

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

**Civil Action No. HBC 230 of 2010**

**BETWEEN** : **AMRIT PRAKASH** of Flagstaff Suva, Fiji, School Teacher.

**PLAINTIFF**

**AND** : **DOMINION INSURANCE COMPANY LIMITED** a limited Liability company having its registered office at 231 Waimanu Road, Suva, Fiji.

**DEFENDANT**

**BEFORE** : **Acting Master Thushara Rajasinghe**

**COUNSEL** : **Nacolawa & Daveta Lawyers** for the Plaintiff  
**Mr. O' Driscoll G.** for the Defendant

**Date of Hearing** : **18<sup>th</sup> November, 2013**

**Date of Ruling** : **05<sup>th</sup> December, 2013**

**RULING**

**A. INTRODUCTION**

1. The issue to be determined in this Order is whether the Plaintiff is allowed to seek an extension of time to file his show cause pursuant to Order 25 rule 9 of the High Court rules without giving his notice of intention to proceed under Order 3 rule 5.

**B. BACKGROUND,**

2. The Defendant filed Summons dated 3<sup>rd</sup> of June 2013 seeking an order to strike out this action of the Plaintiff for want of prosecution pursuant to o 25 r 9. The plaintiff upon being served with the said Summons appeared in court and sought 14 days time to file his

show cause. However, instead of that, the Plaintiff filed Summons dated 6<sup>th</sup> of November 2013 seeking various orders including an order for leave to file affidavit in response to the Summons for strike out.

3. The learned counsel for the Plaintiff informed the court that he is only seeking an extension of time to file his show cause and do not wish to proceed with other orders sought in his Summons. In the meantime, the learned counsel for the Defendant objected for this Summons and stated that the Plaintiff is first required to file Notice of Intention to Proceed under O 3 r 5 before he seek extension of time for filing his show cause. In light of this objection, both counsel agreed to file their respective written submissions on this objection and determine it prior to proceed with the Defendant's Summons for strike out.
4. Order 3 rule 5 states that

*“Where six months or more has elapsed since the last proceeding in a cause or matter, a party intending to proceed must give not less than one month's notice of that intention to every other party”.*

5. In view of o 3 r 5, no party is allowed to proceed in a cause after six months of last proceeding without giving notice under this rule. However, o 25 r 9 could not be considered as the proceeding of a cause. The purpose of Order 25 rule 9 is to prevent inexcusable and inordinate delay of the proceedings. Accordingly, the procedural steps which are required to take under o 25 r 9 do not fall within the meaning of “Proceeding in a cause” under order 3 rule 5.
6. The Fiji Court of Appeal in Avinash Singh v Pakesh Singh and others (ABU0044 of 2006s) held that

*“for the avoidance of doubt, the fact that there was a notice of intention to proceed under Order 3 rule 5 of the Rules of the High Court does not prevent an application to dismiss a case of want of prosecution. It buys not immunity from the exercise of the Court's inherent powers”.*

7. In view of the reasons set out above, I find that to provide show cause under O 25 r 9 does not fall with the meaning of “proceeding in the cause” under O 3 r 5. In that event, I hold that the party who is required to provide show cause is allowed to seek extension of time pursuant to o 3 r 4 without giving notice under o 3 r 5.
8. No order for Cost,

Dated at **Suva** this **5<sup>th</sup>** day of **December, 2013**.

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**R.D.R. Thushara Rajasinghe**  
**Acting Master of High Court, Suva**