IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 82 of 2015

BETWEEN: **KAMLESHAN SAMI MUDALIAR** of Lot 5 Wainibuku Subdivision, 9 Miles, Taxi Driver.

PLAINTIFF/RESPONDENT

AND: **PUSHPA MUDALIAR aka PUSHPA WATI DEVI** of 9216 Sierra River Drive, Elk Grove, CA 95624, USA, Supervisor

DEFENDANT/APPLICANT

BEFORE: **Hon. Mr Justice Vishwa Datt Sharma**

COUNSEL: **Mr Narayan E.** for the Plaintiff
No Appearance for the Defendant

Date of Ruling: **27th October, 2022 @ 9.30am**

DECISION

[Summons to show cause pursuant to Order 25 Rule 9 and Order 3 Rule of the High Court Rules, 1988]

[1] The Defendant/Applicant filed a Summons coupled with an Affidavit in Support on 25th June 2021 and sought for the following orders-

(a) That the Plaintiff/Respondent to show cause why the written cause or matter should not be struck out forthwith for want of prosecution or as an abuse of the process of the Court on the grounds as enumerated at paragraph 1(i) to (iv) inclusive within the Summon filed herein

(b) That the Plaintiff/Respondent to pay costs of this application on a solicitor client indemnity basis.

(c) That all monies paid into this Honourable Court on 17th by the Defendant/Applicant pursuant to this Honourable Courts Order of 28th June 2016 be further paid out to the Defendant/Applicant and/or its authorised Solicitors, Patel Sharma Lawyers following the Order for striking out of the within action.

(d) Costs.

[2] That the Summons was assigned with a returnable date of 28th October 2021.

[3] The Summons was not served on the Plaintiff/Respondent nor its Solicitors representing and have the application adjourned to 23rd March 2021 for service.

[4] Nilesh Sharma Lawyers were served with the Summons and Counsel appearing informed Court that the firm did not have any instructions on representation.

[5] Matter was once again adjourned to 26th November 2021. The Court was informed by Patel Sharma Lawyers that they will serve the same onto Sunil Kumar Esq and adjourned to 13th December 2021.

[6] On 18th January 2022, this Court was informed by Patel Sharma Lawyers that:-

- Transfer of the property had taken place;
- Matter in disposition.

[7] The Court adjourned the Hearing of the Summons to 18th March 2022.

[8] The Counsel in charge of the case was directed to furnish Court with a written submission.

[9] This matter was heard on the aforesaid date adjourned for Court decision on notice.

[10] This Court whilst writing its decision discovered that Sunil Kumar Esq represented the Plaintiff/Respondent. However the Solicitor's firm was not appropriately served with any Summons and/or a Notice of acknowledgement of Hearing.

[11] Further, no affidavit of service could be found or located from the file records.

[12] For this very reason, this Court did not complete its Decision and rather thought fit and appropriate to make the following directives:-

(i) The Plaintiff and/or his Solicitors to be served with a Notice of Adjourned Hearing returnable before this Court on 29th day of November 2022.

(ii) An Affidavit of Service to be filed into Court to prove service of the Notice either onto the Plaintiff personally and/or his Solicitors.

(iii) The Defendant's/Applicant's Summons to Show Cause will only be determined once the abovementioned Directives have been complied with accordingly.

Dated at Suva this 27th day of October 2022.

HIGH COURT OF FIJI
SUVA

VISHWA DATT SHARMA
JUDGE

Cc: Kamleshan Sami Mudaliarof Lot 5 Wainibuku Subdivision, 9 miles, Nasinu.
Patel Sharma Lawyers, Suva.