

IN THE COURT OF APPEAL, FIJI ISLANDS
ON APPEAL FROM THE HIGH COURT OF FIJI

MISCELLANEOUS ACTION NO. 07 OF
2007

(High Court Civil Case No. HBC 174 of
1995)

BETWEEN: SATYA PRASAD SINGH *Appellant*

A N D : AMBIKA PRASAD
1st Respondent

A N D : THE FIJI SUGAR CORPORATION LIMITED
2nd Respondent

Hearing: 27 April 2007

Ruling : 3 May 2007

Counsel: R Singh for applicant
M Muir for first respondent

RULING

- [1] On 3 October 2005, Finnigan J granted a Mareva Injunction and an Order ne exeat regno on ex parte application by the present first respondent in order to assist him in executing a judgment in the Lautoka High Court. Added to the injunction were two conditions that the present applicant shall file a statement of his assets with the court within 14 days and that, until he “fully complies with” that condition, he was restrained from leaving Fiji (subsequently expressed as an Order ne exeat regno) and should forthwith deliver his passport to the court.

- [2] By notice of motion filed in the Lautoka High Court on 18 January 2007, the applicant sought dissolution of the orders, the release of his passport and permission to travel outside Fiji. It was heard by Connors J and, on 20 February 2007, he refused the application. He concluded his judgment:

“This matter as I understand it from the affidavits and my limited perusal of its history is indeed a most unfortunate matter. This matter involves a dispute between two brothers, involving a dispute as to cane proceeds over an extensive period of time with proceedings before this Court for approximately 12 years. It is of even greater concern to have obtained a judgment and the judgment creditor/plaintiff is unable to properly, adequately and quickly have the judgment satisfied by the judgment debtor particularly when the judgment debtor is in fact his brother.

It is equally of concern that the existing injunction is going to restrain the defendant from travelling to New Zealand to be with his children. They are matters within the hands of the parties. The Court saw fit to grant the injunction in October 2005. There has been nothing placed before me to satisfy me that I should exercise the courts discretion to dissolve the injunction at this time. The failure of the first defendant, the applicant on the motion, to comply with the Orders of the Court in a proper and timely manner work to his disadvantage and certainly are against the exercise of the discretion at this time. The notice of motion is dismissed.”

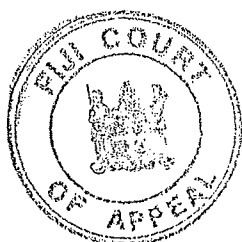
- [3] An appeal against that order of Connors J was filed on 9 March 2007 and, the following day, a application was filed to vary the Mareva injunction and for an order that the appellant be no longer restrained from leaving Fiji and that his passport and other travelling documents be restored to him.
- [4] The principal grounds of the application before Connors J was that the applicant had complied, albeit out of time, with the requirements of the second condition that he file a full statement of his assets.
- [5] The submission of counsel in this application repeated that issue and also raised the question of the constitutionality of the writ of ne exeat regno. The grounds of appeal show that the appeal will be based on the same issues:

- “1. That the learned trial judge erred in law and in fact in not exercising his discretion in favour of the appellant by dissolving the Mareva injunction when there was adequate evidence adduced by the appellant to show substantial compliance with the terms of the Mareva injunction previously granted by the Court.
2. The learned judge erred in law and in fact by purporting to implement the conditions of the Mareva injunction in such a manner as to place a restriction on the appellant's right of movement in leaving Fiji and thus unreasonably and in breach of his constitutional right placed a clog on the appellant's right and freedoms as guaranteed to him under Article 34 of the Constitution of Fiji.
3. The learned judge erred in law in not dissolving the Mareva injunction as the Mareva injunction infringed the appellant's right to personal liberty under Article 23 of the Constitution of Fiji.
4. The learned trial judge erred in law and fact in purporting to impose a burden on the appellant to establish his constitutional right to leave Fiji”

[6] As a result, a determination of this application will effectively determine the issues on appeal. If this application is granted, it will remove the whole basis of the appeal and render those proceedings moot. I consider that such a determination is a matter for the consideration of the full Court.

[7] Similarly, an appellate court will only reluctantly interfere with the primary judge's finding of fact. It is clear that the conclusions of Connors J as to the adequacy of the statement of assets is a matter of continuing dispute. That will have to be a matter for the full Court also.

[8] The application is refused with costs to the respondent of \$300.



Gordon Ward
Gordon Ward
PRESIDENT