

IN THE HIGH COURT OF FIJI

APPELLATE JURISDICTION

Civil Appeal No. HBA 34 of 2011

BETWEEN : **SHIU KARAN NARAYAN** of Covec Technology, Tamavua,
Businesswoman.

APPELLANT

AND : **MUKESH KUMAR and ROSHNI DEVI KUMAR** of Nakasi,
Nausori, Contractor and Domestic Duties.

RESPONDENT

BEFORE : **Justice Deepthi Amaratunga**
COUNSEL : **Appellant in Person**
Mr. Kumar S. for the Respondent
Date of Hearing : **14 August 2014**
Date of Decision : **26 September 2014**

DECISION

INTRODUCTION

1. This is the Defendant's Motion for stay of the judgment delivered on 22nd October, 2010 by Resident Magistrate refusing to extend the time period for Notice of Intention to Appeal. The decision of the learned Resident Magistrate was upheld in this Court and also awarded costs on appeal to this Court. There was no appeal to Court of Appeal. The present Motion seeks to stay the said Magistrate's judgment.

ANALYSIS

2. The learned Resident Magistrate had refused to extend the time period for Notice of Intention to Appeal, by the Defendant and against this decision an appeal was made to the High Court and this appeal was heard on 18th March, 2014 and on 20th March, 2014 the appeal was dismissed and cost of \$1,500 was ordered against the Defendant.
3. Nearly after three months on 4th June, 2014 a Motion was filed seeking;

'.. for an Order that the Judgment dated 22nd October,2010 sealed in the Magistrates(sic) Court on 29th November,2010 against the Defendant be stayed pending determination by the Fiji Court of Appeal of the appeal

lodged by the Defendant and based upon the grounds contained in the Affidavit of ...'

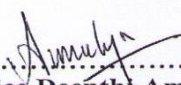
4. The purported motion was made in terms of the Order 47 rule 10 and inherent jurisdiction of the court. I say it purported as there is no Order 47 rule 10 in High Court Rules of 1988.
5. Though the said motion stated a pending determination by the Fiji Court of Appeal there was no evidence of such application before me. The Defendant is seeking stay of the Magistrate's Court decision dated 22nd October, 2010 sealed on 29th October, 2010. The learned Magistrate has refused to grant extension of filing a Notice of Appeal. Against this an appeal was made and the said appeal was also dismissed by this court on 20th March, 2014 and now the Defendant is allegedly seeking leave of the Court of Appeal as the time stipulated for lodging leave for appeal to High Court had expired.
6. The Plaintiff obtained judgment in 2010, but was unable to enjoy the fruits of the said judgment mainly due to the efforts of the Defendant. First the Defendant failed to make a Notice of Appeal within the stipulated time period and when the learned Magistrate refused to extend the time period again an appeal was made against the refusal to grant extension by the learned Magistrate. The said Appeal was dismissed with cost, on 20th March, 2014 and again waited for nearly 3 months before making this application for stay of the judgment of the learned Magistrate. The Defendant is utilizing the due process to delay the payment ordered by the learned Magistrate. This application for stay is an abuse of process and needs to be struck off with cost summarily assessed at \$750.

FINAL ORDERS

- a. The motion dated 4th June, 2014 is struck off.
- b. The cost of this application is summarily assessed at \$750.

Dated at **Suva** this **26th** day of **September, 2014**.




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Justice **Deepthi Amaratunga**
High Court, Suva