

IN THE HIGH COURT OF FIJI
AT LABASA
CIVIL JURISDICTION

CIVIL ACTION NO. HBC 62 OF 2016

BETWEEN: **ABDUL SAHEED HUSSAIN**

Plaintiff

AND: **JADURAM INDUSTRIES LIMITED**

Defendant

CORAM: **The Hon. Mr. Justice David Alfred**

COUNSEL: **Mr. A. Sen for the Plaintiff/Appellant**

Mr. A. Ram for the Defendant/Respondent

Date of Hearing: **17 September, 2018**

Date of Decision: **17 September, 2018**

DECISION

1. This is the Plaintiff's appeal against the Ruling of the Master made on 2 February 2018 that Pacific Engineering Projects Ltd (Pacifie) be joined as the Second Defendant in these proceedings.
2. The grounds of the appeal are that:
 - (1) The Master erred in law in ordering that the Plaintiff had to file an action against Pacifie when he does not have any cause of action against it.

- (2) The Master erred in law in ordering that the Plaintiff had to file a claim against Pacific and prosecute the same in Court.
3. On 28 May 2018 Seneviratne J gave the Plaintiff leave to appeal out of time.
4. At the hearing before the Court this morning, Mr Sen relied on Order 15 rule 6 of the High Court Rules (HCR) (cause not defeated by misjoinder or non-joinder of any party) and submitted that Pacific should not be joined as a defendant.
5. Mr Ram submitted that Pacific was a necessary party regarding the defective lid, and relied on O.15 r. 6 (2)(b) (Court ordering person to be added as party).
6. At the conclusion of the arguments I said I would take time to consider my decision. Having done so, I now proceed to deliver it.
7. The sole issue before me is whether the Master was right to have ordered the Plaintiff to join Pacific as the Second Defendant herein.
8. If I may say so with respect, the Master would have been well advised to have adhered to what she stated in paras 8 and 9 of her Ruling.
9. In para 8, she cites the Supreme Court Practice 1999 volume 1 at para 15/6/7 that the plaintiff is entitled to choose the person against whom to proceed and to leave out any person against whom he does not desire to proceed.
10. And in para 9, the Master quotes *ibidem* para 15/6/8 that the plaintiff who conceives he has a cause of action against a defendant is entitled to pursue his remedy against that defendant alone. He cannot be compelled to proceed against other persons whom he has no desire to sue.
11. The above propositions should have caused the Master not to make the order to join Pacific as a co-defendant against the desire of the Plaintiff. Instead the ends of justice would have been met if the Defendant had applied, as it was entitled to, for leave to

issue a Third Party Notice against Pacific, under O.16 r.1 (1)(c) HCR, where the issue connected with the original subject matter of the action could be determined between the plaintiff and the defendant and Pacific. Indeed, in my view the defendant is clearly looking at this in para 3 of its Statement of Defence.

12. I think the words of Seneviratne J in para 12 of his Ruling that “It is the position of the plaintiff that he had no cause of action against the party who was joined by the order of court, for him to file a statement of claim” says it all.
13. In the result, the Appeal is allowed, the Master’s Ruling is set aside and the Defendant shall pay the Plaintiff \$500 as the costs summarily assessed of this Appeal.
14. The action shall now proceed in the normal course.

Delivered at Labasa, this 17th day of September, 2018.



DAVID ALFRED
JUDGE
HIGH COURT OF FIJI