

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 235 of 2008

BETWEEN : NARAIN NAIR 2 Namako Place, Stage 2 Tacirua, Sales Manager

PLAINTIFF

AND : RANJANA NAIR 2 Namako Place, Stage 2 Tacirua, Sales Manager

DEFENDANT

BEFORE : Master Thushara Rajasinghe

**COUNSEL : Mr. Prasad V. for the Plaintiff
Mr. Mishra Prakash for the Defendant**

Date of Hearing : 9th July, 2014

Date of Ruling : 7th August, 2014

RULING

A. INTRODUCTION

1. This is the Summons filed by the Defendant seeking following orders inter alia;
 - i. The application for taxation of cost filed on 21st day of May 2013 and struck out by this Honorable court on 3rd of March 2014 be re-instated and the matter be listed for hearing,
 - ii. And the cost of this application be the costs in the cause,
2. This Summons was called before me on the 2nd of April 2014, where the Plaintiff and the Defendant were given directions to file their respective affidavits, which they filed accordingly. Subsequently, this Summons was set down for hearing on 9th of July 2014. The counsel for the Plaintiff and the Defendant made their respective oral arguments and

submissions during the cause of the hearing. Having carefully considered the respective affidavits, arguments and submissions of the parties, I now proceed to pronounce my ruling as follows.

3. The Defendant filed her bill of cost on 21st of May 2013, which was set down for hearing on 3rd of March 2014. However, the learned counsel for the Defendant was not present at the hearing on 3rd of March 2014, wherefore, upon the application of the learned counsel for the Plaintiff; the application for taxation of cost was struck out. The Defendant has now filed this Summons to re instate her application for taxation.
4. The Defendant deposed in her affidavit in support that her counsel was ready to conduct the hearing on the 3rd of March 2014, but found that the hearing was listed at 2.30 p.m in the cause list published by the High Court registry instead of 11.30 a.m., the time originally given by this court. Having found the differences of time for the hearing, the office of the Defendant's solicitors has contacted the High Court registry and inquired the same. They were confirmed by the registry that the hearing was set down at 2.30p.m. However, this matter was taken for hearing at 11.30 a.m and was struck out on the ground of non appearance of the Defendant. The Defendant contended that their failure to appear on the hearing date was not due to their own fault, but the mistake of the high court civil registry for giving and confirming them a wrong time for the hearing.
5. The Plaintiff objected this application for re-instatement on the ground that it was the duty of the counsel to vigilantly follow the orders of the court and if this matter is reinstated, it will prejudice the plaintiff.
6. Having considered the respective submissions of the Plaintiff and the Defendant, I now turn to review the applicable laws on this issue of reinstatement.
7. Order 32 rule 5 (4) of the High Court Rules states that;

"Where an application made by summons has been dismissed without a hearing by reason of the failure of the party, who took out the summons to attend the hearing, the

court, if satisfied that it is just to do so, may allow the summons to be restored to the list”.

8. Accordingly, the court is allowed to restore any summons to the list if it satisfied that it is just to do so. In this instance case, the summons was dismissed on the ground of non appearance of the Defendant. I am satisfied that the Defendant’s non appearance was due to the mistaken information given by the High Court Registry, firstly in their published cause list and then verbally confirming the wrong time when it was inquired by the Solicitors of the Defendant. The failure was not due to the intentional default of the Defendant. Under such circumstances, I find it is just to restore the application for taxation of cost to the list.
9. I do not make any order for cost as I found that the failure was not due to any intentional default of the Defendant
10. In conclusion, I make following orders that;
 - i. The application for taxation of costs filed on 21st of May 2013 is hereby reinstated and restored to the list,
 - ii. No order for cost,

Dated at **Suva** this **07th** day of **August, 2014**.



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R.D.R. Thushara Rajasinghe
Master of High Court, Suva