

IN THE FIJI COURT OF APPEAL

Civil Jurisdiction

Civil Appeal No. 31 of 1981

Between:

NAUSORI DAILY TRANSPORT  
LIMITED

Appellant

and

SHIU NARAYAN  
s/o Augustine

Respondent

Ashik Ali for the Appellant  
R.I. Kapadia for the Respondent

Date of Hearing: 11th March, 1982

Delivery of Judgment: 2nd April, 1982

REASONS FOR JUDGMENT AND  
ORDER AS TO COSTS

Gould V.P.,

The appellant company brought an action against the respondent in the Supreme Court of Fiji, claiming a declaration that a Bill of Sale dated the 30th May, 1978, and registered under the Companies Ordinance (Cap. 216 - 1967) as a mortgage or charge under No. 3048/1, was void and unenforceable, and seeking an order setting it aside. The claim was resisted and on the 27th May, 1981, the learned Judge in the Supreme Court gave judgment dismissing the action with costs. The appellant company brought the present appeal to this Court and on the 11th March,

1982, we dismissed the appeal. We now give our reasons and at the same time will deal with the question of costs, upon which counsel made some submissions.

There is no need to set out the facts save in the barest outline. The instrument securing the moneys owing by the appellant to the respondent is headed "Bill of Sale" and we will so refer to it. It was expressed to be given over certain motor vehicles which had been sold by the respondent to the appellant. The action arose, according to the judgment in the court below, out of a demand by the respondent for the payment of the balance of moneys owing (then some \$32,881.80) and the contemplated seizure of the vehicles. The Bill of Sale was not registered under the Bills of Sale Act (Cap. 225).

A number of matters which had been relied upon in the Supreme Court were dealt with by the learned Judge. We will do no more than mention them as they are overshadowed by his final finding.

It was argued that the Bill of Sale contravened section 10 of the Bills of Sale Act in that it did not describe the chattels in a Schedule. The learned Judge did not consider the absence of a Schedule contravened section 10. It is to be noted that the earlier enactments in England, though they may form a basis for the Fiji legislation, are not in force in Fiji. The next matter was an allegation that the Bill of Sale did not set forth the consideration accurately, thus, by virtue of section 7 of the Bills of Sale Act rendering the Bill of Sale fraudulent and void. The argument on this, was based on the fact that part of the purchase price of the said vehicles was satisfied by the appellant having undertaken liability under a prior Bill of Sale given by the respondent to Shreedhar Motors Limited. This was coupled with an argument that

the use of the phrase "now due and owing" was incorrect as it was claimed that the money was owing but not "now due". We do not deem it necessary to discuss this matter; the learned Judge was of opinion that the consideration was sufficiently stated and was not in any event satisfied that the money was not "now due and owing".

We now proceed to the final finding of the learned Judge. The effect of it is that the Bills of Sale Act does not apply to the Bill of Sale in question. If that is so the appellant is unable to rely upon any of the arguments put forward by him and mentioned above. The first is based upon section 10 of the Act and those relating to the statement of consideration depend on section 7. The appellant, the grantor of the Bill of Sale, is, of course, an incorporated company, and the learned Judge said :

" A Bill of Sale given by an incorporated company over its property is not a bill of sale to which the provisions of the Bills of Sale Act apply. It is registered as a charge under the Companies Act.

Clause 2 of the Bills of Sale Act states :

'This Ordinance shall apply to every bill of sale whereby the holder or grantee has power, either with or without notice, at any time to seize or take possession of any personal chattels comprised in or made subject to such bill of sale.'

'Personal chattels' is defined in clause 3 at some length. Ignoring the irrelevant portions of the definition : 'personal chattels' means - goods ..... but does not include chattels, interests in ..... the capital or property of incorporated or joint stock companies ....."

We pause here to say that there has been a slight slip in the making of the abbreviation just quoted. It would be better as follows :

" 'Personal chattels' means goods .... but does not include ..... shares or interest ..... in the capital or property of incorporated or joint stock companies ....."

The difference is not material. The judgment continues -

" The legislature has expressly excluded a Bill of Sale over chattels owned by an incorporated company from the operation of the Act by the definition of 'personal chattels'. While the plaintiff's Bill of Sale does confer power on the defendant to seize or take possession of the plaintiff's personal chattels referred to in the Bill of Sale, they are not 'personal chattels' as defined by the Act.

