

IN THE COURT OF APPEAL, FIJI
ON APPEAL FROM THE HIGH COURT OF FIJI

CIVIL APPEAL ABU 78 of 2016
(High Court HBC 217 of 2014)

BETWEEN : MOTI LAL

Appellant

AND : CHANDAR BHAN

Respondent

Coram : Calanchini P

Counsel : Mr S Singh for the Appellant
Ms R Naidu for the Respondent

Date of Hearing : 20 and 21 July 2016

Date of Ruling : 22 July 2016

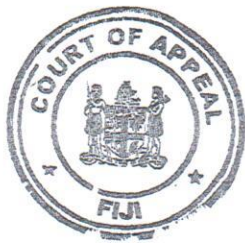
RULING

[1] This is an application for a stay pending appeal. The application was initially made by summons dated 18 July 2016 and supported by an affidavit sworn on 18 July 2016 by

Rajinesh Narayan. The application was listed for mention on 21 July 2016. Due to the urgency of the application the Appellant then filed an ex parte summons on 19 July 2016 supported by an affidavit sworn on 19 July 2016 by Rajinesh Narayan. The ex parte application was listed for hearing on 20 July 2016. On that day the Court granted a stay of execution till 21 July 2016 and ordered the Appellant to file and serve a supplementary affidavit by 4.00pm on 20 July 2016. Time was abridged to allow the papers to be served on the Respondent for the mention on 21 July 2016.

- [2] When the parties appeared on 21 July 2016 leave was given to the Respondent to file and serve in court two affidavits sworn on 21 July 2016 by Chandar Bhan. The Respondent opposed the application.
- [3] The Appellant's application for a stay pending appeal is in relation to the notice of appeal filed on 18 July 2016. In that notice the Appellant is seeking an order that the orders made by the learned High Court Judge on 18 July 2016 be set aside. The effect of that order was that the High Court refused to grant to the Appellant, as the Defendant in the High Court, a temporary stay of execution pending the hearing of the substantive stay application that was fixed for hearing on 21 July 2016 at 2.15pm.
- [4] The only appeal before this Court was, therefore, the refusal by the High Court to grant an interim stay for the period of 18 July to 21 July 2016. The application for a stay pending appeal that is currently before the Court in reality replicated the order sought in the notice of appeal.
- [5] Since the substantive application for a stay of execution is listed before the High Court today it would be inappropriate for this Court to proceed to hear any application or decide any appeal that had the effect of usurping the functions of the High Court.
- [6] As a result and so as not to interfere with the exercise of the High Court's jurisdiction the Appellant is granted a stay of execution until the completion of the High Court proceedings that are listed for hearing today at 2.15pm.

- [7] This order otherwise disposes of both the application for a stay and the notice of appeal.
There will be no order as to costs.



W. Calanchini

Hon. Mr Justice W. D. Calanchini
PRESIDENT, COURT OF APPEAL