IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

1. M. S. A. Aleem Mohamed of
No. 21, Galbokka Raod,
Weligama.

2. M. Shane Suhail of
No. 9, Samaraweera Place,
Weligama.

PLAINTIFFS

C.A 1062/1998 (F)
D.C Matara 7155/L

Vs.

Abdul Mohamed Muhular of
No. 22, Station Road,
Weligama.

And others

DEFENDANTS

AND BETWEEN

Abdul Mohamed Muhular of
No. 22, Station Road,
Weligama.

1ST DEFENDANT-APPELLANT

Vs.

1. M. S. A. Aleem Mohamed of
No. 21, Galbokka Raod,
Weligama.

2. M. Shane Suhail of
No. 9, Samaraweera Place,
Weligama.

PLAINTIFFS-RESPONDENTS

BEFORE: Anil Gooneratne J.

COUNSEL: R. Sahabandu with D. Warawewa for the 1st Defendant-Appellant

I. Hussain with A. Hussain for the 1st Plaintiff-Respondent

ARGUED ON: 17.5.2012

DECIDED ON: 28.08.2012

GOONERATNE J.

This is an appeal from the Order of the learned District Judge, Matara dated 22.10.1998 refusing an application by the 1st Defendant-Appellant to vacate the ex-parte judgment entered against him on 18.2.1992, more particularly for the reason that (apart from the reason of default which

resulted in ex-parte trial) the trial Judge refused to grant a postponement of the default inquiry on the application made by Appellant's Attorney-at-Law.

When I perused the record it appears that defaults of 1st Defendant had occurred from a very early stage of the suit. Reason being alleged illness of the 1st Defendant-Appellant. In this type of inquiry the Appellate Court must not be called upon to decide on the merits where a case has only been heard ex-parte 30 NLR at 6. This court having heard counsel on either side at a hearing on 17.5.2012, permitted parties to file written submissions if they so desire. Appellant has filed written submissions which is somewhat prolix. What is being stressed by the Appellant inter alia in the submissions is not the default of the Defendant-Appellant on the date of filing answer but the failure to attend court on the default inquiry date due to illness, though a medical certificate was made available. Plaintiff-Respondent had objected for granting a postponement and proceeding of 22.10.1998 gives all details of submissions by Counsel on either side. Those proceedings indicate that Attorney-at-Law appearing for the 1st Defendant sought to excuse his client by tendering a medical certificate with notice to the opponent.

The opponent of the Appellant had objected not only on the contents and validity of the medical certificate, but also for repeated

postponements at least on 13 occasions where the original court was gracious enough to grant adjournments, and Attorney for Plaintiff finally objected to a postponement when the inquiry was finally fixed on 21.10.1998 being the final date of inquiry.

The trial Judge in a very brief order has refused to grant an adjournment. Whether to grant or not to grant postponements are generally in the discretion of the trial Judge who is expected to give and consider such application with a judicial mind and not any other reason. No doubt the trial Judge has been critical of the medical certificate. It appears that more than the reason to reject the medical certificate the trial Court Judge emphasis the fact that the date in question is <u>a final date.</u> This is what is significant in the impugned order.

To add to the above the trial Judge refer to, either Defendant-Appellant failure or indifference to summon a necessary witness for his case. That is also <u>another important point</u> referred to in the impugned order though the Appellant attempts to stress medical grounds, it is not the sole reason to reject the application. I have noted the following extract from the order.... මෙම නඩුව 98.04.28 වන දින විමසිමට තිබු අවස්ථාවේ 1 වන විත්තිකරු ප්‍රතිකාර ලබා ගත් රෝහලේ වෛද්‍යවරයා සාක්ෂි දිම සඳහා

කැඳවීමට ඇති බව ප්‍රකාශ කර ඇතත් සාක්ෂිකරු කැඳවීමට සිතාසි අරගෙන හෝ වෙනත් කිසියම් පියවරක් මේ දක්වා ගෙන නොමැත.

98.8.28 වන දින විත්තිකරුවන්ට ඉල්ලීම වන විමසීම අද දිනට අවසාන වශයෙන් කල් තබා ඇත.

This court observes that there should be finality to litigation. Court should not leave room to enable the society to fault the judicial system. Trial Judge has in his brief order approached the problem in the correct perspective. No court should tolerate repeated applications for postponements. If postponements are permitted, one of the parties have to suffer, resulting in delayed justice. I do not wish to disturb the order of the trial Court. Order of 22.10.1998 affirmed.

Appeal dismissed with costs.

JUDGE OF THE COURT OF APPEAL