

IN THE HIGH COURT OF FIJI AT LAUTOKA
CIVIL JURISDICTION

Civil Action No. HBC 328 of 2022

BETWEEN

NARAIN HOLDINGS PTE LIMITED a limited liability company having
its registered office at 75 Suva Street, Suva, Fiji.

PLAINTIFF

AND

BANK OF BARODA a Government of India undertaking incorporated in
India and also carrying on business in Fiji as a foreign company
having its principal place of business at Bank of Baroda Building,
86-88 Marks Street, Suva, Fiji.

DEFENDANT

Counsel : Mr. Prasad N. for the Plaintiff
Ms. Vokanavanua N. for the Defendant

Date of Hearing : 06th October 2023

Date of Judgment : 27th October 2023

JUDGMENT

[1] The plaintiff instituted these proceedings by filing a writ of summons seeking an order for specific performance of the agreement between the plaintiff and the defendant and also certain other alternative remedies. The reliefs sought in the statement of claim are as follows:

- a) Specific performance;
- b) Damages;
- c) In the alternative, judgment in the sum of \$140,000.00;
- d) Pre-judgment and post-judgment interest;
- e) Costs of this action; and
- f) Such further and other relief as this Honourable Court may deem just.

[2] The defendant did not file the acknowledgement of service and the intention to defend the action and the plaintiff then filed summons pursuant to Order 13 rule 3 of the High Court Rules 1988 for judgment. In the said summons the plaintiff sought the following orders:

- (a) The sum of \$140,000.00 being the value of the goods specified in the statement of claim dated 29 November 2022 and filed on 1 December 2022 being the following goods:
 - (i) Spray Booth model No. BDT 7200, Block Making Machine with compulsive mixer, Portable Band Saw Model No. MJ 1300, Double Saw Balde Angle Model No. MJ100, Hammer Crusher Model No. PC 400x300 & 80Kva Diesel Generator;
 - (ii) 150Kva Cummins Engine Diesel Generator; and
 - (iii) Stone Crusher Goodwin 300 ton with conveyor vibrating screen.

- (b) Pre-judgement interest pursuant to section 3 of the Law Reforms (Miscellaneous Provisions) (Death and Interest) Act 1935;
- (c) Alternatively, interest thereon to be assessed by this Honourable Court;
- (d) Costs of the action to be summarily assessed by this Honourable Court; and
- (e) Such further and other relief as this Honourable Court may deem just.

[3] The defendant did not oppose this summons and no affidavit in opposition was filed.

[4] The plaintiff entered into a sale and purchase agreement with the defendant to purchase the machinery referred to above with two pieces of land and also some vehicles.

[5] In clause 4 of the said agreement the defendant had agreed as follows:

The said properties are sold free of all mortgages, charges, other encumbrances whatsoever except those assessments registered against the title/Lease.

[6] However, the plaintiff alleges that the chattels were stored on the neighbour's yard which fact was not disclosed to the plaintiff by the defendant. The neighbor had demanded \$58,959.00 as payment for rental in arrears for storing chattels on his property.

[7] Before completing the settlement of the mortgagee sale, a representative of the defendant Ms. Kumar sent an email to the plaintiff stating that;

- (i) The purchasers will be entitled to take possession of the chattels listed in page 1[3] and other chattels listed in page 2[6,7,9] as per the Sale and Purchase Agreement after the settlement date on as is where is basis.

(ii) Should the possession be refused / objected by any third party then the mortgagee will arrange at their costs the possession of such chattels.

[8] However, the defendant has failed to take necessary steps to hand over possession of the chattels to the plaintiff and the defendant has not offered any explanation for their failure.

[9] Plaintiff has attached some photographs showing the condition of the chattels. It is absolutely clear from the photographs that the chattels are deteriorated and are in a very poor condition.

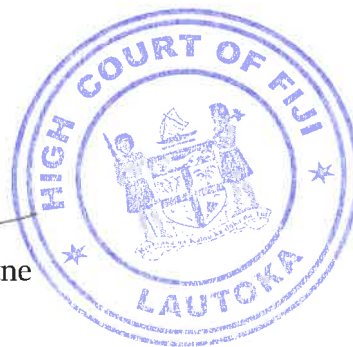
[10] None of the allegations leveled against the defendant by the plaintiff has been denied or challenged by the defendant. Their silence through the entire proceeding shows that there is a tacit admission of the plaintiff's allegations and therefore, the plaintiff is entitled to a judgment as prayed for in the summons.

ORDERS

1. The defendant is ordered to pay the plaintiff \$140,000.00 with interest at the rate of 4% per annum from the date of the institution of this action until the entire sum is paid in full.
2. The defendant is also ordered to pay the plaintiff \$5,000.00 as costs of this action.


Lyone Seneviratne

JUDGE



27th October 2023