 62).
13. The Plaintiff's solicitors on 03rd December 2018 knew the matter stood struck out and there was ample time prior to the legal vacation coming into effect to file the necessary application.
14. The Plaintiff also asserts that ample notice was not given for non-payment of cost.

15. The order for cost was made on 30th July 2018. Despite notice being served for ruling the Plaintiff's solicitors failed to appear in court. On 08th August 2018 Plaintiff's solicitors again failed to appear in court.

Via a letter of 15th August 2018, the Plaintiff's solicitors were reminded to attend court on 28th August 2018.

16. On 18th October 2018 Mr Gosai appeared for the Plaintiff and was reminded to pay the cost and the matter was adjourned to 13th November 2018.
17. On 13th November 2018 there was no appearance made by the Plaintiff's solicitors.
18. I find that sufficient time was given for payment of cost.
19. It is the Plaintiff's solicitors who failed to attend court when required.
20. The reply to defence and defence to counterclaim was filed after reminder by the court on 18th October 2018.
21. Direction was also for filing of summon for direction. This was not complied with as well.
22. Records shows that it is due to the laxity of the Plaintiff and/or it's solicitors that matter got struck out.
23. Hence the excuse of no ample notice being given for payment of cost is unacceptable.
24. The order for payment of cost still remains and the cost has not been paid till todote.
25. No cogent reason has been provided for non-compliance of the order.

26. Hence, I refuse to exercise my discretion in reinstating the matter and extending the orders for payment of cost and filing of summon for direction.
27. Further I note that the Plaintiff has filed a notice of motion and not a summon pursuant to Order 32.
28. Order 32 of the Rule requires that applications in chambers should be by way of a summons if not made ex-parte.
29. Furthermore, the Plaintiff has invoked Order 2 Rule 2 and Order 13 Rule 10 of the High Court rules, neither of the orders applies to this application.
30. The matter was struck out for non-compliance of unless orders.
31. There was no irregularity in the proceedings neither was there judgment entered pursuant to Order 13 of the rules.

Orders

32. The Plaintiff's motion dated 11th January 2019 is dismissed.
33. The Plaintiff is ordered to pay cost of this application which is summarily assessed at \$850 and is to be paid by 12 August 2022, 4pm.




.....
Vandhana Lal [Ms]
Acting Master
At Suva.

29 July 2022

TO:

1. Suva High Court Civil Action No. HBC 90 of 2017;
2. Prena Preetika Lawyers, Solicitors for the Plaintiff;
3. Haniff Tuitoga, Solicitors for the Defendant.