IN THE COURT OF APPEAL, FIJI

[ON APPEAL FROM HIGH COURT]

Civil Appeal No. ABU 033 of 2019

High Court Civil Action No. HBC 234 of 2011

BETWEEN	:	AUTOWORLD TRADING FIJI LIMITED
		Appellant
AND	:	SURUJ NARAYAN
		RAJENDRA NARAYAN
		Respondents
Coram	:	Almeida Guneratne, AP
	:	Basnayake, JA
	:	Lecamwasam, JA
Counsel	:	Mr. S. Singh for the Appellant
	:	Mr. V. Filipe for the Respondents
Date of Hearing	:	20 May 2021
Date of Judgment	:	28 May 2021

JUDGMENT

Guneratne, AP

[1] Having had the advantage of perusing the draft judgment of Justice Lecamwasam, I agree with the reasoning and conclusion reached by His Lordship that, the judgment of the High Court has to be set aside and the appeal allowed with the attendant Orders proposed in the said Judgment.

[2] Having said so, I feel compelled to make the following observations:

(a) The Record of the High Court proceedings had not been perfected and yet Counsel for both parties tendering their respective bundle of documents with which they agreed for this Court to take into consideration though some of the documents were found to be missing from the record.

(b) Given the delay in the judgment of the High Court which (His Lordship) Justice Lecamwasam has taken note of at paragraph [23] of the principal Judgment, this forensic commitment shown by both Counsel, I have to acknowledge here, to have this appeal determined.

(c) I say that for the reason that at least a couple of cases scheduled for hearing had to be vacated due to the High Court Record not being complete for which reason I was compelled to issue a Practice Direction (bearing No.1 of 2021) in pursuance of my functions now as Acting President of this Court.

(d) I rest my reflections in saying that:-

"I appreciate both Counsel in agreeing to proceed with the Appeal for had they not, this appeal could not have been heard on the scheduled date and would have had to be vacated".

Basnayake, JA

[2] I agree with the reasons, conclusions and orders of Lecamwasam, JA.

Lecamwasam, JA

[3] This is an appeal filed by the Appellant against the judgment of the Learned High Court Judge at Suva dated 21st March, 2019. The facts of this case as succinctly stated by the Learned High Court Judge, which I reproduce for ease of reference, as follows:-

> ***"INTRODUCTION***
>
> *1. This is an action filed by the Plaintiff, an importer and dealer of used vehicles against the two defendants, the purchaser of a tow truck and a car and purported guarantor of the said purchase. I used the word purported as the signature on the guarantee is denied, and stated that on the date of the execution of guarantee 2nd Defendant was not present in Suva, and much emphasis was made on that with an that. Second Defendant was engaged in a towing and taxi business, and had requested to import a tow truck for his business. Accordingly, a used tow truck was imported and was sold along with another used car. The vehicles were sold to 1st Defendant who was the father of the 2nd Defendant. At the time of sale Bill of Sale was entered for two vehicles and the sale was considered as one transaction. Both vehicles were sold at a combine price of $75,000. No evidence to distinguish value of the two. From that only $300 was paid at the time of sale for both vehicles and rest was paid through instalments with interest, as per the conditions of the Bill of Sale. It is admitted that chassis of the tow truck was cracked at the time of sale. The official of Land Transport Authority (LTA) said that he had informed the Plaintiff, that chassis of the tow truck needs to be replaced within 12 months. He said registration of vehicles with broken chassis is rare and there were no equipment to test the strength of chassis with LTA. The first registration was refused without wielding the broken parts of chassis, and once it was done conditional registration was granted. This wielding was done at a private local garage and 1st Defendant, was not informed about this and LTA officer could not state the material or gauge of metal part used in wielding. There is no evidence of Plaintiff informing the condition of the chassis at the time of sale or that conditional registration of tow truck. LTA subsequently within 2 years, issued a defect order against the tow truck, and refused to register the tow truck, without replacing entire chassis. The tow truck could not be used for its purpose without registration. The Plaintiff was informed of the issue of defect order. Since there were defaults on the Bill of Sale, both tow truck and car were repossessed by Plaintiff and they were re-sold. There is evidence that even when tow truck was re-sold the defect on the cassis was not informed and refusal to register by LTA without replacement of chassis, was also not informed. Strangely, despite defect order to replace chassis, a registration was obtained in 2007 without replacement of chassis. The Plaintiff state that tow truck was sold "As is where is" basis hence there was no warranty on the condition of the chassis."*

