

**IN THE HIGH COURT OF FIJI AT SUVA**  
**CIVIL JURISDICTION**

**Civil Action No. HBC 326 of 2009**

**BETWEEN** : **B.PRASAD & SONS LIMITED**  
**PLAINTIFF/APPLICANT**

**AND** : **JOE MYUNG YOO c/- KOREAN MOTORS CO LTD**  
**DEFENDANT**

**BEFORE** : **Hon. Justice Kamal Kumar**

**COUNSEL** : **Ms. S Narayan for Plaintiff/Applicant**  
**Mr. W. Tabuya for Defendant**

**DATE OF HEARING** : **5 October 2016**

**DATE OF JUDGMENT** : **17 October 2016**

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**JUDGMENT**  
**(Committal Proceedings)**

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## **Introduction**

1. Pursuant to leave granted on 19 August 2016, Applicant filed Notice of Motion dated 19 August 2016, seeking following Orders:-

- “a). That Joe Myung Yoo C/- Korean Motors Co Ltd of Lot 8 Jai Hanuman Road, Bhindi Sub-Division, Vatuwaqa, Suva, be committed to prison for the Contempt of Court in failure to comply with order granted by Honorable Mr. Justice Kumar in Court on Thursday, the 31<sup>st</sup> Day of March, 2016;***
- b). That Joe Myung Yoo C/- Korean Motors Co Ltd of Lot 8 Jai Hanuman Road, Bhindi Sub-Division, Vatuwaqa, Suva do pay the Plaintiff their costs and incidental to this application and the order to be made thereon;***
- c). That such further or other order may be made as the Court shall think fit.”***

**(“the Motion”)**

2. The Motion was listed to be called on 21 September 2016 when Counsel for the Applicant appeared and Mr P. Patrick appeared on instructions for Respondent and sought an adjournment on the ground that Respondent’s Counsel was away overseas to attend a conference. Respondent failed to appear. The Motion was adjourned to 5 October 2016 for hearing.

## **Background/Undisputed Facts**

3. Pursuant to Judgment delivered on 31 March 2016, this Court granted following Orders against the Respondent as Defendant:-

- “I. Defendant to pay Plaintiff the sum of \$66,666.36;***

**II. Defendant to pay the Plaintiff interest on the sum of \$66,666.36 at the rate of 3% per annum from 5<sup>th</sup> October 2009 to date of this Judgment.**

**III. Defendant to pay the Plaintiff costs of this action assessed in the sum of \$3,000.00.”**

4. Respondent so far paid \$16,000.00 being legal cost and interest and offered to pay the Judgment sum of \$66,666.36 by monthly installments of \$750.00.
5. Applicant accepted the sum of \$16,000.00 paid by the Respondent on without prejudice basis but refused Respondent's offer to pay the sum \$66,666.36 by monthly installments of \$750.00.
6. The Respondent paid a sum of \$3,750.00 into his Solicitors Oceania IP's Trust Account. Details are as follows:

<u>Date</u>	<u>Amount</u>
14/6/2016	\$ 750.00
1/7/2016	\$1,500.00
8/9/2016	\$ 750.00
8/9/2016	<u>\$ 750.00</u>
	<u>\$3,750.00</u>

#### **Application for Committal**

7. The Orders made by this Court on 31 March 2016 appears at paragraph 3 of this Judgment.
8. It is not disputed that the Order was served on the Respondent and he is fully aware of his obligation.
9. Order 45 Rule 1(1) of High Court Rule provide as follows:-

***“Subject to the provisions of these Rules, a judgment or order for the payment of money, not being a judgment or order for the payment of money into court, may be enforced by one or more of the following means, that is to say-***

- (a) writ of fieri facias;***
- (b) garnishee proceedings;***
- (c) a charging order;***
- (d) the appointment of a receiver;***
- (e) in a case in which rule 4 applies, an order of committal;***
- (f) in such a case, writ of sequestration.”*** (emphasis added)

