

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

**CIVIL ACTION NO. HBC 186 of 2017**

**BETWEEN : SHAREEN LATA HANS  
PLAINTIFF/ APPLICANT**

**AND : MAHENDRA DEO  
DEFENDANT/RESPONDENT**

**CIVIL ACTION NO. HBC 121 of 2018**

**BETWEEN : MAHENDRA DEO  
PLAINTIFF/ RESPONDENT**

**AND : SHAREEN LATA HANS  
DEFENDANT/ APPLICANT**

**CIVIL ACTION NO. HBE 11 of 2017**

**IN THE MATTER OF PACIFIC WEST BUILDERS LIMITED.**

A limited liability company having its registered office at Lot 9,  
Bountiful Subdivision, Namaka Lane, Namaka, Nadi.

**AND:**

**IN THE MATTER OF WINDING UP APPLICATION UNDER  
COMPANIES ACT -2015.**

**BETWEEN : PACIFIC WEST BUILDERS LIMITED  
APPLICANT**

**AND : SHAREEN LATA HANS  
RESPONDENT**

**BEFORE : Hon. JUSTICE. MOHAMED MACKIE.**

**APPEARANCE :** Mr J. Sharma -For Ms S. Hans.  
Mr A. Narayan - (junior) For Mr. M. Deo.  
Mr R. Gordon- for the Liquidator (William & Crosbie)  
Mr R. Singh – For the former Liquidator (E & Y)  
Mr J. Mainavolau – For the Official Receiver.

**DATE OF HEARING :** On 9<sup>th</sup> September, 2022 & 17<sup>th</sup> May, 2023

**WRITTEN SUBMISSIONS:** By Ms. Hans, filed on 23<sup>rd</sup> June 2023 (Re. her Summons filed 8<sup>th</sup>  
June 2022, Mr. Deo's Summons of 12<sup>th</sup> October 2022 & another

one filed on the same date (Re Mr. Deo's Summons filed on 4<sup>th</sup> April 2022).

By Mr. Deo, filed on 23<sup>rd</sup> June 2023 (Re Ms. Hans's Summons on 8<sup>th</sup> June 2022 & his Summons on 12<sup>th</sup> October 2022) , and another one filed on the same date ( in Reply to Mrs. Hans's & for his Summons filed on 8<sup>th</sup> June, 2023 & for his Summons filed on 4<sup>th</sup> April 2022).

By Official Receiver filed on 27<sup>th</sup> June 2023.

By former Liquidator (E & Y) filed on 9<sup>th</sup> September 2022.

**RULING** : On 22<sup>nd</sup> August, 2023.

## **RULING**

### **A. INTRODUCTION:**

1. Before me are ( 3 ) Summons for adjudication, being contested by and between the main parties hereof, who are the shareholders of the wounded up Company called "**Pacific West Builders Ltd** " and former husband & wife, but now embroiled in prolonged litigation in the above styled 3 consolidated actions before this Court over disputes , *inter-alia*, about the degree of their respective shareholding in the said Company.
2. This ruling is pronounced pursuant to the hearing held before me on 09<sup>th</sup> September 2022 in relation to the Summons filed on 4<sup>th</sup> April 2022 by Mr. M. Deo, and the subsequent hearing held on 17<sup>th</sup> May 2023 in relation to Summons filed on 8<sup>th</sup> June 2022 by Ms. S. Hans, & the Summons dated and filed on 12<sup>th</sup> October 2022 by Mr. Deo, details of which are given in paragraphs (A), (B) & (C) bellow, with the reliefs sought therein.
  - A. By the Summons filed on 4<sup>th</sup> April 2022, together with an Affidavit in support and annexures thereto, Mr. Mahendra Deo, (the Plaintiff in action No. HBC 121 of 2018), is seeking the following orders pursuant to section 492, 495, 540 and 542 of the Companies Act 2015 and Order 62 Rule 21 of the High Court Rule 1988.
    1. *Mr. Steven Pickering and/or Ernst & Young (Chartered Accountants) be removed and/or discharged as the Liquidator of Pacific West Builders Pte Limited ("the company");*
    2. *Mr. William Crosbie and/or HLB Mann Judd (Fiji) (Chartered Accountants) be appointed as liquidators of the company in lieu of Mr. Steven Pickering and/or Ernst & Young (Chartered Accountants);*
    3. *Leave be granted to the Applicant for an extension of time (retrospectively) for his Summons for Taxation of Indemnity Costs filed on 4<sup>th</sup> March, 2021, or alternatively, leave be granted to the Applicant to file a fresh Summons for taxation of indemnity costs, if required/applicable;*
    4. *That the appointed liquidator be directed to pay into Court or the Companies Liquidation Account (after satisfaction of all company liabilities, debts and/or*

