

IN THE HIGH COURT OF FIJI
AT LABASA
CIVIL JURISDICTION
CIVIL APPEAL NO. HBA 03 OF 2017

BETWEEN:

VIMALS GARAGE

APPELLANT

AND:

ISIKELI RAVATABU

RESPONDENT

Appearance: Appellant - Mr. A Sen
Respondent - No Appearance

Date of Hearing : 14th March, 2018

Date of Judgment : 15th March, 2018

JUDGMENT

Introduction

- [1] This is an appeal from the Ruling of the Resident Magistrate (RM) delivered on 25.08.2017. The RM had dismissed the appeal against the decision of Small Claims Tribunal (SCT). The Appellant-Respondent (the Respondent) appealed to the Magistrate's Court against the decision of SCT where 'Vimal's Garage' was the party against whom the claim was made in the SCT. There is a Statement of Defence filed in SCT and had admitted that vehicle Registration No EW 418 was serviced in 'my garage on 7th April, 2012'. Vimal Prakash had appeared in the court below as its owner and had also appealed against the decision of SCT by filing a notice of appeal on 21.5.2013 against the decision of the SCT made on 13.5.2013.

Analysis

- [2] The Ruling of the RM dismissing the appeal against the decision of SCT was delivered on 25.8.2017.
- [3] The mode of an Appeal to the High Court against the decision of a Magistrate's Court is contained in Order XXXVII of the Magistrates' Court Rules and states as follows;

'ORDER XXXVII. - CIVIL APPEALS

I. - Notice of Intention to Appeal

Notice of intention to appeal

1. Every appellant shall within seven days after the day on which the decision appealed against was given, give to the respondent and to the court by which such decision was given (hereinafter in this Order called "the court below") notice in writing of his intention to appeal:

Provided that such notice may be given verbally to the court in the presence of the opposite party immediately after judgment is pronounced.'

- [4] The copy record of the court below indicate that none of the parties appeared on that date , hence there was no oral notice of intention possible as provided in terms of the proviso to the above provision of law.
- [5] The Notice of Intension to Appeal in this matter was filed on 19th September, 2017, without obtaining extension of time from the court below or by this court.
- [6] So there was no Notice of Intension to Appeal filed within the time stipulated in terms of Order XXXVII of the Magistrates' Court Rules.
- [7] So the appeal should be dismissed in limine.
- [8] Without prejudice to the above I will briefly consider the merits of this appeal.
- [9] The Grounds of Appeal contained in the copy record of the court below are as follows:

- '1. That the learned Magistrate erred in law and in fact in failing to dismiss the Respondent's claim when he has not correctly identified the Appellant.
2. That the learned Magistrate erred in law and in fact to dismiss the Respondent's claim when there was a clear evidence of biasness and further the Referee exceeding the jurisdiction.
3. That the decision of the learned Magistrate lacks merit and cannot be supported in consideration with the evidence in the Tribunal.'

[10] At the hearing the counsel combined all the said grounds to one issue and that was the wrongful naming of the Respondent in the SCT as Vimal Garage.

[11] The counsel stated that he Vimal Garage is not a legal entity hence cannot be sued. He also said Vimal Prakash who had appeared in SCT cannot be held liable for the unincorporated entity.

[12] Not only Vimal Prakash had appeared and given evidence in the SCT , but in the statement that was filed on behalf of the Respondent had admitted that 'Vehicle Registration no EW 418 was serviced by my garage on 7th April,2012'.

[13] In the Appeal Report of the SCT (page 51 of the Copy Record of SCT) had identified Vimal Prakash as the owner of the Vimal's Garage. He had not only appeared and taken steps on behalf of the Respondent as its owner and he is estopped from denying that fact in appeal.

[14] Vimal Prakash had not raised this issue in the SCT and had even sought to file written submissions on behalf of Respondent, but there was no submissions filed, and had even made certain concessions on behalf of the Respondent (Vimal's Garage).

[15] The conclusions contained in the SCT are as follows

'The Respondent opted for a replacement engine from Osaka Auto Spares as it was more affordable than the total Claim. Both parties agreed. The Claimant agreed on the condition that the replacement engine be tested and certified by qualified person.'

[16] The SCT is a special tribunal and it is not bound by all the legal technicalities and this is stated in Section 15 (4) of the which reads as follows:

'(4) The Tribunal shall determine the dispute according to the substantial merits and justice of the case, and in doing so shall have regard to the law but shall not be bound to give effect to strict legal rights or obligations or to actual forms or technicalities.'

- [17] In terms of the above provision the SCT is has wider authority without being unnecessarily fettered with technicalities forms and even legal rights. This is a very good example of such an instance. This power is granted to SCT due to its monitory limitation on claims added and sometimes it may be not be pragmatic considering the value of the claims and also the fact that parties are not represented by lawyers.
- [18] In the light of the above provision and the facts before SCT where Vimal Prakash had appeared and made some admissions and concessions on behalf of the Respondent as its owner the legal objection to the naming of the Respondent in its unincorporated name cannot sustain.
- [19] Section 15(4) of the Small Claims Tribunal Act 1991, is not referred in the Ruling of the court below, or in the cases relied by counsel for appellant. RM had considered the issue of incorrect naming of the Respondent, and had rejected the objections with sound reasoning. I affirm the decision of the court below. The appeal is dismissed. No costs awarded.

Final Order

- [20] (a) The Ruling of the Resident Magistrate delivered on 25.08.2017 is affirmed.
(b) No costs.

Conclusion

- [21] The Notice of Intension




Deepthi Amaratunga

Judge