

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

In the matter of an  
application for revision

Court of Appeal No: CA 1865/2005 (Revision)  
& No: CA 1866/2005 (Revision)

District Court of Colombo No: 6375/SPL  
& No: 6674/SPL

Plexus Cotton Ltd.

Petitioner-Petitioner

Vs.

Dan Mukunthan

Respondent-Respondent

Before: Eric Basnayake J

Counsel: Shamil Perera with Prasard Sarathchandra for the petitioner-petitioner  
Uditha Egalahewa with Gihan Galabadage for the respondent-respondent

Written submissions tendered on: For the petitioner-petitioner: 1.6.2010  
For the respondent-respondent: 26.7.2010

Decided on: 13.1.2012

Eric Basnayake J

The petitioner-petitioner (petitioner) filed this revision application (CA 1865/2005) inter alia to have the order dated 7.6.2005 of the learned District Judge of Colombo set aside.

Two cases namely CA 1865/2005 (Revision) & CA 1866/2005 (Revision) were filed in the Court of Appeal to revise the judgment dated 7.6.2005. On 24.5.2002 the petitioner filed in the District Court case No. 6375/SPL to have the High Court Justice of the United Kingdom Judgment dated 1.10.2001 registered under the Reciprocal Enforcement of Judgments Ordinance (the Ordinance). The respondent- respondent (respondent) filed case No. 6674/SPL in the District Court to have the application of the petitioner to register the judgment refused. The District Court heard both cases together and delivered

a single order in respect of both cases, refusing to register the judgment. As the judgment was in respect of two cases and the decision was against the petitioner, two revision applications were filed by the petitioner.

According to the facts the petitioner had sold and delivered in September 1998, 222 bales of raw cotton for \$78,908.01 to Veyangoda Textiles Mills Ltd. The respondent-respondent (respondent) stood surety for the payment. On default of payment the petitioner instituted action against the respondent for the contracted sum in the High Court of Justice, Queens Bench Division in the United Kingdom. On 1.10.2001 the petitioner obtained from the High Court a default judgment.

The registering of a judgment would amount to obtaining a judgment from the District Court of Colombo and this would empower the judgment creditor to enforce it. Section 3 (1) is as follows:-

**Where a judgment has been obtained in a Superior Court (High Court of England) in the United Kingdom, the judgment creditor may apply to the registering court at any time within twelve months after the date of the judgment ....to have the judgment registered in the court....**

On notices being served the respondent filed objections on the ground inter alia that the judgment was obtained against the respondent ex-parte without the service of summons and therefore the judgment of the High Court of England cannot be enforced against the respondent and moved for a dismissal of the petitioner's application.

The learned Judge refused to register the judgment on the basis that the respondent was not served with summons. The learned Judge held that there is evidence of summons being served on the respondent on 7.11.2001 and no evidence of service of summons prior to this date. The ex-parte judgment was entered on 1.10.2001. The learned Judge held that the respondent was not given an opportunity to answer to the interrogatories. The learned Judge also found that the petitioner should have filed action against

Veyangoda Textile Mills and not the respondent who was the guarantor and that the action was filed after the lapse of one year and was prescribed.

Section 3 (2) of the Ordinance makes provision to reject an application for registration if found that the judgment was obtained without serving summons. Section 3 (2) is as follows:-

**3(2): No judgment shall be ordered to be registered under this section if (a), (b) not reproduced  
(c) the judgment debtor, being the defendant in the proceedings, was not duly served with the process of the original court...(emphasis added)**

The petitioner in the petition filed on 24.5.2002 specifically stated that the respondent was duly served with notice of the action. The learned counsel for the petitioner submitted that the respondent was served with notices of the High Court of England case on 28.6.2001. This is evident by the document marked X1 which is an affidavit by the process server confirming that summons had been served on the respondent.

The document X1 makes reference to Court of Appeal case No.APN/GEN/09/01. The learned counsel submitted that APN/GEN/09/01 was initiated by the Court of Appeal to serve summons on the respondent. The judgment was entered against the respondent on 1.10.2001 by the High Court of England as the respondent failed to respond to the summons. The learned counsel submitted that the respondent was aware of the service of summons and withheld this information from the District Court of Colombo in order to mislead court.