[4] The Learned High Court Judge further provides further the following detailed account of the pertinent facts;

"FACTS

2. *The Plaintiff and Defendant filed minutes of pre-trial conference, between them where the following facts were agreed between them. Third party neither participated in pre-trial conference nor at the hearing. There are no pleadings filed by third party.*

    1. *The Plaintiff is a company duly incorporated in the Fiji Islands and is engaged in the sale of new and second hand imported motor vehicles and financing of purchase of motor vehicles to approved customers.*

    2. *On 18 October 2006, the Plaintiff, at the request of the first Defendant agreed to sell motor vehicles having registration numbers FB917 and FB119 to the first Defendant for the sum of $75,000.00.*

    3. *On 18 October 2006, the first Defendant entered into and executed a Bill of Sale over motor vehicles having registration numbers FB917 and FB119 in favour of the Plaintiff to, inter alia, secure the payment of all the monies due and owing by the first Defendant to the Plaintiff together with agreed interest and other charges.*

3. *The Bill of Sale entered between the parties stated ,*

    (i) *The sum advanced to the first Defendant was $75,000.00.*
    (ii) *Interest was payable on the said sum at the rate of 10% per annum at a flat rate.*
    (iii) *The sum advanced plus interest and charges were to be paid in 60 months' time.*
    (iv) *The total sum secured amounted to $112,500 plus charges*
    (v) *The first Defendant was required to make a payment of a minimum of $1,875.00 per month until full payment.*

4. *The Plaintiff in the statement of claim stated.*

    a. *On 18 October 206, it sold motor vehicle registration numbers FB917 and FB119 to the first Defendant for the sum $75,000.00.*
    b. *Both vehicles were fully financed by the Plaintiff.*
    c. *The agreed interest charge was 10% over 5 years' time totaling $37,500.00.*
    d. *The loan was personally guaranteed by the second Defendant and he executed a guarantee document which was dated 18.10.06.*

e. *The first defendant defaulted on his payments as a result of which the vehicles were repossessed, advertised and sold by the Plaintiff.*
f. *The residual debt as at 20 July 2011 was $59,244.09 and the Plaintiff claimed this sum from both defendants.*
g. *The claim against the 1st Defendant is based on the Bill of Sale and for 2nd Defendant based on the purported Guarantee, a separate instrument which the 2nd Defendant denies.*
h. *Plaintiff is also claiming interest at the rate of 1.5% per month from 20 July 2011.*

5. *The Defendants in the statement of defence stated :*

(a) *They admit that the first defendant purchased the vehicles for the price.*
(b) *Admit the purchase was financed by the Plaintiff and paid installments till June, 2008.*
(c) *Deny that the second Defendant signed a personal guarantee.*
(d) *They claim that motor vehicle FB917 had a cracked chassis and Plaintiff was given 1 year from first registration to replace it.*
(e) *Plaintiff did not disclose the defective chassis to the Defendants.*
(f) *On 09 October 2008, a defect order was issued by LTA (Third Party) to the Defendants and could not get the registration for tow truck, and Plaintiff was notified of it.*
(g) *Plaintiff promised to change the chassis at no cost. Despite this, Plaintiff took possession of both vehicles under Bill of Sale, from the Defendants compound on 10 December 2008.*
(h) *On 11 December 2008, on request Defendants were advised that it was on a joint account so both needed to be taken and both will be released once the chassis was fixed.*
(i) *Both vehicles were sold and money recovered by Plaintiff.*
(j) *The Defendants had also included counter claim.*

