

IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA
CIVIL JURISDICTION

Civil Action No. HBC 69 of 2012

BETWEEN : **KIRAN DEVI AUTAR**

PLAINTIFF

AND : **EDWARD NAGAIA & ANOTHER**

DEFENDANT

Counsel : Ms. S. Lata for the Plaintiff
Defendant in Person

Date of Ruling : 9th May, 2018

Ruling by : Hon. Mr. Justice Mohamed Mackie

R U L I N G

[On summons for leave to withdraw as Counsel]

1. The plaintiff's Solicitors on 26th March 2018 filed summons for leave to withdraw as counsel for the plaintiff and same was supported before me on 28th March 2018.
2. The summons is supported by an affidavit sworn on 26th March 2018 by one Karthikeyan Chandra, being a Solicitor employed by Messrs. Rams Law, Barristers and Solicitors.
3. This action is pending since the year 2012 and the default judgment entered against the 1st defendant for a portion of the claim stands affirmed, after the application by the 1st defendant to have it vacated was dismissed by this Court by its ruling dated 7th December 2017. The 1st defendant has not moved against the above ruling of this court.
4. However, on being directed, the 1st defendant has filed his statement of defence on 27th March 2018 for the balance claim of the plaintiff.
5. It is at this juncture, the plaintiff's solicitors have filed the summons for withdrawal, stating that despite several e- mails sent, the plaintiff has not responded or given instructions for this matter and another proceeding in the Magistrate's court of Nadi.

6. According to the affidavit, it is stated that the plaintiff had been instructing the solicitors via e-mail and in person during her visits to Fiji from Australia. Her present postal address in Australia is not known. It is also stated that plaintiff's Son namely, Rajesh Autar also was in communication with the solicitors via e-mail with regard to this matter on behalf of his mother.
7. The e-mail dated 17th January 2018 sent by the plaintiff's solicitors to the plaintiff, with a copy to her son, is annexed to K. Chandra's supporting affidavit as KC-1. Plaintiff has not responded to this mail. However, her Son Rajesh Autar by his mail dated 29th January 2018 has responded in the following manner.

"Hi Barbara. I have left messages with your reception. I haven't been to Fiji in a while but will pay your dues when I am around. I have never said no to your fees.

Regrads. Thanks DJ RAI(Raj)

8. Once again on 7th March 2018 the plaintiff's Lawyers have sent a mail to the plaintiff. This too has not been responded.
9. When the application was supported on 28th March 2018, this Court made following orders ;
 - a. *Plaintiff's postal address may be obtained by emailing her Son.*
 - b. *If her son fails to submit the address within 3 days, notice to the plaintiff may be sent via e-mail address of her Son.*
 - c. *Matter may be mentioned on 9th may 2018 at 10.30 am for the plaintiff to respond.*
 - d. *Notice to the plaintiff by e-mail may be copied to the registry via its email address*
10. In keeping with the above order, the plaintiff's Solicitors have sent the e-mail dated 28th March, 2018 to plaintiff's son Rajesh, requiring the postal address of the plaintiff, and in response to this mail Rajesh by his returner mail dated 1st April 2018 has responded as follows;

**"from : Rajes Autar djra1sydney@gmail.com
Date: Sun, Apr 1 2018 at 5.57 pm
Subject: Re KIRA N DEVI AUTAR v EDWARD NAGAIYA – CIVIL
ACTION No. 69/2012
To : Sonia Lata- soniaramslaw@gmail.com**

**Will call u on Wednesday next week.
regards
raj autar"**

11. This shows that he has received the mail and he acts for his Mother. He would, undoubtedly, have informed his mother about this summons and what is going on with regard to this case.

12. Since there was no feedback from the Plaintiff's Son with his mother's postal address, the Solicitors acting in terms of my order dated 28th March 2018, have sent the summons and the affidavit for withdrawal to the plaintiff's Son on 5th April 2015 through his aforesaid e-mail address.
13. Though, one month has elapsed, the plaintiff or her son have not responded to the summons. The plaintiff or anyone representing her did not appear in Court today 9th May, 2018 being the summons returnable date. This shows that the plaintiff being duly informed and served with this withdrawal application, is not interested in proceeding with this matter either through the current solicitors, new solicitors or in person. I am satisfied that the above service is sufficient.
14. When the matter came up today 9th May 2018, the plaintiff's solicitors made the application for the orders as prayed for in the summons. Since there were no response either from the plaintiff or her Son, Court heard the application for withdrawal.
15. Under these circumstances, this Court has no alternative but to allow the application for withdrawal.
16. Accordingly, this Court makes following orders.
 - a. Application for withdrawal allowed, subject to the service of the order on the plaintiffs.
 - b. The Plaintiff's Solicitors shall dispatch the order to the plaintiff through her Son Rajesh Autar, via his e-mail address.
 - c. Order shall be sealed and served within 7 days.
 - d. Mention on 30th May 2018 to see the response by the Plaintiff.
 - e. Cost in the cause.



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A.M.Mohammed Mackie

Judge

**At Lautoka
9th May, 2018**