

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE**

**CIV-2022-404-1187
[2023] NZHC 818**

BETWEEN VIJENDRA PRASAD
Plaintiff
AND PRATIBHA RAJ
Defendant

Hearing: On the papers at Auckland

Appearances: M R Taylor for Plaintiff
C T Patterson for Defendant

Judgment: 18 April 2023

**JUDGMENT OF POWELL J
[Costs]**

This judgment was delivered by me on 18 April 2023 at 3.00 pm pursuant to
R 11.5 of the High Court Rules

.....
Registrar/Deputy Registrar

Solicitors:
Maria Taylor, Auckland for Plaintiff
Lateral Lawyers Ltd, Auckland for Defendant

Counsel:
M R Taylor, Auckland
C T Patterson, Auckland

[1] On 11 November 2022, I struck out defamation proceedings brought by Vijendra Prasad against Pratibha Raj,¹ and awarded costs against Mr Prasad.²

[2] The parties were unable to agree on the quantum of costs properly payable. Ms Raj seeks costs on a 2B basis together with an uplift of 50 per cent plus disbursements, while Mr Prasad contends costs on a 2B basis together with disbursements are appropriate.

The position of the parties

[3] Mr Patterson for Ms Raj submitted r 14.6(3)(b)(ii) of the High Court Rules 2016 was engaged on the basis that the proceedings brought by Mr Prasad were unreasonable and an abuse of process, and that indeed there was an argument indemnity costs could have been sought pursuant to r 14.6(4)(a). Mr Patterson relied in particular upon my conclusions:

- (a) The pleaded “civil disputes between the parties”, which took up the greater part of the statement of claim that was the subject of the strike out application (some 17 paragraphs) were entirely unconnected to the defamation claims,³ and therefore entirely irrelevant.⁴
- (b) The pleaded “civil disputes between the parties” nonetheless contained serious allegations against Ms Raj and added weight to the suggestion that the defamation proceedings were brought primarily for the purposes of placing inappropriate pressure on Ms Raj in the context of the parties’ acrimonious break up.⁵
- (c) The defamation claim itself included relief that was not available.⁶

¹ *Prasad v Raj* [2022] NZHC 2960 at [19].

² At [20].

³ At [8].

⁴ At [12].

⁵ At [17].

⁶ At [17].

[4] In response, Mr Taylor on behalf of Mr Prasad opposed any award of increased costs. Mr Taylor submitted that the defamation allegations were not untenable or entirely meritless. Mr Taylor submits that there was no improper motive behind the proceedings, and that it would be improper to base an uplift on costs on that ground.

Discussion

[5] There appears to be no dispute that costs calculated on a 2B basis amount to \$15,175.50, nor is there any dispute with the disbursements claimed by Ms Raj in the sum of \$770.

[6] In *Bradbury v Westpac Banking Corporation*, the Court of Appeal noted that “increased costs may be ordered where there is failure by the paying party to act reasonably”.⁷ In the later decision of *Corrick v Silich* the Court said that “[s]omething beyond the usual type of pleading adjustments and infelicitous drafting of documents and briefs is required before an increase is ordered to overall trial costs”.⁸

[7] Having considered the submissions of the parties and r 14.6(3) of the High Court Rules I concluded that increased costs are justified but not to the extent sought by Mr Patterson. The attempt by Mr Prasad to retain the pleaded “civil disputes between the parties” was clearly unreasonable and called into question the bona fides of the proceedings for the reasons given in the judgment. As a result, increased costs are appropriate. On the other hand, it was not unreasonable for Mr Prasad to argue that the defamation allegations should be allowed to proceed and scale costs are appropriate to deal with that part of the application.

[8] Taking these matters together I conclude that the 2B scale costs of \$15,175.50 should be increased by 20 percent, to a total of \$18,210.60.

⁷ *Bradbury v Westpac Banking Corporation* [2009] NZCA 234, [2009] 3 NZLR 400 at [27].

⁸ *Corrick v Silich* [2018] NZCA 221, [2018] NZCCLR 21 at [61].

Decision

[9] Mr Prasad is to pay Ms Raj cost in the sum of \$18,210.60, together with \$770 in disbursements, a total of \$18,980.60.

Powell J