The learned counsel further submitted that the District Court is only empowered to recognise and enforce the foreign judgment in Sri Lanka and cannot go into the substantial issues between parties. The learned counsel for the petitioner submitted that **the finding of the learned District Judge was erroneous in the circumstances.**

APN/GEN/09/2001 (Ministry of Justice No. N1/B4/21/2000)

By letter dated 26.4.2001 the Ministry of Foreign Affairs had requested the Secretary, Ministry of Justice to serve the documents received from the British High Commission, Colombo, on the respondent. The Ministry of Justice by letter dated 17.5.2001 had requested the Registrar, Court of Appeal to have the notices served on the respondent. The Registrar, Court of Appeal had conveyed an order of the President of the Court of Appeal to the District Judge of Colombo requiring him to have the summons served on the respondent and to report on 25.5.2001. These summons were later issued to the District Court of Mt. Lavinia.

On 14.6.2001 the Fiscal of the District Court of Mt. Lavinia ascertained the present address of the respondent as No. 3, Charles Circus, Colombo 3. Thereafter on 18.6.2001 the Registrar of the Court of Appeal sent summons to the District Court of Colombo to be served on the respondent. On 6.7.2001 the Fiscal of the District Court of Colombo reported under oath that (X1) the summons was served on the respondent on 28.6.2001. On 12.7.2001 the District Judge of Colombo forwarded the Fiscal report to the Registrar of the Court of Appeal as proof of service of summons. This report was in turn sent to the Ministry of Justice by the Registrar of the Court of Appeal on 20.7.2001. The Secretary, Ministry of Justice forwarded the Fiscal report to the Ministry of Foreign Affairs on 30.7.2001. This document was sent by the Ministry of Foreign Affairs to the British High Commission on 22.8.2001. Thus the Solicitors of the petitioner were informed by the British High Commission of the successful service of summons.

Initially the High Court of Justice had sent a claim form, particulars of claim (plaint) and acknowledgement to be served on the respondent. The reference number of the claim is 2001 Folio 107. From the date of such service the defendant (respondent) has 23 days to file an acknowledgement of service. In the event an acknowledgement of service is filed, the defendant has 37 days from the date of service of the claim to file a defence. The summons was served on 28.6.2001. Until 1.10.2001 the respondent had failed to file an

acknowledgement or a defence. Hence the judgment was entered for the amount prayed for as the respondent had failed to reply to the claim form. This is a JUDGMENT FOR CLAIMANT (in default) (X2). It is addressed to the defendant and states as follows: "You have not replied to the Claim Form (No. 2001 folio 107). It is therefore ordered that you must pay the claimant the sum of (sterling pounds) 53,933.54....You must pay to the Claimant a total of (sterling pounds) 57,457.88.

#### Service of Summons on 1.11.2001

The Ministry of Foreign Affairs on 9.8.2001 sent a letter to the Secretary, Ministry of Justice informing that the interrogatories in the "Return Copy" duly completed and signed by the defendant had not been received by the Ministry of Foreign Affairs and to have the same sent forthwith. As a result of this communication the District Court proceeded to issue summons requiring the respondent to be present in court on 13.11.2001 and to return after completion a set of interrogatories. The respondent complained that before the interrogatories were returned, the High Court had proceeded to enter a judgment ex-parte. The respondent admitted to having received these summons on 1.11.2001.

The learned counsel for the petitioner submitted that the respondent was required to appear in the District Court on 13.11.2001 as per the case No: TPN 085. However by this date a default judgment had already been entered in the High Court of England. The learned counsel submitted that TPN 085 has been opened by the District Court of Colombo for the purpose of serving summons on the respondent. However prior to initiating proceedings in that matter, summons had already been served on the respondent on 28.6.2001. The learned counsel submitted that the respondent's position that he was not served with summons on the case filed against him in the High Court of United Kingdom is false. The High Court of United Kingdom entered default judgment as the respondent had failed to send the claim form duly perfected.

It is to be noted that the respondent never challenged the Fiscal Report declaring under oath that the respondent had been served with summons on 28.6.2001. It was the failure of the respondent to respond to these summons that made the High Court of Justice in England pronounce an ex-parte judgment against the respondent. Considering the above facts I am of the view that the learned District Judge has erred in refusing to register the judgment. I also agree with the learned counsel for the petitioner that that in this type of applications the court has no jurisdiction to go in to the merits of the case and the learned Judge erred by doing so. Therefore I set aside the order dated 7.6.2005 and direct the learned District Judge to proceed to register the judgment under section 3 (1) of the Ordinance. I allow both applications. The petitioner is entitled to costs in both applications

Judge of the Court of Appeal