*liquidation fees) the net liquidated funds (realized property), and which sum shall remain in such account until either the determination of Lautoka Civil Action No. HBC 121 of 2018, or otherwise on application of the parties;*

5. *The hearing of the Respondents' Summons filed on 6<sup>th</sup> April, 2021 and this application be heard simultaneously/concurrently;*
  6. *Costs of this application be paid by the Respondent on a full solicitor/client indemnity basis; and*
  7. *Such other order (s) as this Honorable Court deems just.*
- B.** *By the Summons filed on 8<sup>th</sup> June 2022, together with her Affidavit in support and annexures thereto, Ms. S. Hans, (the Plaintiff in action No. HBC 186 of 2017 & Respondent in winding up action No: 11 of 2017), is seeking the following orders pursuant to Order 29 of the High Court rules 1988, Sections 491, 495, 538, 543, 554, 561 & 562 of the Companies Act 2015 and other relevant rules of the High Court and Companies Act 2015 and rules and other legislations and the inherent jurisdiction of this Court,*
1. *That this court clarify who was and is in charge of and/or responsible for the company Pacific West Builders Limited and its assets since the Ruling delivered herein on 15/11/21 and orders sealed on 23.11.21.*
  2. *That there be an order requiring the Official Receiver to discharge their duties pursuant to the Companies Act, 2015, more particularly pursuant to Section 538 (3) of the Companies Act, 2015.*
  3. *That Official Receiver to provide full Financial Report, Accounts, Inventories and all information required by the Liquidator to fulfil audit and liquidation requirements of the appointed Liquidator from the period 03 July, 2020.*
  4. *That a committee of inspection be appointed as per Companies Act, 2015 to act with the Liquidator and the applicant and her professional representative be appointed as members of the committee along with any other members that the liquidator may appoint.*
  5. *That Mr. Mahendra Deo be restrained from:*
    - a) *Receiving any money on behalf of the company Pacific West Builders Ltd;*
    - b) *Dealing with any bank account or Property belonging to the company Pacific West Builders Ltd;*
  6. *That Mr. Mahendra Deo be restrained from entering the company Pacific West Builders Ltd's principle place of business at Lot 9, Bountiful Subdivision, Namaka Lane, Namaka, Nadi and by himself, his servants, agents or otherwise and howsoever from dealing with, withdrawing, receiving, assigning, utilizing, charging and/or encumbering any bank account with any financial institution within Fiji until the final determination of all three consolidated matters.*

7. *That the appointed Liquidator provide monthly reports to the court and all parties in this matter.*
  8. *Any such or further Orders that the court may deem just and expedient in the Circumstances of the matter.*
  9. *Costs of this application be paid by the Respondent on full solicitor indemnity basis.*
- C. By the Summons filed on 12<sup>th</sup> October 2022, together with his Affidavit in support sworn on 11<sup>th</sup> October 2022 and the annexures thereto, Mr. M. Deo (the plaintiff in the action No: HBC 121 of 2018) is seeking the following reliefs pursuant to Order 18 Rule 18 of the High Court Rules 1988.
1. *The Summons filed on 8<sup>th</sup> June, 2022 be struck out and dismissed on the grounds that it discloses no reasonable cause of action, is scandalous, frivolous or vexatious, it will prejudice, embarrass or delay the fair trial of the action, and/or is otherwise an abuse of the process of the Court.*
  2. *Shareen Lata Hans ("the Respondent") and/or her solicitors be prohibited from commencing, without leave of the Court, any further proceeding (s) and/or application (s) in respect of any claim or subject matter involving her, Mohendra Deo and/or Pacific West Builders Limited;*
  3. *If notice of any new proceeding (s) and/or application (s) is given by the Respondent and/or her solicitors to the Applicant (or his solicitors) without leave first having been obtained, the proceeding (s) and/or application (s) are to be automatically dismissed;*
  4. *Costs of this application be paid by the Respondent and/or her solicitors, Sairav Law, jointly or severally, on a full solicitor/client indemnity basis; and such other order (s) as this Honorable Court deems just.*

