

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Action No. HBC 340 of 2014

BETWEEN

BHARAT JOGIA of 309 Toorak Road, Suva.

FIRST PLAINTIFF

AND

MARUTI JEWELLERY LIMITED a limited liability company having its
Registered office at Factory 309.

SECOND PLAINTIFF

AND

PRAKASH KUMAR of Delailabasa, Labasa, Businessman.

FIRST DEFENDANT

AND

DUKSHA KALYAN trading as **REEMAS FASHION GARMENT** and

NU TOUCH and having its registered business at

Kalyanji Pala Building, Nasea, Labasa.

SECOND DEFENDANT

Counsel : Mr A. Nadan for the Plaintiff
Mr J. Vulakonvaki for the Defendants

Date of Ruling : 08th April, 2019

RULING

- [1] The plaintiffs instituted these proceedings to recover \$82,000.00 from the defendants with interest and costs.
- [2] On 20th November, 2018 the plaintiff filed an ex-parte notice of motion seeking inter-alia and injunction restraining the defendants from leaving the country. The defendants filed an application to have the interim order made in this matter restraining them from leaving the country, set aside which was refused by the court.
- [3] The orders sought in the Notice of Motion are as follows:
- (1) An injunction restraining the defendants from leaving the jurisdiction of this Honourable Court until the determination of within proceedings;
 - (2) An injunction from selling and/or disposing of and/or dealing with and/or removing from the jurisdiction of this Honourable Court any and all assets and monies of the defendants until further order of this court;

- (3) That the defendants will file a full statement of their assets wherever located with this Honourable Court within fourteen (14) days of the service of the order;
- (4) That a writ of Ne Exeat Civitate shall be issued forthwith commanding and conveying the defendants forthwith before a judge of this Honourable Court unless the defendant shall deposit a sum deemed appropriate by the court or surrender their passport or travelling documents and/or give to the plaintiff a bond executed by the defendants for security satisfactory to the plaintiff that the defendant will not leave the jurisdiction without notice to this Honourable Court.
- (5) That costs of this application shall be paid by the defendants.

[4] When this matter came up for hearing on the application of the plaintiff filed on 20th November, 2018 the parties informed court that the matter could be disposed of on written submissions and the parties were given time till 19th March to file their respective submissions but only the defendants filed submissions.

[5] In his written submissions the learned counsel has only dealt with the application for stop departure order. The learned counsel has placed reliance on various previous authorities which I have referred to in my earlier ruling on the application of the defendants to have the temporary stop departure order set aside. I will briefly discuss here the principle governing the grant of stop departure order again in this ruling.

[6] In the case of **Prasad v Carpenters (Fiji) Ltd [2004] FJCA 45; HBC0185.2009** the Court of Appeal said we do not consider that section 34 prevents a court from ordering a writ ne exeat regno in a proper case. The provisions of section 34 of the present Constitution is similar to that of the provisions of section 21 of the previous Constitution.

[7] In the case of **Sami v Raj [2014] FJHC 389; HBC210.1989L (30 May 2014)** following the decision in **Prasad v Carpenters (Fiji) Ltd (supra)** said:

Section 21 of the 2013 Constitution also guarantees the right to freedom of movement. However, at section 21 (3), 21(6) (i), and 21 (7) (b), it is clearly set out that the right to leave Fiji may be curtailed for the purpose of ensuring that the person whose right is in question appears before a court for trial or "other

proceedings" and/or for the purpose of protecting the rights and freedoms of others.

In Seng Mi Commercial Company v John Y Singh & Company Ltd (Judgment 1) [1997] FJHC 32; Hbc0018j2.97s (6 March 1997) Justice Fatiaki said:

If I should be wrong however in the issuance of the Writ ne exeat then there is no doubt in my mind that this Court has the necessary power and jurisdiction to issue an injunction restraining the second defendant from leaving the country and requiring him to deliver up his passport on the ground that they are necessary and reasonable orders which are ancillary to the due performance of the Court's function of protecting the plaintiff's rights to a Mareva injunction pending the hearing of the action. [See: Bayer A.C. v. Winter and Others (1986) 1 ALL E.R. 733]