10. Order 45 Rule 4(1) provides as follows:-

***“Where -***

- (a) a person required by a judgment or order to do an act within a time specified in the judgment or order refuses or neglects to do it within that time or, as the case may be, within that time as extended or abridged under Order 3, rule 4, or***
- (b) a person, disobeys a judgment or order requiring him to abstain from doing an act, then subject to the provisions of these Rules, the judgment or order may be enforced by one or more of the following means, that is to say-***
  - (i) with the leave of the Court, a writ of sequestration against the property of that person;***
  - (ii) where that person is a body corporate, with the leave of the Court, a writ of sequestration against the property of any director or other officer of the body;***
  - (iii) subject to the provisions of the Debtors Act, an order of committal against that person or, where that person is a body corporate, against any such officer.”*** (emphasis added)

11. Sections 3 and 4 of the **Debtors Act** provide as follows:-

**“3. Except as hereinafter in subsequent sections mentioned and except as may be provided by the Magistrates' Courts Act, and by the bankruptcy law in force for the time being no person shall be arrested or imprisoned for making default in payment of a sum of money. But this enactment shall not apply to default- (Cap. 14)**

- (a) in payment of a penalty or sum in the nature of a penalty other than a penalty expressly provided for by contract;**
- (b) in payment of any sum recoverable summarily before a magistrate;**
- (c) by a trustee or person acting in a fiduciary capacity in obeying an order of the court for payment of a sum in his possession or under his control;**
- (d) by a barrister and solicitor in payment of costs when ordered to pay costs for misconduct as such or in payment of a sum of money when ordered to pay the same in his character of an officer of the court;**
- (e) in payment for the benefit of creditors of any portion of a salary or other income in respect of the payment of which the court is authorised to make an order.**

**Court may commit to prison defaulting judgment debtor**

**4. Subject to the provisions hereinafter mentioned and to the rules in the Schedule the court may commit to prison for a term not exceeding six months or until payment of the sum due any person who makes default in payment of any debt or installment of any debt due from him in pursuance of any order or judgment of any competent court:**

**Provided that the jurisdiction given by this section shall only be exercised where it is proved to the satisfaction of the court that the person making default either has or has had since the date of the order or judgment the means to pay the sum in respect of which he has made default and has refused or neglected or refuses or neglects to pay the sum. For the purpose of this section, the court may direct any debt due from any person in pursuance of any order or judgment of any competent court to be paid by installments and may from time to time rescind or vary such order.”**

12. Pursuant to Order 45 Rule 1(1) and Rule 4(1) of the High Court Rules the Applicant can only enforce the judgment debt by way of Committal proceedings

if there was a time limit within which the Respondent was to pay judgment sum.

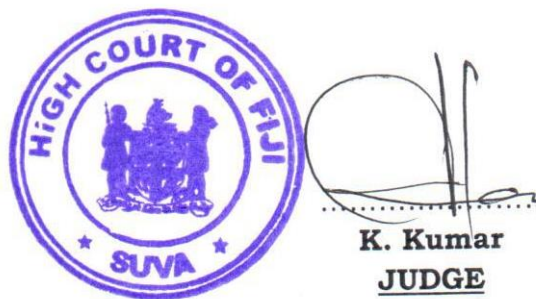
13. It is undoubted that there was no time limit for Respondent to pay the judgment debt to the Applicant or no Summons was issued by the Applicant for means test as required under the Debtors Act.
14. Therefore under the circumstances of this case the Applicant cannot enforce the Judgment delivered on 31 March 2016, by way of Committal proceedings.

**Cost**

15. I have taken into consideration that the Respondent's counsel did not raise the issue in request to Order 45 Rule 1(1) and Rule 4(1) at all.

**Order**

16. Applicant's (Plaintiff) Notice of Motion dated 19 August 2016, is dismissed and struck out with no Order to as costs.



**At Suva**

**17 October 2016**

**DIVEN PRASAD LAWYERS for the Plaintiff/Applicant**  
**OCEANIA IP for the Defendant**