**B. DISCUSSION:**

**A. Summons Filed on 4<sup>th</sup> April 2022 By Mr. M. Deo. (Summons "A")**

3. To begin with, let me deal with the Summons (A) above filed by Mr. Mahendra Deo on 4<sup>th</sup> April 2022 seeking for reliefs listed thereunder. This Summons was heard on 09<sup>th</sup> September 2022.
4. The 1<sup>st</sup> and 2<sup>nd</sup> reliefs in the said Summons, namely, (1). The removal and/ or discharge of Mr. Steven Pickering and/ or Ernst & Young ( Chartered Accountants ) as Liquidator of Pacific West Builders Pte Limited ( " the Company " ), and( 2). The appointment of Mr. William Crosbie and / or HLB Mann Judd (Fiji) ( Chartered Accountants) as the new Liquidators of the Company in lieu Mr. Steven Pickering and / or Ernst & Young ( Chartered Accountants) have already been granted by the mutual consent of the parties on 21<sup>st</sup> November 2022, in order to avoid the delay in the Liquidation process. Thus, no adjudication is needed in relation to those reliefs are concerned. Thus, the consent order given as above is in operation now.

5. The relief sought in paragraph (3) of this Summons "A" is vehemently objected by the Mr. J. Sharma, Counsel for Ms. Hans, on the ground that it is connected with the pending Summons before the Master, being filed by Mr. Deo, on 4<sup>th</sup> March 2021 seeking the relief for Taxation of Indemnity Costs, against which Ms. Hans has filed a Striking out Application on 6<sup>th</sup> April 2021. Those two Summons stand fixed for hearing before the Master for 01<sup>st</sup> November 2023, along with the Stay Application preferred by Ms. Hans, against the Ruling of the Master delivered in a connected substantial matter.
6. Mr. Deo, in paragraph (3) of his Summons "A" is seeking for the extension of time ( retrospectively) for his, admittedly, belated Summons for Taxation filed on 4<sup>th</sup> March 2021 and pending before the Master or alternatively for leave to be granted for him to file fresh Summons for Taxation of Indemnity Costs. In paragraph 5 of his Summons "A" hereof, he is also moving for Ms. Hans's Summons filed on 6<sup>th</sup> April 2022 for striking out of the Summons for Taxation of Indemnity Cost, to be heard before this Court, together with his this Summons filed on 4<sup>th</sup> April 2022.
7. Essentially, what Mr. Deo wanted was that when his Summons "A" above is heard before this Court, Ms. Hans's Summons filed on 6<sup>th</sup> April 2022 for striking out of Mr. Deo's Summons for Taxation of Indemnity Costs, which is pending before the Master, being fixed for hearing on 1<sup>st</sup> November 2023, also to be heard before this Court simultaneously.
8. Parties do not dispute the Master's jurisdiction, as a taxing officer, to hear and determine the Summons for Taxation of Indemnity Costs. It is on this basis the Summons for Taxation filed by Mr. Deo on 21<sup>st</sup> March 2021 and Ms. Hans's Summons filed on 6<sup>th</sup> April 2021 for striking out thereof are before the Master and waiting for the hearing on 1<sup>st</sup> November 2023. I don't find any justifiable ground only for the Striking out Application by Ms. Hans filed on 6<sup>th</sup> April 2021 to be heard before this Court, while the Summons for taxation and indemnity costs by Mr. Deo, which is sought to be struck out, remains with the Master.
9. A striking out Application, in my view, should be heard and decided before the same forum where the very matter sought to be struck out is pending. Both the parties hereof have subjected themselves to the Jurisdiction of the Master as far as the Summons for Taxation of Indemnity Cost is concerned. Thus, the hearing of the striking out Application of it also should be heard before the Master, against whose decision, the aggrieved party, if wishes, will be at liberty to move for an Appeal to a judge in the same Court.
10. I find it is not proper for this Court to lay its hand on a matter pending before the Master for the exercise of his jurisdiction. If this Court proceeds to hear the Striking out Application by usurping the jurisdiction of the Master, who is supposed to hear the substantial Application, it will be the opening of the flood-gate for the influx of striking out Applications to the judges, when the related substantial matters are pending before the Master.
11. Moreover, if Mr. Deo, needs the extension of time for his Summons for Taxation or, alternatively, seeks leave to file a fresh summons for that purpose, he has to make an Application for such purpose before the Master, subject to any objection by Ms.

Hans's Counsel. The outcome before the Master on such an application can thereafter be challenged before a Judge by the aggrieved party, if need arises. Hence, this Court finds that the relief (3) prayed for in Mr. Deo's Summons filed on 4<sup>th</sup> April 2022 does not warrant favorable consideration.

