

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 364 of 2017

BETWEEN:

PUSHPA DEVI of Lot 4 Manuka Street, Nakasi Park Estate, Domestic Duties as Executrix and Trustee of the ESTATE OF NARAYAN NAIR aka NARAIN NAIR.

First Plaintiff

AND:

AVISHESH NAVNIT NAIR of Lot 4 Manuka Street, Nakasi Park Estate, Clerk as Executor and Trustee of the ESTATE OF NARAYAN NAIR aka NARAIN NAIR.

Second Plaintiff

AND:

WASU DEWAN NAIR aka VASU DEWAN NAIR aka BASUDEWAN NAIR of 5987 Leonardo Way, Elk Grove, CA 95757, Retired Machine Operator.

Third Plaintiff

AND:

NARAINI NAIR of Vitogo, Lautoka, Domestic Duties.

Fourth Plaintiff

AND:

NAIR'S TRANSPORT CO. LTD a limited liability company having its registered office at Lot 81, 9 miles, Nasinu (alongside Kings Road – Wainibuku Road Junction).

First Defendant

AND:

KUNJAN NAIR of Lot 81, Wainibuku Road, 9 Miles, Company Director.

Second Defendant

AND:

VINOD NAIR of 1 Corin Road, Manurewa, Auckland, New Zealand, Retired.

Third Defendant

AND:

SARITA DEVI NAIR of Lot 81, Wainibuku Road, 9 Miles, Nasinu, Domestic Duties as the trustee of the Estate of RAJESHWAR NAIR.

Fourth Defendant

AND:

KUNJAN NAIR of Lot 81, Wainibuku Road, 9 Miles, Company Director as the Trustee of the Estate of SARADA NAIR aka SHARDA DEVI NAIR aka SARDA DEVI NAIR.

Fifth Defendant

Representation:

Plaintiffs: Mr. V. Singh, Mr. R Singh & Ms. N. Devi (Parshotam Lawyers)

Respondents: Mr. R. Prakash & Mr. S. Nandan (On Instructions of S Nand Lawyers).

Date of Hearing: 24th July 2025.

Ruling

A. Introduction

- [1] I granted leave to the plaintiffs to issue committal proceedings against Shorene Shabina Kant, Ritesh Rishi Nair and Damodran Nair (Respondents). These respondents have filed summons to set aside the leave so granted. The summons is supported by an affidavit of each of the respondents.
- [2] An affidavit in response of Avishesh Navnit Nair was filed. Thereafter all the three respondents filed a reply to the response.
- [3] The application filed is pursuant to the inherent jurisdiction of the court.

B. The Submissions

- [4] In brief the Respondent's submissions were that this application is made pursuant to Order 32 rule 6 of the High Court Rules 1988. That the Plaintiff failed to strictly comply with the technical and mandatory requirements of a committal proceeding. The statement and affidavit verifying the statement fail to reach the standard required for leave to be granted. The documents had to stand on their own merits at the time the application for leave was made and defects in them cannot be fixed at a later stage. The Plaintiff did not put before the court, the order into evidence through the affidavit verifying the statement. Which is fatal to leave application. The order lacks sufficient specifics.
- [5] The other submissions for the Respondents were that the order failed to comply with Order 45 rule 5 by not providing prescribed time limits. The Plaintiff failed to make necessary application to court to perfect the order before seeking leave of the court. They failed to make an application for supplementary order against the director and secretary, together with penal notices. There was no proper evidence of personal service on the directors and the secretary even though personal service was not dispensed with.
- [6] For the Plaintiff it was submitted that the summons was deficient and incomplete. It did not cite the High Court Rule that was relied upon for the application. According to the Plaintiff's the matters raised for the respondents are not those matters that should be considered at leave stage but should be for the substantive committal application.
- [7] For the Plaintiff it was submitted that the service of the orders on the Respondents were as the officers of the company. The Respondents are office bearers of the company. The orders were sealed. The Respondents did not complain about specifics despite their written request for compliance with the orders. The Respondents refused to sign to acknowledge the orders.

C. Determination

- [8] The Respondents should have cited the relevant rules in the summons under which the application was being made. It makes it easier for the court and the parties once that is

done. Everyone is on the same page and relevant rules are considered. At the hearing of the matter reliance was placed on Order 32 Rule 6 of the High Court Rules.

- [9] Order 32 rule 6 of the High Court Rules 1988 provides that “*the Court may set aside an order made ex parte*”. The leave granted to the plaintiff was ex-parte. Order 52 rule 2 (2) provides that “*an application for such leave must be made ex parte to a judge in chambers, and must be supported by a statement setting out the name and description of the applicant, the name, description and address of the person sought to be committed and the grounds on which his [or her] committal is sought, and by an affidavit, to be filed before the application is made, verifying the facts relied on.*” Committal proceedings are initiated ex parte.
- [10] Order 52 proceedings operate in two stages. The first is an application for leave to apply for committal. This is done ex parte. This is administrative in nature. The second stage is application for an order of committal.
- [11] What was required of me in the first stage was to ensure that the application (ex parte) was by a notice given to the Registry within the prescribed time as per Order 52 Rule 2 (3) and lodged with the required statement and affidavit at the same time. I was to ensure that the statement set out the information that is specified in and required by Order 52 rule 2(2). The contents of that statement must be verified by an affidavit which is to be filed before the application is made and at the same time as the other documents. I am also required to satisfy myself that the application is one that falls with the jurisdiction that is given to the court under Order 52 rule 1. All the requirements for the leave was complied with. Then leave was granted.
- [12] Once the leave is granted the application for an order of committal is made by motion and in accordance with requirements of Order 52 rule 3. This then proceeds inter parte. This is now on foot. Any issues of the Respondents can be dealt with in the proceedings.
- [13] The application by the respondents to set aside the committal proceedings has no merit. It is dismissed. The respondents are to pay the Plaintiff, \$5000.00 as costs with 21 days. The costs have been summarily assessed.

D. Court Orders

- (a) The application by the Respondents to set aside the committal proceedings has no merit. It is dismissed.
- (b) The Respondents are to pay the Plaintiff, \$5000.00 as costs with 21 days. The costs have been summarily assessed.

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Chaitanya S.C. A Lakshman

Puisne Judge
22nd August 2025