6. *In counter claim, inter alia pleaded.*

(a) *That sale of vehicles under Bill of Sale was unconscionable, misleading hence in violation of Section 54, 55 and 56 of Fair Trading Act, 1992*
(b) *The defects in the chassis of tow truck was known and Plaintiff had mislead the buyer, when they were fully aware that the said vehicle cannot be registered or used for long period of time without replacement of entire chassis.*
(c) *The sale of the vehicles was unlawful and the Plaintiff is precluded from claiming under said transaction*

7. *In reply to the counter claim, Plaintiff stated:*

(a) *The vehicles were sold to the defendants on an as is where is basis.*

(b) *The Defendants had inspected the vehicles prior to purchase and knew or ought to have known the condition of the motor vehicles.*

(c) *The Defendants themselves obtained a certificate of road worthiness (from the Land Transport Authority in 2007.*

(d) *Payments stopped from 04 June 2008.*

8. *The defendants also stated that: Plaintiff failed to notify them of the defects whereas LTA had advised them on that. The LTA officer had overlooked the cracked chassis on the second time that they inspected the vehicle. Chassis had been welded and the Plaintiff knew that the said chassis needed to be changed before the vehicle came into the Defendants.*

9. ***The Defendants filed its third party notice on 24 July 2012.*** *The Defendants also filed its* ***claim against the Third Party*** *and claimed as follows:*

a. A declaration that the Defendants are entitled to be indemnified by the Third Party against the whole of the Plaintiff's claim.

b. Judgment against the Third Party for any and all amounts which the Defendant's may be adjudged to pay the Plaintiff.

c. Judgment against the Third Party for the entire Counterclaim.

d. The Third Party indemnify or contribute the whole of the Plaintiff's claim for damages, together with the Defendant's costs of Defending this action and the costs of the Third Party Proceedings, that may be awarded by the Court.

e. Pre Judgment interest of 13% per annum from 20 September 2011 to the date of judgment pursuant to section 3 of the Law Reform (Miscellaneous Provision) (Death and Interest) Act Cap 27.

f. Post Judgment interest of 4% per annum from the date of judgment to the date of full payment pursuant to section 4 Law Reform (Miscellaneous Provision) (Death and Interest) Act Cap 27 as amended by section 2 of the Law Reform Miscellaneous Provision) (Death and Interest) Decree 2011".

Grounds of Appeal

[5] The Appellant has preferred the following grounds of appeal:

1. *The Learned Judge erred in law and in fact in dismissing the Appellant's claim on the basis of Sections 54, 55 and 56 of the Fair Trading Decree 1992 when the provisions has not been pleaded as a defence by the Respondents.*

2. *The Learned Judge erred in law and in fact in dismissing the Appellant's claim for recovery of the residual debt owed under the Bill of Sale and Guarantee agreement*

executed by the Respondents to secure payment to the Appellant when the said vehicle had been used by the Respondents in their business for more than 2 years since the date of purchase and the chassis became an issue only when the Appellant made a claim for recovery of the residual debt owed under its credit arrangements with the Respondents.

3. *The Learned Judge erred in law and in fact in holding that the Appellant breached Sections 54, 55 and 56 of the Fair Trading Decree 1992 when there was no factual or legal basis to justify the allegations and the same had not been pleaded as a defence by the Respondents.*

4. *The Learned Judge erred in law and in fact in holding that the Appellant breached Sections 54, 55 and 56 of the Fair Trading Decree 1992 and failed to consider that the matter of the cracked chassis became an issue only in 2011 when the Appellant filed its claim for recovery of the debt owed to it.*

5. *The Learned Judge erred in law and in fact in holding that the Appellant did not inform the Respondents about the issue of the cracked chassis when there was evidence that the Respondents knew about the cracked chassis at the time of purchase on 18 October 2006 and that they had attended to the first passing of the said vehicle at the Land Transport Authority in 2007 and the vehicle had been passed without any issues.*

