

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

**Civil Action No. 197 of 2023**

**BETWEEN:**                    **RACHANA RAVEENA NARAYAN** of Bureta Street,  
Samabula, Suva.

**Plaintiff**

**AND:**                            **VIJAY RAJENDRA MANI GOUNDAR** of 92 Sawau Road,  
Bayview Heights, Suva.

**Defendant**

**Representation**

**Plaintiff:** Ms. A Singh (Kholi & Singh Suva).

**Defendant:** Mr. S. Raikanikoda (Raikanikoda & Associates).

**Date of Hearing:** 4<sup>th</sup> November 2024.

**Ruling**

**A.     Introduction**

[1]     The Defendant in this matter filed 2 summonses. The first sought to set aside judgment in default. The other was for leave to appeal and leave to appeal out of time.

**B.     Brief History**

[2]     Writ of summons was filed on 30<sup>th</sup> June 2023. The Plaintiff claimed return of \$330,000.00 lent to Defendant. the money lent was to be repaid within 1 month. Acknowledgement of service was filed on 20<sup>th</sup> July 2023. Statement of defence was filed on 3<sup>rd</sup> August 2023. Reply to statement of defence and summons for direction was filed on 18<sup>th</sup> August 2023.

[3]     The Acting Master on 3<sup>rd</sup> October 2023 made various directions/orders, which included discovery. The Acting Master ordered that “...*failure to comply with above directions, in defaulting parties pleadings shall be S/O subject to a cost of \$3000, as summarily assessed by the Court.*”

[4]     On 12<sup>th</sup> February 2024 the Acting Master noted that PTC was not filed. The court was informed that the Defendant failed to provide documents and that he failed to give instructions to his lawyer. Acting Master then “*pursuant to unless orders made on 03/10/23, Defendants pleading are S/O subject to a cost of \$3000.00.*”

[5] Judgment by default was sealed on 26<sup>th</sup> March 2024. It was served on the Defendant on 29<sup>th</sup> April 2024.

**C. Submissions and Hearing**

[6] The summons was set for hearing on 4<sup>th</sup> November 2024. Mr. Raikanikoda informed the court that the Defendant come to him in the morning of 4<sup>th</sup> November 2024. Previously, the Defendant was represented by Reddy & Nandan Lawyers. They had filed the summons. The hearing was adjourned to give time to counsel for Defendant to make submissions.

[7] I have noted the submissions of the parties.

**D. Determination**

**(a) Setting aside of Judgment by default**

[8] The Defendant relies upon Order 19 Rule 9 of the High Court Rules 1988 for the setting aside of the judgment by default application. Order 19 of the High Court Rules has provisions for setting aside of a judgment entered when there is a default in the pleadings. It does not provide for setting aside of a judgment which is entered by a court for non-compliance of an unless order. It deals with those circumstances where there is a default in the service of either the statement of claim on the defendant or where the defendant fails to serve the statement of defence within the period fixed by or under the Rules for service of the defence.

[9] I find that there is no order made by the Acting Master pursuant to Order 19. The Defendant has made an application under Order 19 Rule 9. The application made pursuant to Order 19 is dismissed.

**(b) Leave to appeal and leave to appeal out of time**

[10] The Acting Master's decision to strike out the Defendant's pleadings was interlocutory.

[11] The principles governing leave to appeal out of time are set out in **McCaig v Manu [2012] FJSC 18; CBV0002.2012 (27 August 2012)** as the factors to be considered are:

- (i) The reason for the failure to file within time.
- (ii) The length of the delay.
- (iii) Whether there is a ground of merit justifying the appellate court's consideration.
- (iv) Where there has been substantial delay, nonetheless is there a ground of appeal that will probably succeed?
- (v) If time is enlarged, will the Respondent be unfairly prejudiced?

[12] The Acting Master had made orders on 3<sup>rd</sup> October 2023 for the filing and inspection of documents. PTC was to have been convened by 27<sup>th</sup> November 2023. On 12<sup>th</sup> February 2024, pursuant to unless orders the Defendants pleadings were struck out. No reason has been given by the Defendant for the failure of non-compliance of inspection of documents. He was required to provide his financial statements. The Defendant has not explained why he failed to provide the bank statements for inspection.

- [13] The Defendant annexed in his affidavit that he was confined to bed in March 2024. The Defendant was required to comply with inspection of documents in October and November 2023. In February 2024 the pleadings were struck out. What the Defendant has submitted later does not correspond with what he was required to do earlier. I find it is conveniently made out by the Defendant.
- [14] There is no ground of merit justifying my consideration. There is substantial delay. I find that if time is enlarged the Plaintiff will be unfairly prejudiced.
- [15] For the reasons given the I decline to grant extension of time. The Plaintiff is entitled to costs which I summarily assess as \$2000.00.

**E. Court Orders**

- (a) **Summons seeking to set side judgment by default is dismissed.**
- (b) **Summons seeking leave to appeal and leave to appeal out of time is dismissed.**
- (c) **Defendant to pay Plaintiff \$2000.00 as costs within 21 days. The costs have been summarily assessed.**



.....  
Chaitanya S.C.A Lakshman  
**Puisne Judge**

**30<sup>th</sup> January 2025**

