

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL/COMPANIES JURISDICTION

Civil Action No. HPP 48 of 2023

BETWEEN: **SHYAL SHIMRAN NAIR** of Lot 26, Nacara Street, Vatuwaqa, Investment, Facilitation Advisor and **SAHIL NAIR** of Lot 44 Vatua Road, Narere, Nasinu. Students respectively.

PLAINTIFFS

AND: **SAWASTHIKA SHIRYN MAHARAJ** of Lot 18, Salato Circles, Newtown, Nasinu, School Teacher.

DEFENDANT

Before: Mr. Justice Deepthi Amaratunga

Counsel: Mr. Ram B. for the Plaintiffs
Mr. Kumar Y. for the Defendant

Dates of Hearing: 26.11.2024

Date of Judgment: 27.11.2024

JUDGMENT

[1] Plaintiff and Defendants entered in to terms of settlement on 6.3.2024 and in terms of the said terms of settlement there are time lines set and completion date of sale of a land was 31.8.2024. Same order entered by court, included a term that allowed parties be at 'liberty to make applications' meaning that if additional orders required such application can be made to the same court including and not limited to any extension of time. Defendant had not sought such extension and disregarded the time line for completion of sale.

[2] Defendant' s failure to comply with ordered of court in timely manner had frustrated Defendant and on3.10.2024 an application for contempt was made by Defendant, after obtaining leave of the court. Parties do not resort to an

action for contempt, due to several pragmatic reasons, and one major factor is the cost.

[3] Despite such action of Plaintiff, Defendant had disregarded the orders of the court and had used the buyer as scapegoat for her failure to complete the transfer within the time agreed or seek an extension. This shows mental element of the actions of Defendant, who had taken orders of the court without gravity. There is no reason for Defendant to act in such manner and blame third party, for her inaction to seek extension of time if there were reasonable grounds for such extension.

[4] Defendant filed an affidavit in opposition and admitted that settlement of sale of the land could not be completed even at 22.11.2024. The reason given for delay is found in paragraph 9 of the said affidavit in opposition which stated;

- i. That on the 18th April 2024 I was able to engage the Real Estate, R Hooker Real Estate who only agreed to terms and condition of the sale as per Court Order.
- ii. That after their engagement, R Hooker Real Estate managed to secure a buyer. (annexed marked A is offer to buy and B is buyers detail)
- iii. That on the 26th April 2024 draft sales and purchase agreement was emailed to Ms. Noleen Karan of Pacifica Chambers who acted for the purchasers.
- iv. That on the 30th April 2024, both parties signed their Sales and Purchase Agreement. (Annexed marked B is a copy of sales and purchase agreement)
- v. That upon execution of Sales and Purchase Agreement, I was waiting for transfer and consent from the buyers and their solicitors.
- vi. That the delay in settling the claim of the Plaintiff arose when I did not receive the transfer and consent documents from the Purchasers Solicitors. In a timely manner. My Solicitors has to push the Solicitors of the Purchaser to expedite the process but due to reasons best known to them, the issue got unnecessarily dragged with no fault of mine.
- vii. That due to the delay on the part of the Solicitors for the Purchasers, my Solicitors drafted the transfer and consent

documents to expedite the process and sent it to Buyers Solicitors. (Annexed marked C is a copy of email)

- viii. That when there were delays on the part of the buyer and her Solicitors than prepared the transfer and consent and delivered to Ms. Karan of Pacifica Chambers in Nausori in person asking that the matter proceed with due diligence to comply with the timeline set by the Court.
- ix. That 30th July 2024 all documents were sent to purchasers' solicitors to lodge consent at Lands Department.
- x. That on the 12th August 2024, Real Estate emailed to Buyers Solicitors regarding consent whereby there were no reply from the buyer. Annexed marked D is a copy of email.
- xi. That on the 3rd October 2024 we again emailed email Ms. Karan regarding consent no update were given. Annexed marked E is a copy of email.
- xii. Finally on the 12th October 2024, we had received stamped transfer and consent document from Purchasers Solicitors Ms. Noleen Karan. Annexed marked F is a copy of transfer.
- xiii. That on the 14th of October 2024, non-individual registration was done and waited for approval.
- xiv. That on the 16th October 2024 non-individual registration was approved, and thereafter Capital Gain Tax referred as CGT was lodged reference No. 23000638843.
- xv. That on the 24th October 2024, CGT application as lodged was returned as FRCS required extra documents like all Previous transfer and undertaking. This was then submitted. Annexed marked G is a copy of email.
- xvi. That on the 26th October 2024, CGT was again returned as they required Last dealing from Titles Office which caused further delay. My Solicitors diligently attended to the same and submitted all required documents. Annexed marked H is a copy of email).
- xvii. That on the 04th November 2024, Search was given for last dealing.

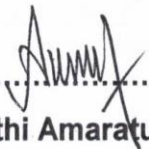
- xviii. That on the 08th November 2024, Search was given again as it is not ready. Annexed marked I is a copy of email.
- xix. That on the 13th November 2024 and 14th November 2024, the search were given again but Titles office was not able to issue the search. Annexed marked J is a copy of email.
- xx. On 15th November 2024 the last dealing was issued by Titles office. Annexed marked K is a copy of email.
- xxi. That on the 20th November 2024 FRCS stated that Estate income tax was not lodged for several years. Annexed marked L is a copy email.
- xxii. That as a result, Capital Gain Tax is still with FRSC and Defendant has also made an application for waiver of CGT. Annexed marked M is a copy of email.

- [5] There was no affidavit in reply filed by Plaintiff. Neither sought oral evidence or cross examined deponents of the affidavits.
- [6] Defendant had admitted that she is yet to transfer the property and blames the buyer. In her affidavit Plaintiff had not shown that she had taken inquired or even concerned about the time line set by consent orders of the court. This is willful disregard of court order.
- [7] The sale and purchase was entered on 30.4.2024 and validity is 90 days.
- [8] Defendant is unable to state why she could not seek extension of time in terms of the terms of settlement entered by court which allowed parties to make such application.
- [9] Defendant had not shown evidence that she took reasonable steps to prevent violation of court orders. No evidence of action taken from 30.4.2024 to 30.7.2024. Which is the validity of 90 day period of sale and purchase agreement for the sale of the property in terms of the court orders.
- [10] So on the admitted facts Defendant had intentionally violated the order to complete the sale by 31.8.2024. The essential requirements of the contempt is proved beyond reasonable doubt on the admitted facts, and affidavit of Defendant.
- [11] Defendant is granted time for mitigation .

FINAL ORDERS:

- a. Defendant had willfully violated court order.
- b. Defendant granted time for mitigation before sentencing.
- c. Cost of this application is summarily assessed \$ 1,000 to be paid by Defendant to Plaintiff on or before 16.12.2024.




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Deepthi Amaratunga
Judge

At Suva this 27th November, 2024.

Solicitors

Benjamin Ram Lawyers

Jiten Reddy Lawyers