

In the High Court of Fiji

Civil Appeal No. HBA 16 and 17 of 2015

Babita Kumar Verma

Appellant

And

Savneel Singh

Respondent

COUNSEL: Mr Kunal Singh for the appellant

The respondent in person

Date of argument : 1st October, 2015

Judgment

1. This is an appeal from a Ruling of the Magistrates Court.

HBA 16 of 2015

2. HBA 16 of 2015 is an appeal from Magistrates Court Action No. 436 of 2012, where a judgment debtor summons was filed by the appellant to enforce an Order of the Small Claims Tribunal against the respondent.

HBA 17 of 2015

3. HBA 17 of 2015 is an appeal from Magistrates Court Action No. 436 of 2012, where a judgment debtor summons was filed by the appellant to enforce an Order of the Small Claims Tribunal against the respondent.
4. The Learned Magistrate found that the respondent was paying his debts in these two cases and four other cases by depositing monies in the Joint account of the appellant and her husband in BSP. There was an overpayment of \$400 made by the respondent. Finally, the lower court held that the balance \$229.50 due in these two cases was to be offset from the overpayment. The judgment debtor summons were struck out.

5. The appellant appeals on the following grounds of appeal:
 - 1) *That the learned Resident Magistrate erred in fact by delivering its ruling without proper factual figures as the calculations in the ruling is entirely incorrect.*
 - 2) *That the learned Resident Magistrate erred in law and in fact by holding the Appellant liable to settle an alleged overpayment into the Appellant's husbands cases that was in a different court and there was no such order by another Magistrate for this court to do so.*
 - 3) *That the learned Resident Magistrate erred in law when she took into consideration of the Respondents submission orally and not ordering him to file a proper Affidavit in Opposition to JDS and then depriving the Appellant to file a proper Affidavit in Response.*
 - 4) *That the learned Resident Magistrate erred in law when she took into account of factual matters over the bar table and orally from the Respondent.*
 - 5) *That the learned Resident Magistrate erred in law and in fact by not disclosing to the Appellant even upon requested twice in writing to forward the calculations and payment evidence shown to the civil registry by the judgment debtor for balancing purposes since the total deposits are far less that it shows in the ruling dated 09/06/2014.*

6. The contention of Mr Singh, counsel for the appellant was that the appellant and her husband were two different individuals, the lower Court was wrong in directing that the balance \$ 229.50 due be offset from the overpayment of \$ 400 made by the respondent, in respect of which there was no proof before Court. It was urged that the respondent should have been ordered to file an affidavit in opposition to the JDS

7. The respondent in reply pointed out quite correctly that there was documentary proof of the overpayment and a proper consideration of the breakdown of payments by the lower Court.

8. In my judgment, the Learned Magistrate had properly given weight to the breakdown of payments and the overpayment made by the respondent to the appellant to the bank account of the appellant jointly held with her husband.

9. As Fatiaki J(as he then was) in *Sheet Metal and Plumbing(Fiji) Ltd v Uday Narayan Deo*, (Civil Appeal No.0007 of 1999) declared:

In such an appeal it is trite that an appellate court will not lightly interfere with the exercise of a judicial discretion and should only do so where it is satisfied that the Magistrate has erred in principle by giving weight to something he ought not to have taken into account or failed to give weight to something which he had taken into account or was plainly wrong in its decision.

10. The appeals fail.

11. **Orders**

- (a) The appeals are dismissed.
(b) The appellant shall pay the respondent costs summarily assessed in a sum of \$ 250.



A.L.B. Brito-Mutunayagam

A.L.B. Brito-Mutunayagam

Judge

19th January, 2017