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IN THE FIJI COURT OF APPEAL  
(AT SUVA)

CIVIL JURISDICTION

CIVIL APPEAL NO.38 OF 1991  
(HIGH COURT ACTION NO.235 OF 1986)

BETWEEN:

MOHAMMED HASIM s/o Mohammed  
Ismail

Appellant

and

NASEERAN NABI d/o Gulam Nabi  
a.k.a. Roshni

Respondent

Mr. S. Koya                      for the Appellant  
Mr. V. Parmanandam          for the Respondent

Date of Hearing :      13th November, 1992  
Date of Delivery of Judgment : 18th November, 1992

JUDGMENT OF THE COURT

This is an appeal from the refusal by Jayartne J. to set aside a default judgment. For the sake of convenience we refer to the parties as the Plaintiff (the Respondent on the appeal) and the Defendant (the Appellant).

The action arose out of the sale of a vehicle by the Defendant to the Plaintiff. Payment of the purchase price was to be made over a period and at a time when there remained a sum of about \$1,500 owing by the Plaintiff the Defendant re-posessed the vehicle.

On 24 March 1986 the Plaintiff issued a Writ and Statement of Claim in which she sought an order for the delivery to her of the vehicle, damages and other relief. Because of the course which the matter then took it is convenient to set out what occurred in chronology:

- 8.4.86 Summons filed by Plaintiff for an order for specific performance (presumably under O.86 r.1)
- 8.4.86 Plaintiffs affidavit in support of summons (although made before the Writ and dated 21 March 1986) filed.
- 22.4.86 Appearance entered on behalf of Defendant by his Solicitor Mangal Singh and citing as his city agents Tikaram and Associates.
- 30.4.86 Affidavit of service on 17.4.86 of Summons and affidavit - personally served on Defendant.
- 8.5.86 Defendant's affidavit made in reply to Statement of Claim.
- 4.6.86 Two affidavits on behalf of Plaintiff filed.
- 11.2.88 Amended Statement of Claim filed.
- 12.2.88 Amended Statement of Claim served on Parshotam & Co. and sent by them to Mangal Singh.

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- 3.3.88 Affidavit of service on 11.2.86 of Amended Statement of Claim on Parshotam & Co. as city agents for Mangal Singh.
- 3.3.88 Summons for Judgment by Default filed.
- 3.3.88 Affidavit as to no defence having been filed.
- 28.3.88 Summons and affidavit sent by Parshotam & Co. to Mangal Singh.
- 13.4.88 Affidavit of service on Parshotam and Co. as city agents for Mangal Singh of Summons for Default Judgment filed.
- 14.4.88 Certificate of no defence filed.
- 14.4.88 Summons heard and Judgment by Default for Plaintiff entered.
- 19.4.88 Judgment sealed.
- 20.5.88 Notice of motion by Defendant to set aside Default Judgment and affidavit of Defendant in support filed.
- 21.5.88 Possession of vehicle given to Plaintiff.
- 29.6.88 Affidavit filed by Mr. Parshotam acknowledging service on 11.2.88 on his firm as city agents for Mangal Singh of Amended Statement of Claim and asserting that the same was forwarded to Mangal Singh on 11 or 12 February 1988, of service on his firm on 28 March 1988 of the Summons and Affidavit of 3 March 1988 and asserting that the same were forwarded to Mangal Singh on 28 March.

- 16.7.88 Motion to set aside judgment heard.  
31.8.88 Judgment delivered refusing to set aside.

While it may be that the Defendant's entry of appearance showed his solicitor's city agents as Tikaram & Associates and subsequent documents were not served on that firm, this would seem to have little significance. It is undoubted that sometime late in 1987 Parshotam & Co. were duly instructed to act as the Suva city agents for Mangal Singh and the Summons for Default Judgment was served on Parshotam and Co. and that it was sent by that firm to the Defendant's solicitors.

In support of the motion to set aside the Defendant deposed that his solicitors were H.M. Patel and Co. and that the Summons had not been served on that firm or on the Defendant personally. H.M. Patel and Co. were not, however, the solicitors on the record. Whatever the reason may have been for Mangal Singh not having taken any step in response to the Summons (and as to this we can only speculate) there can be no doubt that the Plaintiff had given effective service.

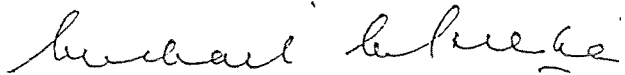
The refusal by the Judge to set the Default Judgment aside was accordingly correct and the appeal must be dismissed.

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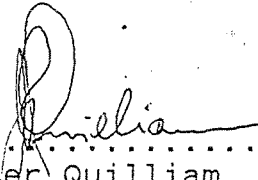
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We note that the Judgment directed the Chief Registrar to assess and determine the damages payable to the Plaintiff and we assume that this will now proceed. Any disputed questions of fact as to the amount of damages to which Plaintiff may be entitled will be decided by him.

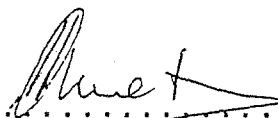
The appeal is dismissed with costs.



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Mr. Justice Michael M. Helsham  
President, Fiji Court of Appeal



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Sir Peter Quilliam  
Judge of Appeal



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Mr. Justice Arnold Amet  
Judge of Appeal