6. *The Learned Judge ignored the rule in Jones v Dunkel in that critical parts of the Defence case not been put to the Appellant and/or its witness during their cross examination and erred in accepting the Respondents version of the facts.*

7. *The Learned Judge erred in law and in fact in holding that the second purchaser of the said motor vehicle FB 917 was not informed of the issues with the chassis when there was evidence from the said purchaser that he knew about the cracked chassis and had spent about $5,000 in repairing the motor vehicle which was passed by the Land Transport Authority and he had even used it is business since the date of purchase.*

8. *The Learned Judge erred in law and in fact in holding that the contract for sale of the two vehicles agreed at $75,000 was an illegal and wrongly held that the claim of the Appellant should fail for illegality.*

9. *The Learned Judge erred in law and in fact in declining the Appellant's claim based on Sections 54, 55, and 56 of the Fair Trading Decree 1992 and wrongly held that the Appellant had acted in an unconscionable manner and had engaged in misleading and deceptive conduct when there was no evidence or legal basis to support such findings.*

10. *The Learned Judge erred in law and in fact in treating the issue of the cracked chassis as a serious defect when the evidence was that the Land Transport Authority had allowed the Respondents to operate the motor vehicle FB 917 for two years before a defect issue was procured by the Respondents so that they can avoid payment to the Appellant and that the Land Transport Authority allowed the said motor vehicle to be re-sold to another party and be used on Fiji's roads without any issue.*

11. *The Learned Judge erred in not considering the totality of the evidence adduced by the Appellant in support of its claim for recovery of the residual debt owed by the Respondents and erred in law and in fact in dismissing the Plaintiff's claim.*

12. *The Learned Judge erred in law and in fact in giving undue weight to the issue of cracked chassis when no evidence was called by the Respondents to support the findings of the learned Judge.*

13. *The Learned Judge erred in law and in fact in holding that the Appellant is prohibited from importing used vehicle with a broken chassis when there was no evidence or law to support such a finding.*

14. *The Learned Judge erred in law and in fact in holding that the Respondent had partially succeeded in their Counter Claim when the Counter Claim was barred filed than 3 years after the claim became statute barred.*

[6] Respondents' Notice

1. *The learned trial Judge erred in law in not awarding general damages to the 1st and 2nd Respondents/1st and 2nd Original Defendants as per its Counterclaim despite its findings that:*

   (i) *The Plaintiff did not notify the 1st Defendant that the tow truck was having a serious defective chassis that prevented it being even registered for the first time without welding it.*

   (ii) *The Plaintiff did not inform the 1st Defendant that LTA in 2006 had granted registration on the welded chassis for 12 months on the condition that it would be replaced within 12 months.*

   (iii) *The sale of two truck to the 1st Defendant was deceptive, misleading and unconscionable; and*

   (iv) *Since the sale of the tow truck and car was valued at $75,000 before addition of interest and there was no evidence to separate the two items, extra transaction needs to be considered as illegal and the Plaintiff's claim fails on illegality.*

   (v) *Payments were made by the Defendant.*

2. *The learned trial Judge erred in law and in fact in holding that the 1st and 2nd Respondents /1st and 2nd Original Defendants' Counterclaim was outside the time period stipulated in Section 127 of Fair Trading Act, 1992.*

3. *The learned trial Judge erred in law and in fact in not granting orders in terms of the 1st and 2nd Respondents/1st and 2nd Original Defendants' Statement of Claim against the Third Party – Land Transport Authority ("LTA") (filed on 19 March 2013) despite the findings that:*

(a) There were no pleadings filed on behalf of the Third Party and that the Third Party did not participate at the hearing.

(b) LTA in 2006 had granted registration on the welded chassis for 12 months on the condition that it would be replaced within 12 months.

(c) Due to an "unexplained" reason LTA had again granted registration in 2007.

(d) Defect order was issued in 2008.

(e) After the repossession of the vehicle it was re-sold to another party, without informing the refusal to register with LTA. Again despite this defect notice of LTA and requirement to replace the chassis. LTA had registered the vehicle without replacement of chassis.

