

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

CIVIL ACTION NO. HBC 99 of 2011

BETWEEN : **FNPFI INVESTMENTS LIMITED**
Plaintiff

A N D : **VENTURE CAPITAL PARTNERS (FIJI) LTD**
1st Defendant

A N D : **DINESH SHANKAR**
2nd Defendant

Counsel : **Mr. R. Nand for the Plaintiff**
Ms. M. Rakai for the 2nd Defendant

Date of Hearing : 22th October, 2014

Date of Judgment: 27th October, 2014

INTERLOCUTORY JUDGMENT

1. The ex parte notice of motion before me, seeks for the following orders:-

- 1). *Summons for leave to appeal filed 4th April 2013; and*
- 2). *Affidavit in Support for leave to appeal filed 4th April 2013; and*
- 3). *Supplementary Affidavit in Support filed 9th August 2013; and*
- 4). *Supplementary Affidavit in Support filed 19th June 2014*

Be made in this action, and that service be effected on the First Defendant **VENTURE CAPITAL PARTNERS (FIJI) LIMITED** through advertisement in the "Fiji Times" upon the grounds contained in the Affidavit of **RAVINDRA PRASAD** sworn and filed herein.

2. The said summons is supported by the affidavit of Ravindra Prasad. The summons is to effect the service of the documents mentioned therein by way of substitute service.
3. The matter was taken up before me on 22.10.14 and counsel made submissions. The Court has considered the affidavits filed in support of the summons, and the submissions made by counsel. The Exparte notice of motion filed by the second defendant seeks an order for substituted service to be effected on the first defendant.

Second Defendant's Case

4. The second defendant has filed an application before court on 9.8.13 seeking leave to appeal the decision of the Master decided on 22.3.13.
5. The said application has been served on the plaintiff on 12.8.13.
6. It was submitted that attempts to serve the said application on the first defendant had proved futile as the first defendant's registered office at Suite 2, Kimberly Street was closed. The second defendant deposes that the first defendant had ceased operations.
7. In the affidavit in support of the application the defendant has deposed that as per the search at the office of the registrar of the companies it had been

revealed that the registered office of the first defendant is still at Suite 2, Level 1, Kimberly Street, Fiji.

8. However it was submitted that the said premises is not occupied by the first defendant anymore and a law firm is now in occupation of the said property.
9. As it is the last known address the second defendant had served the documents on the said address and an affidavit of service has been filed by one Roleen Ashika Prasad.
10. However as the first defendant is not in occupation on the said address, the second defendant has filed this application seeking to serve the documents by substituted service namely by advertising in the "Fiji Times."

Determination

11. The application is made pursuant Order 65 Rule 4 of the High Court Rules.
12. The said rules states:

4. (1) *If, in the case of any document which by virtue of any provision of these Rules is required to be served personally or a document to which Order 10, rule 1, applies, it appears to the Court that it is impracticable for any reason to serve that document in the manner prescribed on that person, the Court may make an order for substituted service of that document.*

(2) *An application for an order for substituted service may be made by an affidavit stating the facts on which the application is founded.*

(3) *Substituted service of a document, in relation to which an order is made under this rule, is effected by taking such steps as the Court may direct to bring the document to the notice of the person to be served.*

13. As per the said rule the second defendant in this instance has to satisfy court that it is "*impracticable for any reason to service the documents in the manner prescribed on the person.*"
14. As per S 391 (1) of the Companies Act it stipulates the method of serving documents under the Companies Act.
15. The second defendants counsel submitted that substituted service is allowed only on exceptional circumstance and that in this instance there is exceptional circumstances.
16. This court is mindful that substituted service should be done with extreme caution. However it is pertinent to note that the "*impracticability*" of each case would differ on the circumstance of the case.
17. The second defendant who is seeking to file an application to leave to appeal against the Master's decision submits that they have taken every endeavor to serve the documents on the first defendant but as the registered office is closed and the whereabouts of the first defendant is not known they are seeking for substituted service by an advertisement in papers. As per the affidavit of service filed the second defendant has in fact sent the documents to the last known address.
18. It was also submitted that in the matter before the Master a law firm had appeared for the first and second defendants but the said law firm had recused

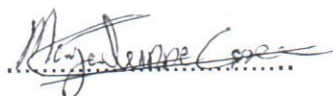
itself from appearing for both defendants. Subsequently the second defendant has been represented by the present law firm and the first defendant is alleged, not to have retained the services of a solicitor firm. Accordingly the second defendant submits that there is no law firm to serve documents.

19. Counsel for the second defendant also cited **Hussain –v- Checkaboard Furnishing [1999] FJCA 68 ABU 00604.98s** and counsel conceded that the circumstance of the said case differs to the present case before me. This court has considered the cited authority as well as the submission of counsel, on the relevance of the said case to the present case before me. I agree with counsel that the circumstance of the said case differs with the application before me.

Conclusion

20. The second defendant being aggrieved by the learned Master's decision is seeking to file leave to appeal application. However as the first defendant was also a party before the Master the second defendant is attempting to serve the documents on the first defendant. I find as per the affidavit of service the documents have been served on the last known address and the registered office of the 1st Defendant is the same as the last known address. The second defendant however submits that the first defendant is not in the said address. It was further submitted that despite trying to ascertain the correct present address of the first defendant they are unable to find it. They further submit till the documents are served on the first defendant, the 2nd Defendant cannot take any steps to proceed in the application for leave to appeal.
21. Considering all the material submitted to court this court is satisfied that the second defendant had taken reasonable steps to serve the documents. In fact as per the affidavit of service it has been served on the last known registered address.

22. In this instance I am inclined to accept that the second defendant has satisfied the court to obtain the relief sought under Order 65 Rule 4 of the High Court rules. Accordingly I make order as per the ex parte notice of motion dated 8.7.14.



Mayadunne Corea

JUDGE

27.10.2014

