

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action no. 287 of 2018

ROSY REDDY of Auckland, New Zealand, Process Worker as the Administratrix of
THE ESTATE OF NARAYAN REDDY, late of Suva, Fiji.

PLAINTIFF

AND

YANKTESH PERMAL REDDY of Waterfront Hotel, Marine Drive Lautoka,
Company Director.

FIRST DEFENDANT

AND

YANKTESH PERMAL REDDY of Waterfront Hotel, Marine Drive Lautoka,
Company Director, **ROHIT REDDY** of Level 2 Spartik House 6-8
Edward Wayte Place, Auckland New Zealand, Company Director,
KALPANA REDDY of Level 2 Spartik House 6-8 Edward Wayte Place,
Auckland New Zealand, **GIYANANAND NAIDU** of 15 Kadau Street,
Lautoka, Finance Manager and Director.

SECOND DEFENDANTS

AND

REDDY CONSTRUCTION COMPANY LIMITED a company incorporated in Fiji and having its registered office at 35 Ravouvou Street, Lautoka.

THIRD DEFENDANT

AND

REDDY ENTERPRISES LIMITED a company duly incorporated in Fiji and having its registered office at 35 Ravouvou Street, Lautoka.

FOURTH DEFENDANT

AND

CLYDE EQUIPMENT (PACIFIC) LIMITED a company incorporated in Fiji and having its registered office at 35 Ravouvou Street, Lautoka.

FIFTH DEFENDANT

AND

REDDY HOLDINGS LIMITED a company incorporated in Fiji and having its registered office at 35 Ravouvou Street, Lautoka.

SIXTH DEFENDANT

AND

FINEGRAND LIMITED a company duly incorporated in Hong Kong and having its registered office at 1st Floor, Tung Hip, Commercial Building, 224 Des Vouex Rd, Hong Kong.

SEVENTH DEFENDANT

Counsel : Mr. Fa. I. for the plaintiff
Mr. Singh. R. with Mr. Singh. V. for the defendants

Date of hearing : 27th May 2019

Date of Ruling : 26th June, 2019

RULING

- [1] On 09th October, 2018 this court granted leave to the applicant to issue committal proceedings against the defendants.
- [2] In the statement of committal filed pursuant to Order 52 rule 2(2) of the High court rules 1988 the plaintiff alleged that the defendants are in breach of the following orders made by the court on the application made by the plaintiff pursuant to Order 24 rule 7(1) & (3) of the High court Rules 1988.
- (i) That the 1st – 7th defendants make affidavits stating whether the documents enumerated at paragraph 1 – (1) – (viii) inclusive in the plaintiff's summons dated 12th May 2016 is or has at any time been, in their possession, custody or power and if not then in their possession, custody or power, when they parted with them and what has become of them.
 - (ii) That all affidavits of the defendants (1 – 7) to be filed served within 14 days.
- [3] The hearing on the committal proceedings was fixed for 27th May, 2019 and when the matter was mentioned before the hearing the learned counsel for the plaintiff submitted that he needs the contemnor before the court for cross-examination. The learned counsel for the defendants submitted that his client cannot be compelled to appear in court in contempt proceedings. The parties were then allowed to file written submissions.

- [4] There is no statutory provision which compels the contemnor to appear in court to be cross-examined. The learned counsel for the plaintiff cited the following paragraph from the decision in **Sheela Wati v Ramendra Mahesh Chaudhary** HBC 212 of 1989.

The evidence before me consists of a number of affidavits, six filed on behalf of the applicant and two on behalf of the respondent and oral evidence given on their cross examination by all but one of the deponents. The uncontested evidence in the proceedings is that the child, Ronika Rupanjali or Ronika Rupanja Chaudhary, as she is sometimes called, was born on to Mumtaz Nazmin Begum at the Lautoka Hospital on 5th July 1978 and the respondent is the child's father. About three months after the child's birth, the respondent and his wife who are in fulltime employment at the time, left the child with the applicant who is her maternal aunt and apart from the period from June 1989 until the present time, the applicant has had the de facto custody of Ronika and has educated and maintained her with the applicant's now estranged husband.

- [5] The learned counsel for the plaintiff also cited the following paragraph from Supreme Court Practice 1988 Vol. 1at page 783:

Evidence – Committal proceedings raise issues independent of the underline litigation. Whatever their form, they are not interlocutory in character, and their nature makes them unsuitable to be regarded as interlocutory proceedings for the admission of hearsay evidence (*Savings & Investment Bank Ltd v Gasco Investments (Netherlands) BV* (1986) New L.J. 657). The appropriate standard of proof to be applied in committal proceedings is the criminal standard of proof (*Dean v Dean* The Times, November 13, 1986, C.A.).

- [6] The learned counsel submitted that to disallow the calling or oral evidence and to rely on affidavit evidence turns the proceedings into an interlocutory one, which it is clearly not.
- [7] The court has not disallowed the plaintiff from adducing evidence at the hearing of the committal proceedings. It is her right to call evidence to prove the allegations against the defendants. The question here is whether the plaintiff can compel the defendants to testify at the hearing. The paragraph cited by the learned counsel for the defendant speaks about responsibility of the plaintiff to establish the allegations leveled against the defendants. The defendant in contempt proceedings has the right to testify on his behalf or to refrain from giving evidence. The contempt proceedings are quasi criminal in nature however that is not a


ground for the court or for the plaintiff to compel the defendant to testify in court at the hearing. The defendants cannot be compelled to assist the plaintiff in proving her case.

- [8] For these reasons the court is of the view that the oral application made by the learned counsel for the plaintiff is without merit.

ORDER

1. The court holds that the plaintiff is not entitled to demand the attendance of the defendant in court for cross examination at the hearing on the committal proceedings.




Lyone Seneviratne

JUDGE

26th May, 2019