

IN THE FIJI COURT OF APPEAL

Civil Jurisdiction

Civil Appeal No. 36 of 1985

Between:

JAI PRAKASH NARAYAN
s/o Deo Narayan

Appellant

and

SANADIKA DEVI d/o
Ram L. Singh

Respondent

K.C. Ramrakha and A. Patel for Appellant
V.K. Kalyan for Respondent

Date of Hearing : 4th November, 1985.
Delivery of Judgment : 8th November, 1985.

JUDGMENT OF THE COURT

O'Regan, J.A.

This case bears a close affinity with Civil Appeal No. 37 of 1985, judgment in which we have just delivered. The appellant is the same person in each case. The respondents are sisters and the events which gave rise to this litigation in each instance dovetail to a large degree. The actions were both heard by Dyke J. on 18th March, 1985 and separate judgments were delivered on 29th March, 1985. In this Court the two appeals were heard together, by consent.

The appellant failed to file a defence, in due time, to an action brought by the respondent to recover

\$8,700 alleged to have been lent by her to him, and interest thereon pursuant to section 3 of the Law Reform (Miscellaneous Provisions) (Death and Interest) Act (Cap.27). The causes of action are thus identical with those in the action which went on appeal under No. 37 of 1985 to which we have just referred.

The appellant's affidavit giving reasons for his omission to file his defence in time is in identical terms to that which he swore and filed for the same purpose in the other case. And in our judgment in that case we were moved to describe the material offered by way of excuse in that affidavit as "a preposterous excuse for his failure to file a defence" and same applies in this case.

In a second affidavit the appellant deposed that the plaintiff had never lent him the amount claimed "or any part thereof or at all". He proved that he had married the respondent in a civil ceremony on 13th May, 1983 and said that she had agreed to settle a sum of \$20,000 upon him provided he married her. To that affidavit he exhibited two memoranda, the first of which is dated 18th March, 1983 and reads :

"I Miss Sanadhika Devi Singh of Lautoka hereby agreed to give the sum of \$20,000 - (Fiji dollars twenty thousand only) to Mr. Jai Prakash Narayan of Nausori if he marries me. If the marriage does not go through I have no claim whatsoever against Mr. Jai Prakash Narayan.

Yours faithfully,
S.D. Singh
Sanadhika Devi Singh (Miss)
c/o P.O. Box 721,
Lautoka."

The second, dated 5th March, 1984 was addressed to a firm of solicitors. The only relevant portion of it reads :

"I hereby give you my instructions to proceed with the divorce action against my husband Jai Prakash Narayan. When the marriage is dissolved I have no further claim against Mr. Jai Prakash Narayan whatsoever."

It, too, is signed by "S.D. Singh".

The respondent filed a long affidavit in reply. We do not find it necessary to refer to it in detail. It recounts details of her meeting and ultimate marriage to the appellant; the representations he made to her as to the need to provide a large sum of money to the Australian High Commission in return for visas for each of them to enter Australia; the amounts she and her sister lent and the sources from which she drew the money. She then went on to depose that on 5th March, 1984 the appellant represented to her that the High Commissioner had come to know that he had borrowed the moneys and he required some notes signed by her to facilitate the procurement of the visas; that she wrote the notes at his dictation and then signed them, and that at his behest she dated the first of the two the 18th March, 1983 which was the day she first met him. And finally she swears that neither document is true.


In our judgment in Appeal No. 37 of 1985 we found the appellant, on a matter which he had introduced to clear himself of the allegations made against him, to be lacking in creditworthiness. The fact that the appeal in that case was heard together with the appeal in this case renders it a simple matter for us to remind ourselves

of our finding on No. 37 of 1985 and to translate that finding to this case. The result is that his evidence as to there being a triable issue having been discredited and he having offered no satisfactory reason explaining his failure to file his defence in due time, he has not made out a case for having the discretion conferred by O.19 r.9 exercised in his favour.

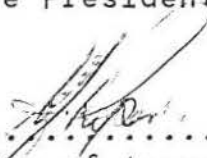
Mr. Ramrakha made legal submissions that the judgment was irregular in that it was in respect of an unliquidated demand and thus not within the prescription of O.19 r.2. We discussed and considered those submissions in Appeal No. 37 of 1985 and rejected them and we re-iterate that rejection on this appeal.

There were no other matters advanced in support of the appeal.

The appeal is accordingly dismissed. The appellant is ordered to pay the respondent's taxed costs.



 Vice President



 Judge of Appeal



 Judge of Appeal