12. By the relief prayed for in paragraph (4) in his summons filed on 4<sup>th</sup> April 2022, Mr. Deo, is seeking for certain orders to be made directing the appointed liquidator. Mr. Deo, is seems to be relying on the Section 495 of the Companies Act 2015 for this relief. This Section primarily deals with an Application to Court by the liquidator or by any contributory or creditor for the **determination of any question arising in the winding up** of the company, or to exercise, as respects the enforcing of calls or any other matter, all or any of the powers, which the Court might exercise if the Company were being wound up by the Court.
13. Mr. Deo, seems to be relying on the averments in paragraph 18 and 19 of his Affidavit in support in order to demonstrate his apprehension that his attempts at recovering any distribution by the liquidator at the end may become difficult under given circumstances. He is also seems to be concerned about the recovery of the indemnity costs ordered in his favor in relation to last 4 years of litigation and accordingly is seeking the relief 4 in his Summons filed on 4<sup>th</sup> April 2022. It has been observed that despite Ms. Hans's ill- health condition and her time to time absence in Fiji, apparently due to her stay in Australia for her treatments, she seems to have made her presence in court and/ or duly been represented. Her health condition and/ or temporary absence from Fiji has not made any contribution for any delay in the process or to distance any relief that Mr. Deo is seeking and entitled to.
14. I don't see this as a question arose in the process of liquidation warranting any determination by the Court or as an instance for the Court to exercise its power that falls within the section 495 of the Companies Act 2015. Neither a question for determination nor circumstances shown to have arisen warranting the Court make an order or direction. The Court has to be satisfied that the determination of the question or usage of power of the Court is just and beneficial.
15. Ms. Hans's time to time stay in Australia and/ or her reported ill- health condition need not necessarily be a ground for this kind of directions to be made to the liquidator at this juncture, and the reasons adduced by Mr. Deo, will not inhibit the process of liquidation and / or the assessment of the indemnity costs before the Master. Further, there is no any allegation against the appointed liquidator to the effect that he is not performing his duties in the manner expected of him, for this Court to make any direction to the liquidator as prayed for by Mr. Deo, in his Summons.
16. At the end of the process, the liquidator is bound to deposit or bring all the remaining monies to the Court. In my view, no necessity has so far arisen to make such a direction, unless it is brought to the notice of the Court and the Court is satisfied that the liquidator is unreasonably withholding or likely to withhold or dissipate the liquidated funds after the deduction of liabilities and related expenses.
17. The next Sections relied on by Mr. Deo, for the above relief, are Sections 540 and 542 of the Companies Act 2015. Section 540 deals with general provisions in relation to

the resignation or removal of an appointed liquidator pursuant to which the relief (1) above was sought and granted on mutual agreement. Section 542 is in relation to vesting of properties in liquidator, under which the necessary orders are made on the Application of the liquidator and not on the Application of the contributors or creditors. This Court has already made order for the vesting of the properties.

18. Thus, for the reasons stated above, this Court is not inclined to grant the relief 4 sought by Mr. Deo, in his Summons filed on 4<sup>th</sup> April 2022.
19. The relief no (5) sought by Mr. Deo, in this Summons, for the hearing of Ms. Hans's summons filed on 6<sup>th</sup> April 2021, together with this Summons, cannot be granted for the reasons stated in foregoing paragraphs of this Ruling. Ms. Hans's striking out Summons filed on 6<sup>th</sup> April 2021 will be heard before the Master. This Court will not be meddling with that Summons before the Master.
20. As far as the relief no (6) for costs are concerned, considering the fact that the parties mutually agreed for the reliefs no. (1) & (2) sought in this Summons by Mr. Deo, and the fact that Mr. Deo fails in reliefs Nos. (3), (4) and (5) thereof and also considering the circumstances, this Court decides to award Ms. Hans a sum of \$ 3,00.00 being summarily assessed costs payable by Mr. Deo.

