

In the High Court of Fiji
At Suva
Civil Action No. 142 of 2014

Pacific Coatings Limited
Plaintiffs

vs

Ronil Ravikash Prasad
Defendant

COUNSEL: Mr D. Prasad for the plaintiff
Mr R. Singh for the defendant
Date of hearing: 11th October, 2017
Date of Ruling : 13th March, 2018

Judgment

1. On 20th October, 2016, the Master by consent, had ordered the defendant to pay the plaintiff a sum of \$ 39,000.
2. The plaintiff filed notice of motion for the defendant to be committed to prison for contempt of Court in failure to comply with the Order granted by the Master. I granted the plaintiff leave to issue committal proceedings.
3. The defendant, in his affidavit in reply stated that he does not have any assets to liquidate to pay the said sum. His only income are his wages from Inter Island Freight Services Limited. He has attached copies of his wage slips He can make payment of \$200.00. He is not deliberately disobeying the Order of Court. He has not been able to abide by the Order of Court, due to his financial problems.
4. The defendant pleaded not guilty to the charge of contempt.
5. The defendant was orally examined as to his means. The defendant said that he has no means and relied on section 4 of the Debtors Act. He earns \$ 250 per week and spends \$150 per week on his sustenance. He lives in his father's house. He is not married. He concluded his evidence stating that he could pay \$200 a month.

6. Section 4 of the Debtors Act provides that the jurisdiction to commit a person for default in payment of a debt shall “*only*” be exercised “*where it is proved to the satisfaction of the court that the person making default either has or has had ..the means to pay the sum.. and has refused or neglected.. to pay the sum*”. (emphasis added)
7. Article 9 (2) of the Constitution “*does not permit a court to make an order depriving a person of personal liberty on the ground of failure to pay maintenance or a debt, fine or tax, unless the court considers that the person has wilfully refused to pay despite having the means to do so*”. (emphasis added)
8. The above provisions unequivocally provide that the court cannot make a committal order, where a debtor does not have means and has not wilfully refused to pay a sum ordered by Court.
9. Mr Singh, counsel for the defendant quite correctly pointed out the plaintiff failed to rebut the defendant’s evidence that he has no means to pay the debt.
10. I am satisfied that the defendant does not have the means to pay the debt outright. I accept the defendant’s evidence that he earns \$250 per week (as borne out in his pay slips), does not have any other means and spends \$150 per week as expenses. He agreed to pay a sum of \$ 200 each month. In my view, the defendant requires money for his sustenance.
11. In my view, the defendant has not willfully disobeyed the Order of Court. I decline the application for an order of committal.
12. I make order that the defendant pay the plaintiff a sum of \$ 200 each month until the debt sum is fully paid.

13. Orders

- (a) The plaintiff's application for an order of committal is declined.
- (b) The defendant shall pay the plaintiff a sum of \$ 200 each month until the debt sum is fully paid. In default, the defendant shall be committed to prison for a period of one month for each default.
- (c) I make no order as to costs.



A.L.B. Brito-Mutunayagam

A.L.B. Brito-Mutunayagam

Judge

13th March, 2018