

IN THE HIGH COURT OF FIJI AT SUVA
APPELLATE JURISDICTION

Appeal No. HBA 15 of 2017
Magistrate's Court Appeal No. 24 of 2016
Small Claims Tribunal No. 0413 of 2016

BETWEEN

AVINESH PILLAY

APPELLANT

AND

RAVNEET DEO

RESPONDENT

Counsel : Appellant in person
Respondent absent and unrepresented

Date of Hearing : 06th November, 2017

Date of Judgment : 07th November, 2017

JUDGMENT

- [1] The appellant Avinesh Pillay instituted proceedings in the Small Claims Tribunal (the Tribunal) claiming \$2000 from the respondent Ravneet Deo. The respondent made a counter claim seeking to recover \$3000 from the appellant. The Tribunal held with the respondent and ordered the appellant to pay \$1000 to the Tribunal.
- [2] The appellant appealed against the said order to the Magistrate's Court and the learned Magistrate dismissed the appeal. The present appeal before this court is against the said dismissal.
- [3] The learned Magistrate dismissed the appeal on the ground that the appellant did not have a right of appeal on the merits in terms of section 33(1) of the Small Claims Tribunal Act 1991.
- [4] Section 33(1) of the Small Claims Tribunal Act 1991 provides that any party to proceedings before a Tribunal may appeal against an order made by the Tribunal under section 15(6) or section 31(2) on the grounds that:
- (a) the proceedings were conducted by the Referee in a manner which was unfair to the appellant and prejudicially affected the result of the proceedings; or
 - (b) the Tribunal exceeded its jurisdiction.
- [6] The learned Magistrate also relied on the following decision in arriving at the conclusion that the appellant did not have the right of appeal on the merits.
- [8] In **Aaryan Enterprise v Mehak Unique Fashion** [2011] Civil Appeal 17 of 2011 the court said;
- "Put, bluntly, there is no right of appeal on the merits even when there may be a clear error of law in the Tribunal's decision'.
- [9] Under section 33(1) of the Small Claims Tribunal Act 1991, an appeal could be made only on the grounds stated therein. I therefore see no reason to interfere with the finding of the learned Magistrate that the appellant does not have a right of appeal against the findings of the referee on the merits.

[10] Since there was no allegation that the proceedings were conducted by the Referee in a manner which was unfair to him and prejudicially affected the result of the proceedings or the Tribunal had exceeded its jurisdiction the learned Magistrate is correct in dismissing the appeal.

[11] For these reasons I hold that the appeal of the appellant is without merit and must necessarily fail.

[12] Orders of the Court:-

- (1) The appeal of the appellant is accordingly, dismissed.
- (2) The parties will bear their own costs of the appeal.



07th November, 2017

A handwritten signature in black ink, which appears to read "Lyone Seneviratne", is written over a horizontal line.

Lyone Seneviratne

JUDGE