**B. Summons Filed by Ms. Hans on 08<sup>th</sup> June 2022 (Summons "B")**

21. It is against this Summons by Ms. Hans, Mr. Deo has filed his Summons on 12<sup>th</sup> October 2022 (Summons "C") seeking to strike out Ms. Hans's this Summons pursuant to Order 18 Rule 18 of the High Court Rules 1988 and under inherent jurisdiction of the Court.
22. Mr. A. Narayan, Counsel for Mr. Deo, in his oral and written submissions, has agreed with the position taken up by Mr. Sharma, Counsel for Ms. Hans, that the Order 18 Rule 18 only refers to the power of the Court to strike out any "**pleading**" or part thereof and **it will not apply to the Summons at hand**. Accordingly, Mr. Narayan, relinquished his reliance under Order 18 rule 18 of the High Court rules and confined his arguments only to the "inherent jurisdiction" of this Court in striking out Ms. Hans's this Summons (B) filed on 8<sup>th</sup> June 2022.
23. However, if this Court finds that the reliefs sought by Ms. Hans, in this Summons are devoid of merits, on which ground alone those reliefs can be declined, with no necessity to exercise inherent jurisdiction of this Court as moved by Mr. Narayan, Counsel for Mr. Deo.
24. Apart from the relief of striking out, Mr. Deo, has also prayed for in his Summons dated 12<sup>th</sup> October 2022 further reliefs such as curtailing any future proceeding/s and/ or application/s against him and/ or in relation to the Company, by Ms. Hans, without the prior leave of the Court being obtained, and in the event such proceedings commences without prior leave, the notices in that regard to be automatically dismissed. This will be discussed finally in this ruling.
25. The first relief prayed for by Ms. Hans, in her Summons filed on 8<sup>th</sup> June 2022, is for clarification by this Court as to who was and is in charge of the Company and its

- assets since the Ruling was delivered on 15<sup>th</sup> November 2021 and orders were sealed on 23<sup>rd</sup> November 2021. ( Ruling by Hon. Amarathunga –J)
26. On careful perusal of the case record, particularly, the contents of the judgment by Amarathunga- J dated 15<sup>th</sup> November 2021, those of the judgment and ruling by Hon. A. Stuart –J (as he then was) and the proceedings thereafter, I find that they speak for themselves and give a clear picture as to who was in charge of the wounded up Company during a given period of time. According to the record, there has not been any period of time without the presence of an Official Receiver/ Provisional Liquidator during the process.
  27. If Ms. Hans was in doubt or dark as to who was in charge or responsible and what was done or not done during a particular period, the judgments/ rulings pronounced so far should , undoubtedly, have enlightened her in this regard. And if it is for information and details as to the handling of assets and finances of the Company during the period she is concerned about, she could have easily liaised with the Company Accountant in that regard.
  28. When the Court is called upon to determine a question or to utilize its powers, at this juncture, it has to be satisfied that such determination or use of power is just and beneficial to the Company. If Ms. Hans, has any concern over the management and handling of Company's assets and finances during a particular period of time, it can be channeled to the liquidator through the Committee of Inspection once it is in place, after following the relevant procedure for its appointment.
  29. I am inclined to agree with the Counsel for Mr. Deo, when he submits that the relief of clarification sought by Ms. Hans from this Court is not intended for the advancement of the liquidation or to bring any advantage to it. I find it to be self-oriented. This Court cannot revisit the decisions of my predecessors (Hon. Justices Amarathunga & A. Stuart (as he then was) in this regard and go against what is found in the record. If any lacuna is found with regard to the assets and/ or finances of the Company in relation to a particular period of winding up and/ or liquidation, the liquidator is at liberty under Section 542 of the Companies Act to apply for necessary orders. This Court will not assist Ms. Hans as far as the relief (1) is concerned in her Summons filed on 8<sup>th</sup> June 2022.
  30. By the relief no. 2, Ms. Hans is seeking an order requiring the Official receiver to discharge the duties pursuant to Section 538 (e) of the Companies Act. At the time of this Application, the position of liquidator was not vacant for the Official receiver to have become the provisional liquidator. With the winding up order being made, the liquidator(s) have been appointed one after the other till the present liquidator HLB Mann Judd (Fiji) was appointed by the consent Order made on 21<sup>st</sup> of November 2022 under whom the liquidation is being carried out now.
  31. The above relief will not serve any purpose and this is confirmed by the Counsel for Ms. Hans, in paragraph 3.16 of his written submissions, where it is stated that by the operation of Orders appointing Mr. William Crosbie of HLB Mann Judd (Fiji) in place of Messrs. Ernest & Young on 21<sup>st</sup> November 2022, the prayer 2 may have become moot. Thus, the prayer (2) does not warrant any further consideration.



