

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No.: HBC 333 of 2011

BETWEEN : PRAKASH SINGH of Veisari, 7 ½ Miles, Farmer.

PLAINTIFF

AND : DEO RAJ of 8 ½ Miles, Nasinu, Businessman.

DEFENDANT

Plaintiff : In person

Defendant : In person

Date of Judgment: 28 February, 2019.

JUDGMENT

INTRODUCTION

1. This summons was filed by Plaintiff seeking extension of time to file leave to appeal against Master's order made on 27.6.2014. The summons was filed on 11th June, 2015. The Master's order struck off the action of the Plaintiff for abuse of process. The Plaintiff had filed the action for setting aside of a consent order entered by Master in HBC 546A of 2007 on 31.01.2008. The Plaintiff not take steps to prosecute the action. The Plaintiff was issued a show cause notice in terms Order 25 rule 9 of High Court Rules, 1988 and after hearing of the parties Master had struck off the action for abuse of process.

ANALYSIS

2. The Plaintiff had institute this action to set aside consent order entered in the High Court Action HBC 546A of 2007 and did not proceeded with the action. The court issued notice in terms of High Court Order 25 rule 9 of the High Court Rules 1988. This order was made on 27.6.2014.
3. The Plaintiff did not take action to appeal against that order within stipulated time. He sought to make an application seeking extension of time nearly after one year from the decision of Master.

4. The Order 3 rule 4 of the High Court Rules of 1988 applies. It states as follow;

'4(1) The Court may, on such terms as it thinks just, by order extend or abridge the period within which a person is required or authorized by these rules, or by any judgment, order or direction, to do any act in any proceeding.' (emphasis added)

5. Though not exhaustive in the exercise of discretion under Order 3 rule 4 of High Court Rules 1988 the following may be considered and their cumulative effect is taken and they are:

- a) The interests of the of justice and specially the failure to exercise extension and consequences. Eg. If the failure to enlarge time would result denial of access to a party.
- b) Whether the application for extension has been made promptly.
- c) Whether the failure to comply was intentional, for e.g. non-compliance of unless order or after an extension of time delaying taking further steps.
- d) Whether there is a good explanation for the failure.
- e) The conduct of the party seeking extension prior to the said application. The extent to which the party in default has complied with rules, court orders or any unless orders were made prior or in this instance.
- f) Whether the failure was caused by the party or his legal representatives. E.g. mistake of law or fact.
- g) Effect of extension have on the trial, if the action is still pending before the court.
- h) The effect which the failure as opposed to granting extension, on all the parties including interest of public if any.
- i) If the extension will result in an appeal or leave to appeal the merits or the prospects of such application.
- j) The effect of extension on case management and right of a party for determination of a civil action without delay.
- k) Whether the defect is curable, and if so the prejudice to other party.

6. In this case the delay of nearly one year is fatal. Plaintiff had not explained reason for the delay.

7. The Plaintiff had not prosecuted the action and the court had issued notice in terms of Order 25 rule 9 for strike out. The Master had struck off the action for abuse of process. Plaintiff is appearing in person for this summons but for hearing before Master he had retained a law firm.

8. Even a weak case would need the time of court for determination, but if it is an abuse of process the matter needs to be struck off. A Plaintiff cannot waste the time of the court so as to make it an abuse of process for his advantage in order to deprive rights of another

party. In this instance there was a consent order entered by the parties and after a long period of time Plaintiff has filed this action challenging the said consent orders and had not diligently prosecuted the matter. When Master had struck off the matter he had not appealed within stipulated time but again seeking extension of time.

9. Even after the strike out of the action by Master, the Plaintiff delayed appeal from that order and taking appropriate steps to reinstate the action for nearly one year. This is continuation of the Plaintiff's conduct that show further abuse of process. This kind of behavior can only substantiate the position taken by Master.
10. The Master had commented the conduct of the Plaintiff in the decision made on 27.6.2014.
11. The Plaintiff in this application seeking extension of time had not annexed proposed grounds of appeal hence it is incomplete. So there are no merits in the appeal for consideration to grant extension of time.
12. The summons seeking extension of time filed on 11.6.2015 is struck off. The Defendant is granted a cost of \$250 assessed summarily.

FINAL ODERS

- a. The Summons filed on 11.6.2015 is struck off.
- b. The Defendant is granted a cost of \$250 assessed summarily to be paid within 21 days.

Dated at Suva this 28th day of February, 2019.




Justice Deepthi Amaratunga
High Court, Suva