[7] The parties led evidence against the above background. As factual evidence reveals, the entire dispute revolves around the truck that was registered in the name of Suruj Narayan, the 1st Respondent. The respondents alleged that the Appellant, Autoworld had failed to reveal to the respondents at the time of the sale of the vehicle, that the above Truck was defective i.e. it had a cracked chassis. The respondents had bought the vehicle in the belief that it is a good vehicle. The position of the Appellant, which the respondents do not admit, is that the 1st Respondent placed an order for a tow truck which led to the Appellant importing a tow truck from Japan. The Learned High Court Judge having heard the case, dealt elaborately with various aspects of the case before arriving at the conclusion that the Plaintiff/Appellant had violated the provisions of Fair Trading Decree1992. Accordingly, the learned High Court Judge held against the Plaintiff and dismissed the plaintiff's action.

[8] The Learned Judge found that Sections 54, 55, and 56 of the Fair Trading Decree 1992 were relevant to the matter before the High Court. As these provisions are instructive for the analysis of this case, I take the liberty to reproduce the said provisions below:-

54. Misleading or Deceptive Conduct.

(1) A person shall not, in trade or commerce engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

(2) Nothing in this Division shall be taken as limiting by implication the generality of subsection (1).

55. Unconscionable Conduct.

(1) A person shall not, in trade or commerce, in connection with the supply or possible supply of goods or services to a person (in this section referred to as the customer), engage in conduct that is, in all the circumstances, unconscionable.

(2) Without limiting the matters to which regard may be had for the purpose of determining whether a supplier has contravened subsection (1) in connection with the supply or possible supply of goods or services, regard may be had to -

> *(a) the relative strengths of the bargaining positions of the supplier and the customer;*
>
> *(b) whether, as a result of conduct engaged in by the supplier, the customer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the supplier;*
>
> *(c) whether the customer was able to understand any documents relating to the supply or possible supply of the goods or services;*
>
> *(d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the customer (or person acting on behalf of the customer) by the supplier in relation to the supplier or a person acting on behalf of the supplier in relation to the supply or possible supply of the goods or services; and*
>
> *(e) the amount for which, and the circumstances under which, the customer could have acquired identical or equivalent goods or services from a person other than the supplier.*

(3) A supplier shall not be taken for the purposes of the section to engage in unconscionable conduct in connection with the supply or possible supply of goods or services to a customer only because the supplier institutes legal proceedings in relation to that supply or possible supply or refers a dispute or claim in relation to that supply or possible supply to arbitration.

(4) For the purpose of determining whether a supplier has contravened subsection (1) in connexion with the supply or possible supply of goods or services to a customer -

(a) regard shall not be had to any circumstances that were not reasonably foreseeable at the time of the alleged contravention; and

(b) regard may be had to conduct engaged in, or circumstances existing, before the commencement of this Decree.

(5) Any person who fails to comply or contravenes this section is guilty of an offence.

56. False or Misleading Representation.

(1) A person shall not, in trade or commerce, in connexion with the supply or possible supply of goods or services or in connexion with the promotion by any means of the supply or use of goods or services -

(a) falsely represent that goods are of a particular standard, quality, grade, composition, style or model or have had a particular history or particular previous use which they do not have;

(b) represent that services are of a particular standard, quality or grade they do not have;

(c) represent that goods are new or unused, if they are not or are reconditioned or reclaim;

(d) represent that a particular person has agreed to acquire goods or services when that other person has not;

(e) represent that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits they do not have;

(f) represent that the person has a sponsorship, approval, or affiliation that person does not have;

(g) make a representation concerning that a price advantage of goods or services exists if it does not;

(h) make a representation concerning the availability of facilities for the repair of goods or of spare parts for goods when they are not;

(i) make false or misleading representation concerning the place of origin of goods;

(j) make a false or misleading representation concerning the need for any goods or services;

(k) make representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy that person does not have.

(2) A person who contravenes this section shall be guilty of an offence".