32. By her relief No. (3) Ms. Hans, is seeking an order for the Official Receiver to provide the full financial report, accounts and inventories, etc. It is alluded by the Counsel for Mr. Deo that the same relief previously being prayed for by Ms. Hans, as per her Summons dated 11<sup>th</sup> December 2020 it has already been determined by the decision of Stuart J marked as MD 12 to his affidavit filed on 12<sup>th</sup> October 2022.
33. In addition to the above, Ms. Hans, made another Application by her summons dated 16<sup>th</sup> December 2021 wherein as per relief ( 4) thereof, she had prayed for the same relief (Vide MD-13), in response to which no relief was granted by Amarathunga – J as per his judgment dated 15<sup>th</sup> November 2021 marked as MD-14. The alternative available for Ms. Hans was appealing against the judgment of Amarathunga – j and not moving this Court again for the same relief.
34. In paragraph (4) of her Summons, Ms. Hans is seeking an order for the appointment of a Committee of Inspection under the Companies Act, to work with the liquidator, comprising of her and her professional representatives to be the members of the Committee, along with any other members that the liquidator may appoint.
35. Careful perusal of the Section 550 (1) & (2) throws light as to how the process of the appointment of Committee of Inspection takes place. The Act states as follows;

#### **Division 8—Committees of Inspection**

##### **Meetings of creditors and contributories to determine whether committee of inspection must be appointed**

*550.—(1)When a winding up order has been made by the Court, it must be the business of the separate meetings of creditors and contributories summoned for the purpose of determining whether or not an application should be made to the Court for appointing a liquidator in place of the Official Receiver, to determine further **whether or not an application is to be made to the Court for the appointment of a committee of inspection** to act with the liquidator and who are to be members of the committee if appointed.*

*(2)The Court may make any appointment and order required to give effect to any such determination and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of these matters, the Court must decide the difference and make such order thereon as the Court may think fit.*

36. As per the above provisions, it is clear that before the Court comes into the picture there should have been a separate meeting summoned for the purpose of determining whether or not an Application should be made to the Court for appointing a liquidator in place of the Official receiver , to determine whether an application is to be made to the Court for the appointment of a Committee of Inspection.
37. Subsequent to the above process only, the Court will consider the need for any appointment and would make order/s required to give effect to any such determination and make further order/s as the Court may think fit. In the absence of above formalities, the relief claimed by Ms. Hans is premature. This seems to have escaped the attention of the learned Counsel for Ms. Hans.

38. It is on record, that initially the current liquidator was handicapped in commencing the performance of his duties as the funds were not available until this Court made its Order on 26<sup>th</sup> May 2023, as the ANZ bank was not releasing the funds owing to its own interest. In addition to that Ms. Hans, through her Counsel, was also objecting the release of the entire funds in the Company's Account to the liquidator's Account, which she was not entitled to object. This in fact delayed the commencement of the operation of the liquidator for some time.
39. I find that Ms. Hans's move to appoint the Committee of Inspection by passing the process for the same and her objection for the release of funds to the liquidator are frivolous, vexatious and an abuse of the process of the Court.
40. The next relief sought as per paragraph 5 of Ms. Hans's Summons is for Mr. Deo to be restrained from;
- a. Receiving any money on behalf of the Company Pacific West Builders Ltd;
  - b. Dealing with any Bank Account or property belonging to the Company.
41. With the commencement of liquidation process by the lastly appointed liquidator and with all powers being conferred on him to deal with all the assets of the Company, to receive and/ or spend monies on behalf of the Company as per sections 541 and 542, there cannot be any role that can be played by Mr. Deo in Company's affairs as Ms. Hans alleges.
42. There is no sufficient evidence to show that Mr. Deo, has dealt with or is dealing with the assets and monies of the Company or at least there is a likelihood for such dealings or receiving monies by Mr. Deo for and on behalf of the Company. If there is such a move by Mr. Deo, the Liquidator is in a better position to move the Court for such orders, to stop it if the situation demands. Thus, the relief 5 sought does not warrant favorable consideration.
43. The next relief (No-6) sought by Ms. Hans in her Summons filed on 8<sup>th</sup> June 2022 is in the nature of injunctive orders against Mr. Deo. My observations in relation to relief 5 above will apply in relation to this relief as well. By this relief, Ms. Hans seeking to restrain Mr. Deo from entering the Company premises.
44. Currently, there is an Appeal by Ms. Hans pending before the Court of Appeal seeking for reliefs, inter-alia, setting aside of all the orders made by the High Court on 3<sup>rd</sup> July 2020, which include an injunction order as well. When an Order made by a forum below is on Appeal, the same parties cannot come before the same forum seeking fresh orders in respect of the same issue.
45. Further, an Application dated 9<sup>th</sup> December 2020 being made before Justice A. Stuart for the dissolution of the injunction orders that is already in place and same relief not being pursued, Justice Stuart has not dealt with that Application. A further Application by Ms. Hans, in respect of the said injunction orders by the Master, also has failed before Justice Amarathunga, wherein it has been correctly pointed out that no relief can be given when the matter is pending before the Court of Appeal and his Lordship has correctly refused that Application.

