

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

HBC 210 of 1989

BETWEEN : **KRISHNA SAMI** son of Mardaiya of Nalovo, Nadi,
Salesman.
PLAINTIFF

A N D : **SANT RAJ** formerly of Nalovo, Nadi but now of Auckland,
New Zealand.
DEFENDANT

A N D : **RAJNEETA DEVI RAJ** of Auckland, New Zealand, Student.
INTERESTED PARTY

Appearances: Mr D. S Naidu for the Plaintiff
Mr S. Nand for the Defendant
Hearing: 12 August 2019
Date of Ruling: 09 December 2019

R U L I N G

INTRODUCTION

1. The background to this case is set out in my earlier rulings (**Sami v Raj** [2014] FJHC 389; HBC210.1989L (30 May 2014); **Sami v Raj** [2017] FJHC 287; HBC210.1989 (21 April 2017); **Sami v Raj** [2019] FJHC 293; HBC210.1989 (29 March 2019)) and in Mr. Justice Ajmeer's Ruling (**Raj v Sami** [2019] FJHC 169; HBC206.2016 (27 February 2019)).

2. In my last Ruling dated 31 October 2019 which is unreported, I was dealing with Messrs Pillai Naidu & Associates' Summons dated 22 August 2019 seeking the following Orders:
 - a) The sum of \$20,000 as legal costs to my solicitors Messrs Pillai, Naidu & Associates arising out of this action.
 - b) That leave be granted to join Rajneeta Devi Raj as the Interested Party in these proceedings.
3. That Summons was served on the interested party by advertisement in the Fiji Times issue of 04 September 2019. It was also duly served on the defendant's (judgement debtor's) solicitors.
4. On the first call on 18 September 2019, Mr. D.S Naidu appeared for the applicant and Mr. Nand appeared for the judgement debtor. There was no appearance by or for the interested party.
5. Mr. Nand confirmed yet again that he carried no instructions by the interested party.
6. The matter was then adjourned for mention on several occasions before the hearing.

RULING

7. I made the following observations in my last Ruling:
 8. *In Sami v Raj [2017] FJHC 287; HBC210.1989 (21 April 2017), I had dealt with an application of the defendant to remove a stop departure order to allow him to return to New Zealand. The Ruling records that Raj had undertaken and had handed a cheque to the sum of \$20,000 which was to be paid to Pillay Naidu & Associates "towards the judgement sum".*

HEARING ON 02 SEPTEMBER 2016

On 02 September 2016 at 2.30 p.m., an affidavit sworn by the plaintiff on the same day was filed. By this affidavit, the plaintiff denies having received any rental from

the defendant's property nor was any rental payment ever made to the trust account of the plaintiff's solicitors.

The plaintiff also annexes a copy of Certificate of Title 8351 over the defendant's Waqadra property which contains notations confirming that the said property is owned by the defendant and his wife as tenants in common. There is also a notification on the said title of a mortgage in favour of the couple's (defendant and wife) daughter.

In Court, Mr. Raratabu again appeared for the defendant and Mr. DS Naidu for the plaintiff.

Mr. Raratabu argued that his client was retired and that a stop departure order would serve no purpose as judgement was already registered against his property which is valued at over \$250,000 compared to the \$50,000 judgement debt. He reiterated the argument that the judgement sum has reduced because the plaintiff has received some of the rental income from the property. He argues also that the defendant's wife needed urgent medical attention and desperately needed the defendant by her side in New Zealand. Mr. Raratabu said the defendant was willing to pay \$20,000 towards the balance.

The defendant's passport was also handed up in court. Sant Raj also undertook in court that he would pay \$20,000 by Monday 05 September 2016 towards the judgement sum.

After hearing both counsel, I then made the following Orders:

- (i) The passport of the defendant/judgement debtor was to be held in court until Sant Raj pays the Trust Account of Pillay Naidu the sum of \$20,000.*
- (ii) Seven days to the defendant/judgement debtor to pay file and serve an affidavit in opposition to the plaintiff's application for any Order for the sale of the property.*
- (iii) 7 days thereafter to plaintiff/judgement creditor to file and serve affidavit in reply.*
- (iv) I then adjourned the case to Tuesday 06 September 2016 for mention at 10.30 a.m. to see if \$20,000 is paid and to consider release of the passport if the money is paid. I also set the date of hearing on the application for the sale of the property to 30 September 2016 at 2.30 p.m.*

06 SEPTEMBER PROCEEDINGS

On 06 September 2016, Fazilat Shah Legal filed a Notice of Change of Solicitor confirming that they had been appointed to act as solicitor for the defendant in lieu of Messrs Siddiq Koya Lawyers. In Court, Mr. Mohammed said that he had a cheque of \$20,000 payable to the High Court.

Mr. Naidu objected saying that the defendant was ordered to pay his firm last Monday and was to have filed an affidavit of assets in Fiji and that unless he purged his contempt, his passport was not to be released.

I ordered that the passport was to be released to the defendant upon the following conditions:

- (i) Bank Cheque in the sum of \$20,000 payable to Pillay Naidu & Associates to be made.*
- (ii) Costs to Pillay Naidu & Associates in the sum of \$1,500.*
- (iii) Affidavit of Assets (including bank accounts) to be filed in fourteen days on defendant's undertaking in Court.*

In due course, the stop departure order was uplifted upon the defendant fulfilling the above. He filed an affidavit of assets on 27 September 2016 wherein he inter alia disclosed that he has one undivided half share in Certificate of Title No. 27650 situate at Waqadra in Nadi and also full ownership of Certificate of Title No. 8351 and approximately \$1000 to his credit in an ANZ Account.

