

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Appeal No: HBC 341 of 2023

BETWEEN : **J SANTA RAM PTE LTD**
PLAINTIFF

AND : **NEW INDIA ASSURANCE COMPANY PTE LTD**
DEFENDANT

Coram : **Banuve, J**

Counsels : **L. Ratuniata, Reddy & Nandan Lawyers for the Plaintiff.**
M. Khalim, Patel, Sharma Lawyers for the Defendant.

Date of Hearing : **29 January 2026**

Date of Ruling : **5 February 2026**

RULING

A. Introduction

1. The Plaintiff initiated proceedings by way of Summons pursuant O.25, r.10 of the *High Court Rules 1988*, on 4 November 2025 seeking that time be allowed to file the application for leave to appeal the decision of the Honorable Master, dated 3 June 2025. It was supported by an Affidavit deposed by Arpana Reshmi Devi, a Director of the Plaintiff.
2. The Defendant filed an Affidavit in Opposition on 29 December 2025 and the Plaintiff filed an Affidavit in Reply on 27 January 2026.
3. The decision of the Master that is the subject of this application, was made pursuant to O.25 Rule 9 of the *High Court Rules 1988*, which states;

Strike out for want of prosecution (O.25.r.9)

9-(1) If no steps has been taken in any cause or matter for six months then any party on application or the Court of its own motion may list the cause or matter for the parties to show cause why it should not be struck out for want of prosecution or as an abuse of the process of the Court.

(2) Upon hearing the application the Court may either dismiss the cause or matter on such terms as may be just or deal with the application as if it were a summons for directions.

4. The application filed on 4 November 2025, however is necessitated by the expiry of the time period for filing an appeal against a ruling of the Master on 17 June 2025. The delay is of some 4 months.
5. The delay is substantial, bearing in mind that the ruling was an '**O.25, r.9 Ruling**' where the Master in the exercise of her discretion struck off the proceeding for intentional and contumelious default on the part of the Plaintiff, in the prosecution of the matter.

6. Bearing in mind the ratio for striking off in the Master's ruling of 3 June 2025, the Court would have expected the Plaintiff to have moved expeditiously, and filed an appeal within the time prescribed by O.59, r.9. It failed to do this leading to the filing of an application for enlargement of time pursuant to O.59, r.10.

B. The Master's Ruling

7. The Master summarized these background facts in her Ruling;
 - (i) A Writ of Summons (with Statement of Claim indorsed) was filed on 10 November 2023.
 - (ii) A Defence was filed on 16 January 2024.
 - (iii) On 10 July 2024, the Plaintiff filed its first notice of intention to proceed and filed another after the O.25, r.9 Notice was issued and served.
 - (iv) The Plaintiff fled an affidavit to show cause, whose contents are summarized as follows;
 - Reply to Defence and Summons for Directions was drafted by previous solicitor in carriage at *Reddy & Nandan* Lawyers, who forgot to file it, nor was it brought to anyone's attention that it had not been filed before the solicitor proceeded on leave..
 - The file was not allocated to anyone else
 - No disrespect was meant to the Court or the Defendant and the delay was due to unfortunate circumstances, is neither intentional, contumelious, constituting abuse of process, substantial risk of an unfair trial or cause the Defendant serious prejudice. Further the Plaintiff is ready to proceed further by filing a Reply to Defence and Summons for Directions.
8. The Defendant opposed the grounds set out by the Plaintiff.

9. In exercising her discretion to strike out proceedings pursuant to O.25, r.9 the issues which the Master found compelling were;
- (i) The Plaintiff was required to show there was no intentional and contumelious default, and that there was no abuse of process of the court.
 - (ii) The first default by the Plaintiff was the failure to file a Reply to Defence within 14 days upon service of the Defence.
 - (iii) A Defence was filed on 16 January 2024. The initial Notice may have been premature as the 6 months expired on 16 July 2024, however it ought to have been a warning to the Plaintiff to take action on the file.
 - (iv) The Plaintiff was to have filed a summons under O.25, r.1 by 4 March 2024, however blames counsel in carriage of the file, for not doing so, despite filing a Notice of Intention to Proceed on 10 July 2024.
 - (v) The Plaintiff's law firm should have moved the Court to seek leave to file a reply out of time, with a Summons for Directions, but chose not to do anything upon expiration of 1 month under the Notice of Intention to Proceed.
 - (vi) Judicial Notice was taken of a previous claim HBC 96 of 2019 which had been set for hearing on 3 and 4 November 2022 but for which an adjournment was sought, after earlier seeking an adjournment on an earlier trial fixture on May 2022, due the non - availability of a witness. The adjournment of the November 2022 hearing date had been refused.
 - (vii) The current proceeding arose from the same set of facts as HBC 96 of 2019, which was initiated on 19 November 2023, in which the cause of action arose in December 2017. Given the outcome in the earlier proceeding, the Plaintiff's counsel ought to have proceeded with due diligence and not await an O.25, r. 9 Notice.
 - (viii) Overall there has been intentional and contumelious default in the manner the Plaintiff has proceeded with its claim and it is struck out under O.25, r.9 in favor of the Defendant.

C. The Summons

10. The Summons filed by the Plaintiff on 4 November 2025 seeks leave to appeal out of time the decision of the Master of 3 June 2025 pursuant to O.59, r.10 of the *High Court Rules* 1988.
11. The principles governing an application for leave to appeal out of time, are as follows¹;
 - (i) The length of the delay
 - (ii) The reasons for the delay
 - (iii) The chances of the appeal succeeding, if an extension of time is granted.
 - (iv) The degree of prejudice to the respondent if the application is granted.
12. The Master's decision of 3 June 2025 to strike out the Plaintiff's claim pursuant to O.25, r.9 is an interlocutory one, based on the 'application approach,'- *Goundar v Minister of Health* –Civil Appeal No ABU0075 of 2006.²
13. To that end, leave to appeal the interlocutory decision is sought³. The Plaintiff however, seeks further time to file the application for leave to appeal out of time, as it were, given the expiry of the period for the filing of an interlocutory appeal prescribed by O.59, r.11.