46. When the Court has already dealt with an Application for injunction and if a similar Application is made subsequently involving the same factual and legal issues between the same parties, no injunction will be granted, unless a change of circumstances is shown. This was decided in ***Ba provincial holding company limited and others v Ba provincial council & Others HBC 237 / 06 8th September 2006.*** Generally, Parties are not allowed to re-litigate interlocutory Applications, unless a change of circumstances is shown or new facts are discovered, which, were previously impossible to be place before the Court. ***Ajimat ali v Marewai M. Ragina 42 FLR 182.*** Thus, the relief 6 sought by Ms. Hans should necessarily be dismissed as this is a clear instance of the abuse of process apart from being frivolous and vexatious.
47. The prayer 7 in Ms. Hans's Summons has already been granted by a previous ruling and it is to be complied with by the newly appointed liquidator. No further orders are required until need for further orders arises.
48. The main position taken up on behalf of Ms. Hans in the oral and written submissions of her Counsel was the failure of Mr. Deo, to file reply Affidavit to her Affidavit in support of her Summons. If the reliefs claimed by Ms. Hans are not supported by the relevant legislation, being the provisions of the Companies Act, the mere failure to file reply Affidavit will not automatically qualify her for the reliefs prayed for.
49. Accordingly, in view of all what I have discussed above, I have no alternative, but to decline the said reliefs (1) to (6) sought in Ms. Hans's Summons filed on 8<sup>th</sup> June 2022, with an order for higher costs in favor of Mr. Deo.
50. In deciding the costs, I take in to consideration the outcome of this Summons. I find that Ms. Hans has failed in obtaining reliefs 1-6 prayed for therein. Firstly, she has not satisfied the Court that she is entitled for such reliefs. Further, exercise in obtaining those reliefs has been found to be frivolous, vexatious and an abuse of the process of the Court. I stand convinced that Mr. Deo and the Official receiver should be adequately compensated by way of Costs to be paid by Ms. Hans, as they seem to have been forced to incur Costs in defending this Summons, which was uncalled and unwarranted.
51. Accordingly, considering the circumstances, this Court orders Ms. Hans to pay Mr. Deo a sum of \$ 8000.00 and the Official Receiver \$ 1,000.00 being the summarily assessed costs.

**C. Summons Filed by Mr. Deo on 12<sup>th</sup> October 2022 (Summons "C")**

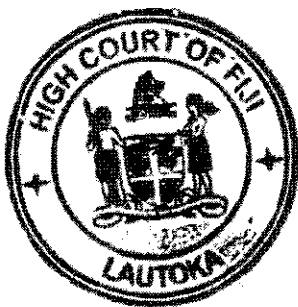
52. Finally, what is left for consideration is the Summons by Mr. Deo, dated and filed on 12<sup>th</sup> October 2022, marked as "C" above.
53. The 1<sup>st</sup> relief sought by Mr. Deo, in terms of this Summons, is to strike out Ms. Hans's summons dated 6<sup>th</sup> June 2022, by acting under Order 18 rule 18 of the High Court rules. This Court has already dealt with the said summons of Ms. Hans, and decided that she is not entitled for the reliefs (1) to (6) sought therein as those reliefs were devoid of merits. The Court also has taken the view that Ms. Hans's said summons should be struck out as her whole exercise in obtaining those reliefs is frivolous,


vexatious and an abuse of the process of this Court. Thus, the relief (1) in Mr. Deo's this Summons dated and filed on 12<sup>th</sup> October 2022 stands duly adjudicated in favor of Mr. Deo, and need not be considered any further.

