

**IN THE HIGH COURT OF FIJI  
AT SUVA  
CIVIL JURISDICTION**

CIVIL ACTION NO.: HBC 340 of 2014

**BETWEEN : BHARAT JOGIA**  
**FIRST PLAINTIFF**

**: MARUTI JEWELLERY LIMITED**  
**SECOND PLAINTIFF**

**AND : PRAKASH KUMAR**  
**FIRST DEFENDANT**

**: DUKSHA KALYAN t/a REEMA'S FASHION**  
**GARMENT and NU TOUCH**  
**SECOND DEFENDANT**

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**APPEARANCES/REPRESENTATION**

**PLAINTIFFS : Ms. S. Prasad [Neel Shivam Lawyers]**

**DEFENDANTS : Mr. O'Driscoll on instruction [Maqbool & Company]**

**RULING BY : Acting Master Ms Vandhana Lal**

**DELIVERED ON : 04 August 2022**

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**INTERLOCUTORY RULING**

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1. The Plaintiffs seeks orders for the Defendants' statement of defence to be struck out and a judgment be entered for them.

This application is made pursuant to Order 24 Rule 16 of the High Court Rules and is supported by an affidavit sworn by Bharat Jogia on 26<sup>th</sup> October 2020.

2. According to the Plaintiffs, despite there being orders made for filing of affidavit verifying list of documents, the Defendants have failed to file and serve their affidavit verifying list of documents thus delaying the fair trial and are said to be abusing the process of the court.

The Plaintiffs claim to be prejudiced as the matter is pending since 2014, hence their application for striking out of the defence.

3. The Defendants' counsel submits there were 3 summons for direction filed and orders were made on each application.

The Defendants accordingly filed their affidavit verifying list of documents as follows:

- On 20<sup>th</sup> October 2015;
- On 22<sup>nd</sup> May 2017; and
- Supplementary list in August 2017.

Hence there is no need to file any further list.

Order 24 rule 16 relied by Plaintiff is of no relevance as it is designed for documents that are not before the Court at the hearing stage. Parties can now proceed for pre-trial conference.

4. Upon perusing the file, I make following observation:
  - Upon the close of the pleading, a summon for direction was filed on 15<sup>th</sup> April 2015 and called in court on 26<sup>th</sup> May 2015.
  - No orders were made and the matter was adjourned as follows to 02<sup>nd</sup> July 2015, and later to 16<sup>th</sup> July 2015.
  - On 12<sup>th</sup> August 2015 orders were made by consent on the summon for direction.
  - The Plaintiffs filed its affidavit verifying list of documents on 25<sup>th</sup> August 2015.
  - The Defendants affidavit verifying list of documents was filed in 29 October 2015.
  - On 22<sup>nd</sup> February 2016 the Defendant filed a summons for specific discovery and leave to serve interrogatories.

- Subsequently on 06 May 2016, the Plaintiffs filed their application to amend the claim.
- On 31 May 2016 by consent the Plaintiff was granted leave to amend its claim.
- An amended writ of summons and amended statement of claim was filed on 07 June 2016.
- Amended statement of defence was filed on 30 August 2016.
- On 15 February 2017, the Court made new orders for filing of the summons for direction and the Plaintiff filed one on 17 February 2017.
- On 28 March 2017, orders were made on the second summons for direction.
- The Plaintiff filed its supplementary affidavit verifying list of documents on 11 April 2017.
- The Defendants affidavit verifying list of documents was filed on 22<sup>nd</sup> May 2017 and the matter was adjourned for several dates for parties to convene a pre-trial conference and file a minute.
- The Defendants on 07<sup>th</sup> August 2017 filed a supplementary affidavit verifying list of documents.
- On 07<sup>th</sup> August 2017, the Defendants filed a summons for accounts and inquiries pursuant to Order 43 Rule 1 and 2 of the Rules.
- On 26<sup>th</sup> July 2019 a ruling was delivered and both parties were order to file respective affidavit verifying accounts supported by relevant documents.
- Plaintiff filed its affidavit verifying list of documents on 24<sup>th</sup> September 2019.
- On 08 August 2019 the Defendant filed an affidavit verifying account.
- The Plaintiff filed another affidavit on 19<sup>th</sup> November 2009.
- On 03<sup>rd</sup> December 2019, I had made orders for summon for direction to be filed.

- One was filed on 04<sup>th</sup> February 2020 and an order made on the summon for direction on 17<sup>th</sup> February 2020.
  - The Plaintiff filed a supplementary affidavit verifying list of documents on 31<sup>st</sup> August 2020.
5. It is due to an oversight summon for direction has been filed 03 times and orders made 03 on all three occasions.
  6. I do not find there to be defiance of orders by the Defendants. Their counsel informs the Court that the Defendants have filed their affidavit verifying list of documents previously and intend to rely on the same.
  7. Hence its only prudent that parties complete discovery on the affidavit verifying list of documents previously filed in this matter and convene a pre-trial conference.
  8. Orders on summon for direction last made on 17<sup>th</sup> February 2020 and not complied with is extended for compliance.
  9. No orders are made for cost on Plaintiff's application.



  
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**Vandhana Lal [Ms]**  
**Acting Master**  
**At Suva.**

**04 August 2022**

**TO:**

1. **Suva High Court Civil Action No. HBC 340 of 2014;**
2. **Neel Shivam Lawyers, Solicitors for the Plaintiffs;**
3. **Maqbool & Company, Solicitors for the Defendants.**