[9] Aided by a careful analysis of the above provisions, the learned High Court Judge had come to the conclusion that the sale of vehicles under the 'Bill of Sale' was 'trade or commerce' in terms of the above provisions. I find no reason to interfere with this finding of the learned High Court Judge, given that the Appellant traded in vehicles as a business venture.

[10] The learned Judge being satisfied that the conduct of the plaintiff/appellant amounts to a violation of the above Sections 54, 55, and 56, dismissed the Plaintiffs action whilst partly allowing the Defendants/Respondents counter-claim.

[11] However, the Appeal before this court necessitates us to revisit the findings of the Learned High Court Judge to determine whether the Plaintiff/Appellant had in fact violated the above provisions. Section 54 quoted above deals with misleading or deceptive conduct, while Sections 55 and 56 deal respectively with unconscionable conduct and false or misleading representation.

[12] Whether the truck was imported especially for the First Defendant as alleged by the Appellant or not, it remains a fact that the First Defendant had bought it from Autoworld Trading Fiji Ltd., the Plaintiff/Appellant. Therefore, it becomes redundant to examine if the vehicle was especially imported for the Respondent, as the outcome of such examination will have no bearing on the issue at hand. The important consideration in this case is whether in fact there was any misrepresentation or deceptive conduct or

unconscionable conduct on the part of the Plaintiff/Appellant. A finding in this regard has a bearing on the Appeal preferred by the Appellant.

[13] As per the evidence of the 2nd Defendant/Respondent, he had visited Autoworld with his father (1st Respondent) in order to inspect the vehicle before the purchase. In his examination –in-chief, the 2nd Defendant/Respondent, Rajendra Narayan told Court; *"I came with my father and inspected the structure, it was in July 2006. Only me and my father went to Autoworld. I can't recall the date ..."* Therefore, it is apparent that he had inspected the vehicles (tow truck and the other vehicle) sometime in July, 2006, which date precedes the date on which the documents were signed, i.e. before 18 October 2006. While alleging that he was not aware that the chassis was cracked, the 2nd Defendant/Appellant went on further to state that *"before the default notice, we did not know about the cracked chassis"*.

[14] Accordingly, the Respondents had become aware of the fact that the chassis was cracked only after the default notice was served. However, having bought the vehicle in 2006, the 1st Respondent had used the truck for 2 years, as revealed by the evidence of the 2nd Respondent, Rajendra Narayan before becoming aware of the said defect.

[15] Therefore, as stated earlier, it is incumbent on this Court to find out whether in fact there was an undisclosed defect in the vehicle which was concealed from the prospective buyers, i.e. the Respondents. If this court, after consideration, arrives at the same conclusion as the Learned High Court Judge, and makes a finding that there was an undisclosed defect, the Plaintiff/Appellant can be held liable under the above provisions of the Fair Trading Decree 1992.

[16] On perusal of the other relevant documents before this court, my attention is drawn to the certificate issued by LTA Officer (Ilai Masi). According to the said certificate, the LTA officer had examined the vehicle on 5th August, 2006 which had been registered in the name of Suruj Narayan (1st Respondent) for the purpose of first registration. In his certificate, the LTA officer avers that during the course of inspection he had noticed evidence of cracks on the chassis of the vehicle, but it was still in serviceable condition.

Hence, the certificate of road worthiness was issued with a 12 month period for replacement. Further, he also avers that the **registered owner was informed of the matter**. Therefore, it is clear that the LTA Officer, being the vehicle examiner and an impartial person with no personal interest as far as parties are concerned, had informed the registered owner of the cracked chassis in his certificate dated 26th January, 2009 (page 81 of the High Court Record) which was not disproved by the respondents.

[17] As such, the 2nd respondent had given blatantly false evidence when he said that they had come to know of the crack of the chassis only in 2008 when the default notice was served. The false evidence of the 2nd Respondent, Rajendra Narayan thus impairs this court's ability to rely on his testimony, making him an unreliable witness.