54. The reliefs 2 and 3 sought by Mr. Deo in this summons dated and filed on 12<sup>th</sup> October 2022 are with far reaching consequences, if granted as prayed for.
55. Parties are engaged in a prolonged and an uncompromising legal battle from the year 2017 before several forums, commencing from Magistrate's Court to Supreme Court, in order to vindicate what they think and/ or advised is their right and entitlement.
56. Counsel for Mr. Deo, has drawn my attention to the fact that none of the Application so far preferred by Ms. Hans, has been decided in her favor. Despite the setbacks and defeats, Ms. Hans, appears to have vowed to fight on relentlessly.
57. Conversely, Mr. Deo, keeps on retaliating Mr. Hans's Applications, while making new Applications on his part as well. The whole litigation process has become a prolonged war for supremacy between both of them, being the estranged Husband and Wife and the shareholders of the Company, with so many mini battles being fought in the form of endless interlocutory Applications at the cost of time and money. I need not specially mention about the time and resources of the Court utilized so far, as the volumes of case records will speak for it.
58. However, in my view, it is not prudent for this Court to grant such reliefs sought in paragraphs No. 2 and 3 of Mr. Deo's Summons dated and filed on 12<sup>th</sup> October 2022 to inhibit Ms. Hans, from commencing any new proceedings and/ or applications against Mr. Deo, and in relation to the Company. If an issue arises in relation to the wounded up Company's affairs, the liquidator is in a better position to seek directions or to commence litigation or make applications. This Court is not inclined to impose such a condition for Ms. Hans to obtain prior leave from the Court to do so, and to treat such proceedings or applications so filed, in the absence of prior leave, to be dismissed automatically.
59. This Court will not extend its helping hand by granting such a relief to Mr. Deo, which could infringe the section 15 (2) of the Fijian Constitution. However, any such a move in future by any party can be appropriately be dealt with by award of costs, if it is so warranted, as I intend to do in relation to these proceedings.
60. Accordingly, this Court decides that the Summons dated and filed by Mr. Deo on 12<sup>th</sup> October 2022 should be dismissed by declining the reliefs sought in paragraphs (2) and (3) thereof, except for the relief 1, which has been granted in favor of Mr. Deo, by declining the reliefs 1-6 sought by Ms. Hans in her summons filed on 8<sup>th</sup> June 2022. Mr. Deo is liable to pay costs unto Ms. Hans on account of this Summons.
61. Mr. Deo, has obtained his reliefs (1) in his Summons dated and filed on 12<sup>th</sup> October 2022 by striking out of Ms. Hans's Summons filed on 8<sup>th</sup> June 2022 and refusal of the reliefs (1) to (6) therein. However, Mr. Deo, has failed in respect of the reliefs (2) and (3) in his said summons. I order Mr. Deo to pay Ms. Hans \$2,000.00 as summarily assessed costs in respect of his Summons filed on 12<sup>th</sup> October 2022.

**D. FINAL ORDERS:**

- a. The reliefs sought in paragraphs (3), (4) and (5) of Mr. Deo's Summons filed on 4<sup>th</sup> April 2022 are hereby declined.
- b. The said summons by Mr. Deo, seeking for the reliefs therein, is hereby dismissed, save the relief No. 1 and 2 granted by consent.
- c. Mr. Deo shall pay Ms. Hans, a sum of \$ 3,000.00 being the summarily assessed costs in respect of this Summons.  
\*\*\*\*\*
- d. The reliefs sought in paragraphs (1) to (6) of Ms. Hans's Summons, filed on 8<sup>th</sup> June 2022 are hereby declined.
- e. The said Summons by Ms. Hans, seeking reliefs therein, is hereby struck out, save the relief (7) granted by a former ruling.
- f. Ms. Hans shall pay Mr. Deo, a sum of \$ 8,000.00 and the Official Receiver a sum of \$1,000.00, being the summarily assessed costs in respect of this Summons.  
\*\*\*\*\*
- g. The reliefs sought in paragraphs (2) and (3) of Mr. Deo's Summons, filed on 12<sup>th</sup> October 2022 are hereby declined.
- h. The said Summons by Mr. Deo, seeking reliefs therein, is hereby dismissed, save the relief (1) granted by striking out Ms. Hans's Summons filed on 8<sup>th</sup> June 2022.
- i. Mr. Deo shall pay Ms. Hans a sum of \$2000, 00 being the summarily assessed costs in respect of this Summons.



  
**A.M. Mohamed Mackie**  
Judge

At High Court Lautoka this 22<sup>nd</sup> day of August, 2023.

**SOLICITORS:**

For the Plaintiff:

For the Defendants:

**AK Lawyers – Barristers & Solicitors, for Mr. Deo**  
**Sairav Law – Barristers & Solicitors, for Ms. Hans**  
**AG's Chamber for the Official Receiver**  
**Mr. R. Singh, for the former Liquidator**