That this Court has the necessary jurisdiction and power to grant both the Mareva Injunction together with the Writ Ne Exeat cannot now be doubted. (See: W.B.C. v. Satish Chandra Civil Action No. 356 of 1991; Merchant Bank of Fiji Ltd. v. Girdhar Lal Raniga and Anor. Civil Action No. 210 of 1993; Robert Rogers v. Pacific Hotels & Development Ltd. Civil Action No. 1132 of 1985; Leslie Redvers Martin v. B.N.Z. and F.D.B. Civil Appeal No. 73 of 1984; Girdhar Lal Raniga v. Merchant Bank of Fiji Civil Appeal No. 31 of 1993 and Al Nahkel for Contracting and Trading Ltd. v. Lowe (1986) 1 ALL E.R. 729) in which it was

The court held:

The court had jurisdiction to issue a writ ne exeat regno in support of a Mareva injunction in order to prevent a defendant from leaving the jurisdiction with assets in order to frustrate a lawful claim before the Court.

In Westpac Banking Corporation v Chandra [1991] FJHC 84; HBC 0356.1991 (2 August 1991) the Justice Scott held:

In issuing a Writ Ne Exeat Regno coupled with a Mareva Injunction the aim of the Court is to require a defendant to provide the plaintiff with a full statement of assets and to preserve those assets before the defendant departs from the jurisdiction. The direct purpose of the orders is not to prevent departure

simpliciter. As the cases reveal the discretion of the court to make such orders will not be lightly exercised. I do not think that a court would be inclined to grant such orders unless the sum claimed was substantial and the claim palpably well founded. I am of the opinion that a court issuing a writ in Fiji of Ne Exeat Civitate would meet the criteria required to be satisfied by section 15(3) (h) of the Constitution and that accordingly such a writ is constitutional

[8] In view of the principles enunciated in the decisions cited above I am of the view that issuing a writ ne exeat regno in a proper case is not contrary to the provisions of section.

[9] The plaintiffs also seek a mareva injunction restraining the defendants from disposing of their properties.

[10] In the case of **Mareva Compania Naviera SA v International Bulkcarriers SA** [1975] 2 Lloyd's Rep. 509 / [1980] 1 All ER 213 Lord Denning said:

If it appears that the debt is due and owing, and there is a danger that the debtor may dispose of his assets so as to defeat it before judgment, the court has jurisdiction in a proper case grant an interlocutory judgment so as to prevent him disposing of those assets.

[11] In this case the plaintiffs' claim is based on the monies deposited in the bank account of the defendants. In the amended statement of claim the plaintiffs have given a detailed account of the monies paid. The plaintiffs claim \$122,750.00 from the defendants after deducting the payments made. The plaintiffs' position is that the defendants requested a loan from the 1st plaintiff several times and the plaintiff lent money. The details of the payments are given in paragraph 6 of the amended statement claim. The defendants have not denied obtaining money from the plaintiff.

[12] From the pleadings it is clear that the plaintiffs have a claim against the defendants which can successfully be maintained.

[13] The purpose of seeking a stop departure order is to secure the repayment of the loan if the plaintiffs are successful in obtaining a judgment in their favour.

[14] The learned counsel for the defendants submitted while the law is settled that the plaintiffs are plaintiffs are entitled to obtain a mareva injunction against the defendants

after establishing that there is a legitimate claim, it is also settled that the court can prevent a defendant or a debtor leaving Fiji with assets. The learned counsel also submitted that the defendant have already declared assets but I do not find any such declaration filed of record. There had been an order made on 09th November, 2018 in action No. 220 of 2014 directing the 2nd defendant to declare her assets but in this matter there is no such declaration. In fact it is one of the orders sought by the plaintiff in this application that the defendants be ordered to file a statement of assets.

- [15] The plaintiffs sought a stop departure order against the defendants on the basis that they were planning to migrate to Australia. This was confirmed by the investigating officer of the Fiji Independent Commission against Corruption.
- [16] For the reasons afore mentioned the court makes the following orders.

ORDERS

1. The defendants are restrained from travelling abroad without leave of the court.
2. The defendants are restrained from selling and/or disposing of and/or dealing with and/or removing from the jurisdiction of this court any and all assets and monies of the defendants until further order of the court.
3. The defendants are ordered to file a full statement of their assets wherever located within fourteen (14) days.
4. Costs in the cause.




Lyone Seneviratne

JUDGE

08th April, 2019