[18] The Learned High Court Judge had dealt with this issue perfunctorily without sufficiently considering the importance of the certificate of Iai Masi in whose evidence as I had already stated, had said: *'the defect of the chassis had been informed to the registered owner'* i.e. the 1st Respondent, Suruj Narayan. Therefore, it could no longer have been an undisclosed defect, of which the Plaintiff-Appellant was under an obligation to have informed the Respondents. Therefore, the Plaintiff/Appellant cannot be accused of misrepresentation, deceptive conduct, or unconscionable conduct as per the provisions of the Fair Trading Decree 1992. I am inclined to prefer the evidence of Ilai Masi in regard to the above defect (which evidence the respondents failed to disprove) over the evidence of the 2nd Respondent, who I have previously deemed unreliable. To elaborate briefly, when Ilai Masi gave "the Certificate" that was on premise that, it was roadworthy. The vehicle was certainly not a mere "soap box on wheels", if I may reminiscence on a well-known quote of Lord Denning.

[19] Consequently, I am sufficiently convinced that the Respondent had bought the vehicle despite having knowledge of the above defects at the time of purchase. Apart from their own inspection, the respondents had irrefutable evidence of the cracked chassis in the form of the inspection and certificate of Ilai Masi prior to the purchase being finalized.

The respondents had agreed to buy the tow truck knowing very well that the chassis was cracked.

[20] The 2nd Respondent has further taken the position that on the date of signing the documents, i.e. on the 18th October 2006, he was not with his father, the 1st Respondent, but had been away in Lautoka having gone to attend a religious function with his son and wife. Therefore, he denies being a signatory to the said document as well as his role of guarantor for the first respondent, his father. However, in view of the aforesaid finding of this court in relation to the credibility of the 2nd respondent, I am not inclined to accept his account. Further, apart from merely denying being present at the time of signing the documents and therefore his signature on the document, the 2nd respondent had not attempted to even call evidence of a handwriting expert to corroborate his evidence. Therefore, I hold that he had in fact signed the documents and is liable as the guarantor. In view of the above findings, it becomes redundant to comment on the evidence of Rana Pratap, Jubar Ali and Pio Tabaiwalu.

[21] Hence, the Learned High Court Judge had missed the wood for the trees and come to the wrong conclusion that the Plaintiff/Appellant had violated Sections 54, 55, and 56 of the Fair Trading Decree 1992. As far as the material before me is concerned, no attempt by the Plaintiff/Appellant of misleading or deceptive conduct or any unconscionable conduct or false or misrepresentation in the transaction is revealed.

[22] In view of the material before me, I am compelled to set aside the Order of the Learned High Court Judge and allow the appeal. I answer the grounds of appeal in favour of the Appellant and reject the Respondent's notice. The 2nd Respondent (as guarantor) is ordered to pay a sum of $59,244.09 and interest from 20th July 2011 until payment at the rate of 4 % per annum. I also order the 2nd Respondent to pay $5000.00 as cost of this action.

[23] Further, this court adverts serious attention to an issue raised by the Appellant, of the inordinate delay between the conclusion of the trial in the High Court and the delivery of the judgment. The trial before the High Court had concluded on 8th July 2015 but the Learned Judge had delivered the judgment after a lapse of 3 years and 7 months. This is of course a significant delay which has an adverse impact on the administration of justice. Learned Judges are directed to take notice of this situation and expedite the delivery of judgments, lest the purpose of litigation is nullified. Indeed, it has been said *ad nauseam*, *"justice delay is justice denied."*

Orders of Court:

1. Appeal allowed.
2. Judgment of the Learned High Court Judge dated 21st March 2019 is set aside.
3. The 2nd Respondent to pay $59.244.09 and interest from 20th July 2011 until payment at the rate of 4 % per annum.

.....
Hon. Almeida Guneratne
ACTING PRESIDENT,
COURT OF APPEAL

COURT OF APPEAL FIJI

.....
Hon. E. L. Basnayake
JUSTICE OF APPEAL

.....
Hon. D. S. Lecamwasam
JUSTICE OF APPEAL