

A 1. MAHESH CHAND
 2. RAVINDRA CHAND

v

CARPENTERS FIJI LTD

B [HIGH COURT, 1995 (Fatiaki J), 17 July]

Appellate Jurisdiction

Courts-whether Magistrates Courts have a summary jurisdiction akin to that enjoyed by the High Court under RHC O14.

C On appeal against the summary dismissal of a statement of Defence filed in the Magistrates Court HELD: Magistrates do not have a power similar to that exercised by the High Court under the provisions of RHC O14.

Cases cited:

Garthwaite v. Garthwaite [1964] P 356

D *Subodh Mishra v. Car Rentals (Pacific) Ltd.* 31 FLR 49

A. *Sen* for Appellants

A. *Parshu Ram* for Respondent

Fatiaki J:

E On the 22nd of September 1993 the respondent Company issued an endorsed Writ of Summons out of the Labasa Magistrates Court claiming a sum of \$3,693.81 for goods and services sold and provided by the respondent Company to the 1st appellant and further, against the 2nd appellant the sum of \$2,000 being the extent of his liability under a guarantee.

F On 31st March 1994 the 2nd appellant filed a Statement of Defence denying any knowledge of being under a guarantee or giving any instructions to the respondent company (to supply goods and services to the 1st appellant). In essence the defence was a blanket denial putting the respondent Company to strict proof.

G On 7th June 1994 the respondent company filed an Amended Statement of Claim outlining the contractual relationship between itself and the 1st and 2nd appellants and Chands Earthworks Services. The respondent Company also claimed a sum in excess of \$4,000 for goods and services supplied together with interest thereon.

On 4th July 1994 the 1st appellant filed a Statement of Defence which save for admitting the respondent company's capacity, comprises a blanket denial of the amended Statement of Claim.

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Then on 18th August 1994 the respondent Company issued a summons for an order that :

- “(1) The Statement of Defence filed by the 2nd defendant does not disclose any defence ; and
- (3) Judgment be entered against the 2nd defendant for the whole of the sum claimed by the plaintiff and interest.”

A

The respondent Company’s summons was also supported by an affidavit of its Credit Controller who deposed inter alia that “... the Statement of Defence filed by the 2nd defendant shows no defence whatsoever...” and also annexed were a Certificate of Registration of Chands Earthworks Services and a self-explanatory Memorandum of Guarantee given by the 2nd appellant to the respondent Company.

B

Notwithstanding the absence of a reference to any Magistrates Court Rule in the application, it is clear beyond any doubt that the respondent Company’s summons of 18th August 1994 sought summary judgment on its liquidated claim against the 2nd appellant.

C

It is also plain from the learned trial magistrate’s Order delivered on 19th December 1994 that he accepted the respondent Company’s submission that the Statement of Defence did not disclose any defence at all and judgment was accordingly entered “... in favour of the plaintiff company against the 2nd defendant for the whole of the sum claimed by the plaintiff together with interest and costs of the action.”

D

The 2nd appellant now appeals against the judgment on various grounds set out in the Notice of Appeal filed on the 16th of January 1995 including a ground that the respondent Company’s claim had not been proved against the 1st appellant and another, to the effect that the trial magistrate ought to have limited his Order to the sum of \$2,000 in terms of the 2nd appellant’s guarantee.

E

From the above and up to the hearing of the appeal it appears that everyone concerned with the case had assumed that the trial magistrate had the necessary power to grant summary judgment in respect of a liquidated claim filed in the Magistrates Court.

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That such a power has long existed in and is regularly exercised by the High Court there can be no doubt whatsoever (See : Order 14 of the High Court Rules 1988). But the same is by no means clear in the case of the Magistrates Court. Indeed at the hearing of the appeal counsel were hard-pressed to find such a power in the Magistrates Court Act or Rules yet the entire proceedings and Order of the learned resident magistrate were predicated upon the existence of such a power.

G

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A Having carefully considered the matter I am not satisfied that such a power (however desirable) is exercisable by the Magistrates Court which is a court of limited jurisdiction.

In this latter regard I am satisfied that the term "jurisdiction" in Section 16 of the Magistrates Court Act (Cap. 14) is used in both senses described by Diplock L.J. in Garthwaite v. Garthwaite [1964] P. 356 when he said at p.387 :

B "In its narrow and strict sense, the jurisdiction of a validly constituted court connotes the limits which are imposed upon its power to hear and determine issues between persons seeking to avail themselves of its process by reference to (1) to the subject matter of the issue or (2) to the persons between whom the issue is joined or (3) to the kind of relief sought or

C to a combination of these factors. In its wider sense it embraces also the settled practice of the court to the way in which it will exercise its power to hear and determine issues which fall within its 'jurisdiction' (in the strict sense) or as to the circumstances in which it will grant a particular kind of relief which it has jurisdiction (in the strict sense) to grant

D ..."

I am fortified in my view not only by the clear absence of any power in the Magistrates Court Act or Rules to grant summary judgment but also by the fact that all provisions which might be of any assistance in the Magistrates Court Act and Rules such as, Section 27(2), Section 46 or Order III r.8, are necessarily limited in their scope and ambit to the exercise by a resident magistrate of a pre-existing statutory power or jurisdiction (in the strict sense).

E

In other words in the absence of a clearly expressed power or jurisdiction (in the strict sense) in the Magistrates Court Act or Rules to grant summary judgment, no rule of practice or procedure derived therefrom can create such a power or grant such a jurisdiction.

F

In my considered opinion save for the various Rules dealing with default judgment.

(viz : Order VI r.8 ; Order XXX r.3 and Order XXXIV r.3) a resident magistrate is required in terms of Order XXXI of the Magistrate Court Rules, to hear every civil cause or matter where "... statements of claim and of defence have been filed."

G

The Fiji Court of Appeal in Subodh Mishra v. Car Rentals (Pacific) Ltd. (1985) 31 F.L.R. 49 in the course of examining the powers of a Magistrates Court to enter default judgment said in relation to Order XXX r.3 at p.53 :

"if the appellant has not appeared at the hearing and a

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judgment was entered without hearing of the evidence ... such judgment would have been given irregularly ...”

Quite plainly even where a defendant fails to appear at the hearing of his case the resident magistrate must still hear the plaintiff's evidence before entering default judgment.

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In the scheme of things the existence of a power to enter summary judgment in the Magistrates' Court does not appear to this Court to be either intended or inferable. Certainly in the limited experience of this Court no such application has ever been entertained or granted by the Magistrates' Court.

B

I am of course mindful that no court, not even a court of limited jurisdiction, should be obliged to hear a case simply because a defendant has filed a Statement of Defence however improperly pleaded or unmeritorious.

In this regard in the case of a Magistrates Court I am satisfied that its wide powers to order the amendment of pleadings under Order XIV r.1 coupled with its wide powers to enter judgment in terms of Order XXXIV r.3 against a defaulting defendant is more than sufficient to deal with such an eventuality.

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In the circumstances there being no power in the Magistrates Court to grant summary judgment, the Order of the learned trial magistrate was made without jurisdiction and is accordingly set aside *ex debito justitiae*.

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The action must now proceed in accordance with this judgment.

(Appeal allowed; Judgment of the Magistrates Court set aside.)

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