Order 59, rule 10 pursuant to which the Summons for leave to appeal out of is filed, does not allow for an extension of time for *leave to appeal*. It applies to the enlargement of time for Notice of Appeal or Cross Appeal and has no relevance to the Summons filed by the Defendant seeking extension of time for leave to appeal.⁴

14. The Plaintiff ought to have relied on O.3, r.4 to seek an enlargement of time for leave to appeal the Master's interlocutory decision of 3 March 2025⁵. This has not been done.

¹ *Nair v Prakash* [2013] FJCA 147 as applied in *Vijendra Mani v Subhash Chandra Sharma* – Civil Action HBC 11 of 2008

² Paragraphs 37-38 of the Ruling delivered on 9 July 2008

³ *Totis Incorporated Sports (Fiji) Ltd and Richard Evanson v Clark and Sellers* (unreported) ABU 35 of 1996

⁴ *Bank v Baroda v Chute* [2023] FJHC 849; Civil Action 34 of 2022 (6 November 2023) per Lakshman, J at paragraph [4]

⁵ *Vijendra Mani v Subhas Chandra Sharma* –Civil Action HBC 11 of 2008 per Ajmeer, J at paragraphs [21]-[22]

D. Analysis

15. Whilst this issue is potentially fatal to the Plaintiff, the Court will nevertheless review the requirements governing leave to appeal.

(i) Length of Delay

The length of the delay is some 4 months in duration. A cursory review of the progress of this matter discloses a sorry case of delay by the Plaintiff. The cause of action arose in December 2017. There was an initial proceeding filed by the Plaintiff HBC 96 of 2019, which was struck off also pursuant to O.25, r.9.

The current matter was again struck off by the learned Master on 3 March 2025, (on the basis of want of prosecution, again), and the summons before the Court seeks further time for leave to appeal. It is not sought under the appropriate procedural rule.

Counsel appearing for the Plaintiff appeared oblivious of the unfortunate history of this matter, that this was the second time the Master has had to strike off this matter, for want of prosecution. Counsel ought rather, to have been vigilant in prosecuting the matter, given its unfortunate history, or, at the least, advance credible grounds to justify seeking further time in order to seek leave to appeal.

(ii) Reason for the Delay

The reasons blithely advanced by counsel for the delay is couched as 'circumstances beyond its control,' were that the deponent of the supporting affidavit was overseas and that counsel who had carriage of the matter had resigned, without the Plaintiff's knowledge. Counsel appears to gloss over the finding of the Master, that the delay in prosecuting this matter,⁶ was intentional and contumelious. The absence of the deponent from the jurisdiction and the departure of counsel handling the matter, cannot possibly constitute adequate 'cause'. The law firm *Reddy, Nandan Lawyers*

⁶ See paragraph 9 herein

was retained by the Plaintiff, not the individual lawyers employed by the firm, in their personal capacity. It is the firm which ought to be extra-vigilant in prosecuting this particular matter, given its unfortunate history of delay. The Court finds no reason to disturb the Master's finding on this issue.

(iii) Chances of Success

There are 3 grounds specified in the 'Proposed Notice and Grounds of Appeal' attached as Annexure 'ARD 3' of the Affidavit in Support of the Summons filed on 4 November 2025;

1. *THAT the learned Master erred in law and/or fact by failing to take account of or apply the relevant legal principles in making their decision.*
2. *THAT the Learned Master erred in law and/or fact in failing to properly consider the Appellant's legal argument and explanation resulted in the misapplication of the facts and law.*
3. *THAT the Learned Master erred in law and/or fact failed to provide adequate reasoning to demonstrate why the Appellant's legal argument were rejected. In particular, the absence of a reasoned analysis of the Appellant's legal explanation means the decision is not sufficiently reasoned and is therefore flawed.*

The Court has reviewed the 3 grounds of appeal proposed against the Learned Master's ruling of 3 June 2025 to strike off this proceeding for want of prosecution⁷. None of the proposed grounds of appeal, address the Master's finding that the delay exhibited in the prosecution of this matter since the cause of action arose in December 2017, (confirmed by the issue of two **O.25, r.9 Notices** against the Plaintiff for want of prosecution), was intentional and contumelious. The Court does not see any new material raised in the proposed grounds to justify reviewing the Master's decision of 3 June 2025, and there is little prospect of this appeal succeeding.

⁷ See paragraph 9 herein

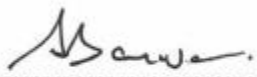
(iv) Degree of Prejudice

This consideration is intrinsically interwoven with the previous aspect of the prospective success of the appeal and in light of the finding that there is little prospect of the appeal succeeding. The response to the query on this issue is also in the negative.⁸

ORDERS

1. The orders sought by the Plaintiff in the Summons filed on 4 November 2025 are refused and dismissed in its entirety.
2. Costs summarily assessed at \$1,500.00 to be paid to the Plaintiff within 7 days of this Ruling.




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Savenaca Banuve
Judge

Dated this 5th day of February, 2026.

⁸ *Munesh Prasad v Rajesh Prasad & Usha Prasad*- Civil Appeal No ABU 0031 of 2016, per Prematilaka JA at paragraph [19]