

IN THE COURT OF APPEAL, FIJI AT SUVA

CIVIL APPEAL NO. ABU0014 OF 2002
(High Court Suva Action No. HBC499 of 2001)

IN CHAMBERS

BETWEEN: DHIREND KUMAR Appellant
 (f/n Chandrika Prasad)

AND: PRAKASHNI PRASAD Respondent
 (f/n Tara Chand)

DECISION

This is an application for stay of an order for vacant possession made by the High Court (Scott J.) on 22nd March 2002 under Section 169 of the Land Transfer Act, pending the hearing and determination of an appeal to this Court from that order.

A similar application for stay made to the High Court (Scott J.) was dismissed on 5th April 2002. The learned Judge refused the stay on the basis that the appeal had no prospect of success, he rated the chances at 'nil'.

The Respondent, who is a purchaser for value, became the registered proprietor of the land comprised in CT 27344 and fixtures thereon on the 9th of November 2001. She bought the land for \$35,000 (thirty-five thousand dollars) from Kenneth Hugh Ross and his co-registered proprietors (Ross Estate) under a Sale and Purchase Agreement dated 26 April 2001.

As at the date of purchase there was a concrete wood and iron building on the subject land built by the Respondent's father Tara Chand and his family, when Tara Chand was the lessee of the land from Ross Estate, under lease No. 85876. At the date of purchase the lease had expired paving the way for the Respondent to buy the land unencumbered.

On the date of purchase there existed a tenancy, created by Tara Chand in favour of the Appellant, in respect of part of the building being a self-contained flat on the land (demised premises). The tenancy was for 12 months commencing on 1st November 2000, at a monthly rental of \$250. There was no provision for renewal, and none is claimed. Therefore, the tenancy expired at the end of October 2001. Rents up to that date were paid in advance, and the Respondent has refused to accept any rental after the expiry of the tenancy.

The expired tenancy agreement contains the usual provision for quiet and peaceful delivery of the demised premises to the landlord upon expiry of the tenancy.

The Appellant refused to give up possession at the end of the tenancy, resulting in the claim for possession by the Respondent under Section 169 of the Land Transfer Act. Scott J. found, that the Appellant had no legal right to remain on the demised premises after the expiry of the tenancy, and it was not suggested to him on behalf of the Appellant that there was any other basis upon which he might remain in possession. Scott J. ordered possession under Section 169 of the Land Transfer Act.

The Appellant's Notice of Appeal sets out six separate grounds of appeal. In my view, the only ground that merits any attention is the one arising under the Fair Rents Act. The Appellant claims that the subject dwelling occupied by him comes within the purview of the Fair Rents Act, that he is a protected tenant under that Act, and therefore not susceptible to summary eviction. It is not necessary for me at this stage to delve in any detail into the merits of this ground of appeal. The Appellant has a right of appeal, and the Appellant seeks a stay principally upon the ground that if his appeal succeeds then in the absence of a

stay such success would be rendered nugatory. In this context it is true that if the order for possession made by Scott J. is implemented, a successful appeal may prove futile, in that it is unlikely that the Appellant will be allowed back into possession of the flat.

I have come to the conclusion, that it would best serve the interests of justice if a stay is granted, but upon terms so as to minimize the prejudice that the Respondent will suffer from such an order. The Appellant has now been in possession for 5 months without paying any rent, the Respondent steadfastly refusing to accept the Appellant as a tenant.

In the circumstances, it is in the interests of justice that the status quo be maintained, and I make the following orders: -

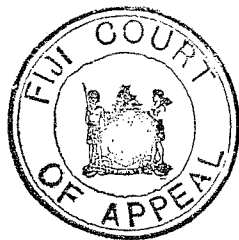
- (i) Stay of execution of the Order for possession made by Scott J. is granted until the hearing and final determination of this appeal.
- (ii) The stay is conditional upon the Appellant paying into Court the sum of \$3,000 within 7 days of the date hereof, being the equivalent of 12 months rental at \$250 per month in respect of the demised

premises. Such sum to be disbursed according to the order of this Court and

- (iii) That the Appellant shall prosecute this appeal with due diligence, and shall file certified copies of the record of proceedings in the High Court in this Court before the 30th of May 2002, so that the appeal is ready to be listed for hearing during the August 2002 Session of this Court.

The costs of this application shall be costs in the cause.

Dated at Suva this 2nd May 2002.



A handwritten signature in black ink, appearing to read "Jai Ram Reddy", is written above a horizontal dotted line.

Jai Ram Reddy
President