

IN THE FAMILY DIVISION OF THE HIGH COURT AT SUVA

ORIGINAL JURISDICTION

<u>ACTION NUMBER:</u>	CASE NUMBER 2017/SUV/0461
<u>BETWEEN:</u>	DHARMA APPLICANT
<u>AND:</u>	MANISHA RESPONDENT
<i><u>Appearances:</u></i>	<i>Mr. P. Kumar for the Applicant.</i> <i>Mr. Amrit Sen for the Respondent.</i>
<i><u>Date/Place of Judgment:</u></i>	<i>Friday 31 January 2025 at Suva.</i>
<i><u>Coram:</u></i>	<i>Hon. Madam Justice Anjala Wati.</i>
<i><u>Category:</u></i>	<i>All identifying information in this judgment have been anonymized or removed and pseudonyms have been used for all persons referred to. Any similarity to any persons is purely coincidental.</i>
EX-TEMPORE RULING	

1. This is a very urgent application and although I was initially of the view that I will give Mr. Sen time to appear and argue his case, I have realized that the time for the compliance of the enforcement judgment is due on 2 February 2025. This is the last working day for compliance and I am told by Mr. P. Kumar that the husband is ready with the monies for payment in Court.
2. If I do not hear the application, the husband will lose out on the property, and this would be a grave injustice to him as he will lose his home. At this age, it will be immensely difficult to provide any relief to him for loss of his home. Even damages will not suffice. It is not easy to build homes these days. I have therefore decided to deal with the application today on papers. This is my ex-tempore ruling.

3. I am faced with an application for enforcement of the orders of 12 December 2024 in this proceedings.

4. The husband is applying for the following orders:-

(i) *An order that the husband deposits the monies referred to in paragraph 30(1) of the ruling of this court in the Family Court Registry;*

(ii) *An order that the Registrar of the Family Court Division executes the Transfer, Consent and Sale and Purchase Agreement on behalf of the wife if she refuses or delays in signing the documents;*

(iii) *An order that the FRCS permits the husband to obtain Capital Gains Tax Certificate on behalf of the wife if she refuses to do so; and*

(iv) *An order that the timeframe for settlement of the property be extended to another 30 days.*

5. The issues in this application has arisen because Mr. Sen is of the view that there should be a 4% interest per annum on the following sums:-

(i) *\$97,000 under paragraph (o) of the substantive judgment;*

(ii) *\$1,500 under paragraph (g) of the substantive judgment;*

(iii) *\$3,500 under paragraph (i) of the substantive judgment; and*

(iv) *\$6,500 under paragraph (j) of the substantive judgment.*

And that upon payment of \$152,700 inclusive of 4% post judgment interest as sought and identified above, the wife will only transfer the property to the husband exclusively and not to the husband and his step-daughter ,Sonia.

6. Let me first deal with the issue of interest. I will start off with the issue of interest on \$97,000. Since interest was not sought in the enforcement proceedings, the court did not deliberate on it. I am of the

view that the wife should have made the question of interest a matter for determination in the enforcement proceedings.

7. She did not do so and is only seeking the same now when the period for settlement of the property is very limited. This issue has given rise to the legal agony between the parties and is holding up enforcement of the orders.
8. I do not find that the issue of interest now should be decided in the wife's favour. She will be getting a lump of \$19,500 as unpaid rent for 5 years. This is equivalent to the interest that she would get at 4% on the sum of \$97,000. If she was to collect rent on a monthly basis from the date of the original judgment to the date of the ruling on enforcement of the original judgment, she would only qualify for \$3,600 per year which would be about \$18,000 for 5 years.
9. It's not easy to invest 300 per month and gain recognizable interest on it. On the contrary, investment of \$19,500 is much more feasible. She gets to invest \$19,500 and get a better return.
10. I find that the lump sum payment of \$19,500 has put her in a more convenient situation to regain money which she may have lost on \$97,000 due to lack of investment. Further, if the monies were paid on time, the rent of \$19,500 would not be given to her. So she either collects the interest or the rent. I have made the award for rent and so she cannot seek double advantage.
11. I do not grant interest on \$97,000.
12. The interest on the sum of \$1,500 is refused as this amount was not recoverable as her share in the residential property.
13. In respect of the interest on the sum of \$3,500 and \$6,500, these monies were to be recovered from standard enforcement proceedings. The wife was not permitted to recover it from her share in the residential property. So it's now refused.
14. On the issue of whether upon the payment of the monies outlined in paragraph 30(1) of the judgment, the wife should transfer the property to the husband and not to the husband and his daughter Sonia, my view is this.

15. It was very clear from the enforcement proceedings papers and my enforcement judgment in paragraph 15 that the only way the wife's share could be paid is by raising the loan in the name of the husband and the daughter jointly. If the daughter does not step in then the loan will not be given to the husband.
16. It is therefore prudent that for the wife to get her shares, the property be transferred in the name of the husband and the daughter.
17. The wife's insistence that she will only transfer the property in the husband's name is being difficult. She ought to appreciate that she should assist the husband in raising a loan to get her share. Her interest is in getting her share of the monies and not in battling that I had initially ordered that the property be transferred in her name exclusively. The orders initially are no longer enforceable due to the financial circumstances of the husband but he is prepared to honour it to give the wife the same advantage if the property was transferred to him exclusively.
18. I do not think that the wife has been genuine in raising the issues she did. I find this to be a deliberate attempt to delay the progress of the matter. She was in court and she appreciated that a third party was to feature in to assist the husband raise a loan. That was not something that was a minute observation in the enforcement proceedings. It was a major factor that influenced the court to grant the husband some time to raise the loan.
19. It is for the above observation that I make the following orders:
- (i) *The time for settlement of the property be extended to another 45 days.*
 - (ii) *The husband is to pay the monies referred to in paragraph 30(1) of the enforcement ruling in Mr. Kumar's trust account within 48 hours. A receipt of the payment is to be given to Mr. Sen and this court.*
 - (iii) *An order that the wife signs all documents necessary to transfer the property to the husband and his daughter Sonia within 2 weeks of the payment of the monies in Mr. Kumar's trust account and if the wife refuses to do so the same to be executed by the Registrar, Family Division High Court, Suva.*

- (iv) *An order that the FRCS permits the husband to obtain a CGT Certificate on behalf of the wife if she refuses to do so.*
- (v) *Once the transfer is executed ad CGT obtained, Mr., Kumar to then within 24 hours or 48 hours, whichever is convenient, to pay the monies to Mr. Sen or his clients nominated account. If there is any refusal to accept the monies then the same to be deposited in the High Court Registry with a copy of this order.*
- (vi) *The husband is entitled to costs of the proceedings in the sum of \$1,500 which can be deducted from the property settlement amount.*

So ordered.

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Hon. Madam Justice Anjala Wati

31.1.2025

To:

- 1. Patrick Kumar Lawyers for the Applicant.***
- 2. Sen Lawyers for the Respondent.***
- 3. File: Family Case Number: 17/SUV/0416.***