

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Action No. HBC 340 of 2014

BETWEEN

BHARAT JOGIA of 309 Toorak Road, Suva.

FIRST PLAINTIFF

AND

MARUTI JEWELLERY LIMITED a limited liability company having its registered office at Factory 309.

SECOND PLAINTIFF

AND

PRAKASH KUMAR of Delailabasa, Labasa, Businessman.

FIRST DEFENDANT

AND

DUKSHA KALYAN trading as **REEMAS FASHION GARMENT** and **NU TOUCH** and having its registered business at Kalyanji Pala Building, Nasea, Labasa.

SECOND DEFENDANT

Counsel : Ms. J. Lal for the plaintiffs.
Mr. G. O'Droscoil for the defendants.

Date of hearing : 29th November, 2018

Date of Ruling : 24th January, 2019

RULING

- [1] The plaintiffs instituted these proceedings to recover \$82,000.00 from the defendants with interest and costs.

- [2] On 20th November, 2018 the plaintiff filed an ex-parte notice of motion seeking inter-alia and injunction restraining the defendants from leaving the country. The court made it inter-parte and until it was served on the defendant the court granted an interim stop departure order until 25th January, 2019. On 27th November, 2018 the defendants filed an ex-parte summons seeking to have the interim stop departure order set aside. The court converted it to an inter-parte summons. On 29th November, 2018 the court heard the counsel and at the hearing the counsel for the defendants informed court that the defendants are prepared to tender a surety bond and the court gave time to prepare the bond and tendered it to court. The defendants in fact tendered a surety bond one Viraj Bhupendra Ramji but there was no evidence that the surety has sufficient means satisfy the judgment if the plaintiffs are successful in their claim.

- [3] When the matter came up before this court on 03rd December, 2018 the counsel for the defendants informed court that the defendants are seeking an order on the submissions already made.

- [4] It is the submission of the learned counsel for the defendants that the court cannot make a stop departure order and such an order would be in violation of the right to movement guaranteed by the Constitution.

- [5] Section 21(3) of the Constitution provides that every citizen, and every other person lawfully in Fiji, has the right to move freely throughout Fiji and the right to leave Fiji.

Section 21(7)(b) of the Constitution –

To the extent that it is necessary, a law may limit, or may authorise the limitation of the rights mentioned in this section-

for the purpose of protecting the rights and freedoms of others.

- [6] In the case of **Prasad v Carpenters (Fiji) Ltd** the Court of Appeal said we do not consider that section 34 prevents a court from ordering a writ ne exeat regno in a proper case.

- [7] Section 34 of the earlier Constitution is similar to section 21 of the present Constitution.

- [8] Justice Tuilevuka In the case of **Sami v Raj** [2014] FJHC 389; HBC210.1989L (30 May 2014) following the decision in **Prasad v Carpenters (Fiji) Ltd** (supra) said:

Section 21 of the 2013 Constitution also guarantees the right to freedom of movement. However, at section 21 (3), 21(6) (i), and 21 (7) (b), it is clearly set out that the right to leave Fiji may be curtailed for the purpose of ensuring that the person whose right is in question appears before a court for trial or "other proceedings" and/or for the purpose of protecting the rights and freedoms of others.

In **Seng Mi Commercial Company v John Y Singh & Company Ltd** (Judgment 1) [1997] FJHC 32; Hbc0018j2.97s (6 March 1997) Justice Fatiaki said:

If I should be wrong however in the issuance of the Writ ne exeat then there is no doubt in my mind that this Court has the necessary power and jurisdiction to issue an injunction restraining the second defendant from leaving the country and requiring him to deliver up his passport on the ground that they are necessary and reasonable orders which are ancillary to the due performance of the Court's function of protecting the plaintiff's rights to a Mareva injunction pending the hearing of the action. [See: Bayer A.C. v. Winter and Others (1986) 1 ALL E.R. 733]

That this Court has the necessary jurisdiction and power to grant both the Mareva Injunction together with the Writ Ne Exeat cannot now be doubted. (See: *W.B.C. v. Satish Chandra* Civil Action No. 356 of 1991; *Merchant Bank of Fiji Ltd. v. Girdhar Lal Raniga and Anor.* Civil Action No. 210 of 1993; *Robert Rogers v. Pacific Hotels & Development Ltd.* Civil Action No. 1132 of 1985; *Leslie Redvers Martin v. B.N.Z. and F.D.B.* Civil Appeal No. 73 of 1984; *Girdhar Lal Raniga v. Merchant Bank of Fiji* Civil Appeal No. 31 of 1993 and *Al Nahkel for Contracting and Trading Ltd. v. Lowe* (1986) 1 ALL E.R. 729) in which it was

The court held:

The court had jurisdiction to issue a writ ne exeat regno in support of a Mareva injunction in order to prevent a defendant from leaving the jurisdiction with assets in order to frustrate a lawful claim before the Court.

In **Westpac Banking Corporation v Chandra** [1991] FJHC 84; HBC 0356.1991 (2 August 1991) the Justice Scott held:

In issuing a Writ Ne Exeat Regno coupled with a Mareva Injunction the aim of the Court is to require a defendant to provide the plaintiff with a full statement of assets and to preserve those assets before the defendant departs from the jurisdiction. The direct purpose of the orders is not to prevent departure simpliciter. As the cases reveal the discretion of the court to make such orders will not be lightly exercised. I do not think that a court would be inclined to grant such orders unless the sum claimed was substantial and the claim palpably well founded. I am of the opinion that a court issuing a writ in Fiji of Ne Exeat Civitate would meet the criteria required to be satisfied by section 15(3) (h) of the Constitution and that accordingly such a writ is constitutional.

[9] In view of the decisions cited and the provisos to section 21 of the Constitution of the Constitution the court has power to grant stop departure orders and it is in my view not necessary to wait for the final judgment of the court.


- [10] The plaintiffs in this matter came to court to recover the loan granted to the defendants to pay for their son's tertiary education in Australia and there is a loan agreement between the parties. This fact has not been denied by the defendants. In reply to this averment in the statement of claim the defendants say that they have through their solicitors requested particulars of the purported loan agreement. If they did not sign the agreement there was no reason why they cannot deny signing any such agreement.
- [11] This action was instituted in the year 2014 and the application for stop departure order was sought after four years and the reason for this application is the statement made by the 2nd defendant stating that he is moving to Australia in November, 2018 which was confirmed by the investigating officer of the Fiji Independent Commission Against Corruption.
- [12] These grounds are sufficient for any court to grant an interim stop departure order until the defendants are heard.
- [13] For the reasons aforementioned the court makes the following orders.

ORDERS

1. The Notice of Motion dated 20th November, 2018 filed by the defendants is struck out and the order sought in the said Notice of Motion is refused.
2. Costs in the cause.



24th January, 2018


Lyone Seneviratne

JUDGE