The fact that the Bill of Sale in question was not registered under the Bills of Sale Act should have alerted counsel. If the Bills of Sale Act had application, by virtue of section 7 the Bill of Sale would have been deemed 'fraudulent and void' for want of registration and the defendant would have had no defence to a claim that the Bill of Sale was not a charge on the chattels."

For completeness we set out here subsection (1) and subsection (2)(c) of the Companies Act (Cap. 216 - 1967) under which the Bill of Sale was in fact registered as a mortgage or charge -

"79(1) Subject to the provisions of this Part of this Ordinance, every charge created after the fixed date by a company registered in Fiji and being a charge to which this section applies shall, so far as any security on the company's property or undertaking is conferred thereby, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the charge, together with the instrument, if any, by which the charge is created or evidenced, or a copy thereof verified in the prescribed manner are delivered to or received by the registrar for registration in manner required by this Ordinance within forty-two days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a charge

becomes void under this section the money secured thereby shall immediately become payable.

(2) This section applies to the following charges :

- (a) .....
- (b) .....

(c) a charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale;"

Mr. Ashik Ali, for the appellant, though he appeared to be in a state of some confusion as to the result of this finding by the learned Judge, did not seek in terms to say it was wrong. It is in accordance with English law where the definition of "personal chattels" is the same - see 4 Halsbury's Laws of England (4th Edn) paragraphs 637 and 644: see also Palmer's Company Law Vol. 1 (22nd Edn) paragraph 44-05 (quoting Re Standard Manufacturing Co. [1891] 1 Ch. 627) where it is also stated that the reason why such transactions do not require registration is that the Companies Acts provide separate machinery.

Mr. Ali sought to base an argument upon the Registration Act (Cap. 224 - 1978). That is an Act which provides that all deeds made in Fiji may be registered, either for publication, preservation or execution. Mr. Ali relied on Part IV of the Act which comprises sections 21-23. They read :

"21. All bills of sale of personal chattels shall be filed and registered by the Registrar under this Act.

22. The Registrar shall continue the present register book and shall make and thereafter keep an index thereto which shall contain a reference to each bill of sale as filed.

23. The Registrar in registering bills of sale shall do so in conformity with the provisions of the Bills of Sale Act."

The "Registrar" means the Registrar of Deeds as it does also in the Bills of Sale Act.

Mr. Ali's submission is that failure to register under the Registration Act, in the light of the mandatory wording of section 21, renders the whole transaction incomplete and unenforceable at law. The Act contains no such provision. In our opinion, as a matter of construction Part IV refers to Bills of Sale registerable under the Bills of Sale Act. This is because of the reference to personal chattels in section 21 read in conjunction with the provisions of section 23 which together indicate the Bills of Sale the legislature had in mind. The only other relevant legislative reference is the Bills of Sale Act itself, and by virtue of the definition of personal chattels the present document is not a Bill of Sale within its terms. We think it is inescapable that the intention of the words "of personal chattels" in section 21, makes it clear that the reference is to the documents comprised in section 2 of the Bills of Sale Act i.e. bills of sale ..... of personal chattels, as defined in that Act.

In our opinion the Bill of Sale in question here, though capable of registration under the Registration Act by virtue of section 2 thereof, was not within the provisions of section 21. Even if it had been, we would not have accepted Mr. Ali's suggestion (it was hardly more) that any of the provisions of the Bills of Sale Act were consequently implied therein. It follows from what we have said that we are satisfied that the learned Judge was correct in his view that the Bill of Sale was not subject to the provisions of the Bills of Sale Act.

For these reasons we dismissed the appeal. Counsel addressed the Court on costs. Mr. Kapadia made a particularly vigorous submission calling for increased

2

costs on the ground that the proceedings were so unmeritorious that they amounted to an abuse of the process of the Court. Appeals were increasingly being used as a means of delay. If that is so we naturally deplore it and will do what we can to check it: we are not however able to say that it is manifestly so in this case.

It is perhaps unfortunate that the nature of the law concerning Bills of Sale is such as to render what might be called technical defences numerous and they are often resorted to. That does not mean that they are necessarily frivolous and indeed they often involve questions of difficulty.

In the present case, we are not inclined to depart from our usual rule that the costs follow the event and are to be assessed in the usual way by the Registrar.

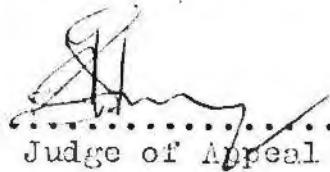
We therefore add to our order dismissing the appeal, that it is dismissed with costs.



.....  
Vice President



.....  
Judge of Appeal



.....  
Judge of Appeal