

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

People's Bank having its principal place
of business at Sir Chittampalam A
Gardiner Mawatha, Colombo 2, and a
Foreign Branch Office at Union Place,
Slave Island, Colombo.

Plaintiff

Vs.

C.A. No. 836 / 2000 F

D.C. Colombo No. 91225 / M

Monta Garment Industries Ltd.

No 196, Hulftsdorp Street,
Colombo 12.

Defendant

AND

Monta Garment Industries Ltd.
No 196, Hulftsdorp Street,
Colombo 12.

Defendant Petitioner

Vs.

People's Bank having its principal place
of business at Sir Chittampalam A
Gardiner Mawatha, Colombo 2, and a
Foreign Branch Office at Union Place,
Slave Island, Colombo.

Plaintiff Respondent

AND NOW BETWEEN

Monta Garment Industries Ltd.
No 196, Hulftsdorp Street,
Colombo 12.

Defendant Petitioner Appellant

Vs

People's Bank having its principal place
of business at Sir Chittampalam A
Gardiner Mawatha, Colombo 2, and a
Foreign Branch Office at Union Place,
Slave Island, Colombo.

Plaintiff Respondent-Respondent

BEFORE : UPALY ABEYRATHNE, J.

COUNSEL : Defendant Petitioner Appellant is absent and
unrepresented.
Chandrasiri Wanigapura for the Plaintiff
Respondent-Respondent

ARGUED ON : 10.10.2011

DECIDED ON : 28.10.2011

UPALY ABEYRATHNE, J.

The Defendant Petitioner Appellant (hereinafter referred to as the Appellant) has preferred this appeal from the order of the learned Additional

District Judge of Colombo dated 23.10.2000. The facts relevant to this appeal are brief as follows;

The Plaintiff Respondent-Respondent (hereinafter referred to as the Respondent) instituted the said action against the Appellant in the District Court of Colombo seeking for a judgement for recovery of a sum of Rs. 13,848,728.53 and the interest accrued thereon. Thereafter the learned District Judge has made order to issue summons on the Appellant. According to the plaint the case has been instituted on 07.05.1984. It appears from the Journal Entries of the case record that the case had been calling in the Colombo District Court for more than 05 years for the service of summons on the Appellant. According to the Journal Entry No. 19, on 22.09.1989, the court has made order for substituted service of summons and in addition to issue summons on the Appellant by registered post returnable for 05.01.1990.

According to Journal Entry No. 20, on 05.01.1990, when the case was called in open court the Appellant was absent and unrepresented. Thereafter the learned District Judge has proceeded to fix the case for ex-parte trial upon the proof of service of summons by registered post. It is apparent from the said Journal Entry that the learned District Judge has paid his attention to the 'Advice of Delivery' which had been sent by Postal Authority in proof of the service by registered post.

Thereafter the case had been heard ex-parte and the decree had been served on the Appellant and on an application made by the Respondent the learned trial judge has made order for execution of the decree. The Appellant thereafter by application dated 11.08.1997 has sought to set aside the said ex-parte decree on the basis that neither the summons nor the ex-parte decree had been served on him.

The learned trial judge, after inquiry, has dismissed the said application of the Appellant by the said order dated 23.10.2000.

I now advert to the Appellant's main contention that the summons were never served on him. As I have stated above it is crystal clear that the summons had been served on the Appellant by registered post. The contention of the Appellant was that at the time relevant to the present appeal there were no provisions in the Civil Procedure Code for service of summons by registered post.

Section 60 of the then Civil Procedure Code was as follows;

“Whenever it may be practicable, the service of summons shall be made on the defendant in person ; but if, after reasonable exertion, the Fiscal is unable to effect personal service, he shall report such inability to the court in a fair-written return to the precept, having the summons attached thereto as an exhibit, and it shall be competent for the court, on being satisfied by evidence adduced before it that the defendant is within Sri Lanka, to prescribe any other mode of service as an equivalent for personal service:”

It is clear that the said section has empowered court to prescribe any other mode of service as an equivalent for personal service. As I have observed hereinbefore the summons could not be served on the Appellant over 05 years. In this regard the most important fact to be noted is that the Appellant was at No 196, Hulftsdorp Street, Colombo 12, which place apparently would have been few meters away from the Colombo District Court. According to Journal Entry No. 17, on 14.06.1989 the Respondent had tendered an affidavit seeking to effect the substituted service of summons. The learned District Judge having gone through the evidence before him has ordered for substituted service of summons and also to serve a copy of the summons by registered post. There had been no evidence

before court that the Appellant was out of the country at that time. Hence I hold that the order of the learned District Judge to serve summons by registered post is within the ambit of then Section 60 of the Civil Procedure Code.

The Appellant has further stated in his petition of appeal that the Respondent's action has been abated in terms of Section 402 of the Civil Procedure Code. I have carefully examined the case record. There is no evidence available to support the said ground of appeal.

Accordingly I find no reason to interfere with the said order of the learned Additional District Judge dated 23.10.2000. Therefore I dismiss the instant appeal of the Appellant with costs.

Appeal dismissed.

Judge of the Court of Appeal