

IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA
CIVIL JURISDICTION

CIVIL ACTION NO. HBC 154 OF 2013

BETWEEN : **ATISH KUMAR SEN** of Stage 2, Natabua Housing, Lautoka,
Businessman.

PLAINTIFF

AND : **SEN BROTHERS TRANSPORT COMPANY** having its registered
office situated at 145 Vitogo Parade, Lautoka.

DEFENDANT

Appearances : Mr V. Sharma for the plaintiff
Mr S. Krishna for the defendant

Date of Hearing : 29 March 2019

Date of Ruling : 29 March 2019

R U L I N G

[on application to set a time limit for compliance]

[01] This is an application filed by the defendant seeking an order setting a time within which the consent judgment entered in this action must be complied with. An affidavit of Amitesh Kumar Sen, the Director of the defendant company who in his affidavit deposes that:

- 1. The plaintiff in court in the presence of his solicitors on the day of the trial had confirmed that they agree to settle this matter where either party in this action will buy other party's share after the valuations are done by the appointed Accountant, Nirbhay C. Rekha & Associates. This was the consent order.*
- 2. The defendant was ready to have the valuation carried out, however the plaintiff was not responding to request to have the meeting with the Accountants for valuation hence the defendant could not do anything (see paras 14 and 15 of the affidavit of Amitesh Kumar Sen).*

[02] This application is made under Order 47, Rule 7 of the High Court Rules 1988, as amended ('HCR'). It will be noted that the application quotes an incorrect rule. The correct rule to be relied upon by the defendant is rule 5, **not rule 7** of Order 45. Under this rule (Rule 5) the court has power to set a time limit within which the judgment is to be complied with. That rule provides:

'Judgment etc requiring act to be done, order fixing time for doing it (O 45, R 5)

5 (1) Notwithstanding that a judgment or order requiring a person to do an act specifies a time within which the act is to be done, the Court shall, without prejudice to Order 3, Rule 4 have power to make an order requiring the act to be done within another time, being such time after service of that order, or such other time, as may be specified therein.

(2) Where, notwithstanding Order 42 Rule 3(1), or by reason of Order 42 Rule 3(2), a judgment or order requiring a person to do an act does not specify a time within which the act is to be done, the Court shall have power subsequently to make an order requiring the act to be done within such time after service of that order, or such other time, as may be specified therein.

(3) An application for an order under this Rule must be made by summons and the summons must, notwithstanding anything in Order 65, Rule 9, be served on the person required to do the act in question.' (Emphasis added)

[03] Rule 5 (of O 45) is to be read with Order 42, Rule 3 (1) of the HCR. That rule set out:

'Judgment etc requiring act to be done, time for doing it (O 42, R 3)

3 (1) Subject to paragraph (2), a judgment or order which requires a person to do an act must specify the time after service of the judgment or order, or some other time, within which the act is to be done.'

(Emphasis added)

[04] While O 42, R 3 (1) states that a judgment or order which requires a person to do an act must specify the time within which the act is to be done, O 45, R 5 empowers the court subsequently to make an order requiring the act to be done within such time if a judgment or order requiring a person to do an act does not specify a time within which the act is to be done.

[05] The relevant part of the consent judgment reads:

'The Parties hereby agree to use only one Accountant namely Nirbhay C. Rekha & Associates (for the purpose of valuations).'

[06] The consent judgment does not specify the time within which the valuation is to be done by Nirbhay C. Rekha & Associates. The valuation is an act to be done by both parties. It has now become necessary to set a time limit within which the act of valuation stated in that consent judgment must be complied with.

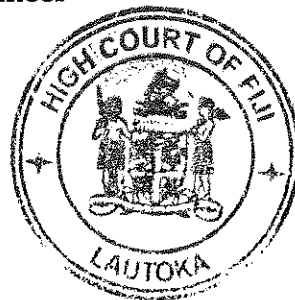
[07] Therefore, acting under O 45, R5 read with O 42, R 3 (1) of the HCR, I now set the time for compliance of the consent judgment. Accordingly, I order the consent judgment must be complied with within 3 months from the date of this ruling. There will be no order as to costs.

Final orders:

1. The parties shall comply with the consent judgment pronounced on 20 April 2016 within 3 months from the date of this ruling.
2. There shall be no order as to costs.

M.H. Mohamed Ajmeer
29/3/19

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M.H. Mohamed Ajmeer
JUDGE



At Lautoka
29 March 2019

Solicitors:

For the plaintiff: M/s Vijay Naidu & Associates, Barristers & Solicitors

For the defendant: M/s Krishna & Company, Barristers & Solicitors