On 30 September 2016, at 2.30 p.m., Mr. Naidu appeared for the plaintiff but there was no appearance by or for the defendant.

Mr. Naidu took issue with the affidavit of assets filed by the defendant. According to him, the affidavit did not fully disclose the details of all the assets that the defendant owns.

I then stood down the case to 2.45 p.m. to await any appearance by the defendant or his counsel. During the time when the case was stood down, my clerk contacted Fazilat Shah legal but was informed by a clerk of that firm that they were not aware that the case would be called today and that Mr. Mohammed was out of the office.

- 9. It is not clear to me how this has been accounted for in the overall scheme of things, so to speak. In particular, I need to know whether that money was in fact paid into the trust account of Pillay Naidu & Associates and if it was, how that payment reconciles with, or is accounted for in, the figures in the 29 March 2019 Orders.*
- 10. I am not inclined to grant the orders sought until this is clarified by a further affidavit to be sworn by the accounts clerk of Pillai Naidu & Associates.*

FURTHER AFFIDAVITS FILED

8. On 06 November 2019, Pillai Naidu & Associates filed an Affidavit of Rozita Priyardarshni ("Priya"). She deposes as follows:

- 1) *That I am the Assistant Accounts Clerk in the office of Solicitors of Messrs Pillai Naidu & Associates, Nadi.*
- 2) *That I refer to Ruling delivered on 31st October, 2019 wherein the Honorable Judge ordered for the Accountant of Pillai Naidu & Associates to file further affidavit showing the breakdown in regards to distribution of funds as per Order made on 29th March, 2019. (Annexed herein and marked "RP-1" is our Statement of Account).*

9. The Statement of Account annexed in Priya's Affidavit is reproduced below:

<u>STATEMENT OF ACCOUNT</u>		
RE: KRISHNA SAMI -vs- SANT RAJ LAUTOKA HIGH COURT HBC NO. 210 OF 1989		
	PAYMENTS	BALANCE
Consideration sum – (Sale of CT No. 8351 Sant Raj (Vendor) Mahendra Keshwan (Purchaser))		\$225,000.00
Paid Krishna Sami (balance under judgment)	\$63,126.52	\$161,873.48
Paid Pillai Naidu & Associates (Legal costs and disbursements) for conveyancing matter	\$8,707.00	\$153,166.48
Paid Fiji Revenue & Customs Services CGT (8/4/2019) R/No. 6895595	\$20,996.90	\$132,169.58
Paid Pillai Naidu & Associates (costs of filing of affidavit and accounts)	\$817.50	\$131,352.08
Paid into High Court in Sant Raj's account as per Order dated 29/03/2019 vide R/No. 357204 on 09/04/2019.	\$131,260.08	
Balance held in Trust Account		\$92.00

10. On 21 November 2019, Priya swore another affidavit by which she deposes as follows:

- 1) *That I am the Assistant Accounts Clerk in the office of Solicitors of Messrs Pillai Naidu & Associates, Nadi.*

2) That I refer to Ruling delivered on 31st October, 2019 wherein the Honorable Judge ordered for the Accountant of Pillai Naidu & Associates to file further affidavit showing the breakdown in regards to distribution of funds as per Order made on 29th March, 2019. (Annexed herein and marked "RP-2" is our Statement of Account).

11. I annex marked *Appendix 1* a copy of the Statement of Account annexed in Priya's second affidavit. It would appear from the said Statement of Account that the \$20,000 paid by Sant Raj in 2016 was all paid to Krishna Sami the plaintiff. If that is the case, then the total that Krishna Sami has received from the judgement is as follows:

\$55,000 - 00	Judgement Sum
\$20,000 - 00	Paid to Krishna Sami on 06 September 2016
\$63,126 - 52	Paid to Krishna Sami out of the sale proceeds
\$83,126 - 52	TOTAL PAID TO KRISHNA SAMI

COMMENTS

12. The difference between the judgement sum and the total sum that Krishna Sami has received so far is 28,126.52.

13. Considering that the consent judgement was entered in 2005, I accept that post judgement interest will have accrued annually on the judgement sum.

14. However, I still require the following to be clearly explained:

- (i) was the \$20,000 paid in 2016 credited against interest accrued on the judgement sum or was it credited against the judgement sum?
- (ii) state the interest rate was being applied?
- (iii) whatever the answer to (i) and (ii) are – why?
- (iv) explain why he was paid \$63,126 -52 in 2019?

15. I am aware that that the appeal does not challenge Ajmeer J's refusal to set aside the consent order in question. Accordingly, whatever Ruling the Fiji Court of Appeal will hand down, is unlikely to disturb the consent judgement in question.
16. Considering the likelihood that a further application will be made by D.S. Naidu for costs in defending the appeal, I am not prepared to make Order in Terms yet on costs until the appeal is concluded.
17. Pillai Naidu & Associates may answer the questions I pose above then.
18. This matter is to be taken off the cause list until the appeal is dealt with by the Fiji Court of Appeal.



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Anare Tuilevuka
JUDGE
Lautoka