

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

D.K. William
No. 262, New Town,
Anuradhapura.

PLAINTIFF

C.A 483/98(F)
D.C. Anuradhapura 10867/RE

Vs.

W. D. Siriwardena
Unit D. 4, Eliya Thambi Building,
No. 26, Harischandra Mawath
1st Lane, Anuradhapura.

DEFENDANT

And

W. D. Siriwardena
Unit D. 4, Eliya Thambi Building,
No. 26, Harischandra Mawath
1st Lane, Anuradhapura.

DEFENDANT-APPELLANT

Vs.

D.K. William
No. 262, New Town,
Anuradhapura.

PLAINTIFF-RESPONDENT

BEFORE: Anil Gooneratne J.

COUNSEL: Appellant is absent and unrepresented
Padma Bandara for Plaintiff-Respondent

ARGUED & DECIDED ON:
29.04.2011

GOONERATNE J.

This is an appeal in a rent and ejection case. District Court of Anuradhapura had on 15.6.1998 entered judgment in favour of the Plaintiff-Respondent. According to the Petition of Appeal and the proceedings held in the District Court, the District Court case had been settled on or about 28.6.1985. In paragraph 3 of the Petition of Appeal it is stated that parties agreed to settle the case as follows:

- (a) As from 01.7.1985, for a period of 5 years a monthly rental of Rs. 450/- was to be paid by the tenant-appellant to the land-lady.
- (b) At the end of the above 5 year period parties by consent agree to fix an enhanced rent.

It appears to this court that as in (b) above, at the end of the 5 year period parties had not reached a settlement with regard to the enhanced rent, and as such that matter had been inquired into by the District Judge who had delivered judgment on 15.6.1998. The appeal arises from the order of the

District Judge delivered on 15.6.1998. The said order reflect that the District Judge has arrived at the decision to fix the rent during the period July 1990 to July 1995 at the rate of Rs. 1600/- and from July 1995 at the rate of Rs. 2600/- per mensum.

Although the plaint and the prayer to the plaint plead eviction of the tenant, in view of the settlement reached between parties, District Court had settled the case as above and when the settlement in (b) above could not be reached between parties the matter was again agitated in the District Court and the appeal seems to be to quash the learned District Judge's decision on the enhanced rent, declared by the District Judge in the above order.

The procedure adopted is somewhat unusual as the judgment finally delivered by the District Court had been as a result of an agreement suggested between parties which could not be implemented.

This court having dispatched notices to the respective parties giving dates and informing them that the case would be mentioned in the Court of Appeal on 10.3.2011 and thereafter fixed for argument on 29.4.2011, the Appellant was absent and unrepresented on the said dates. Respondent was represented by counsel. It is apparent that the Appellant

does not exercise due diligence to prosecute this appeal As such appeal has to be rejected.

The learned District Judge had based his findings on two reports marked X & Y, but he seems to have taken them as a guide and arrived at his own calculation in fixing the rent. Section 408 of the Civil Procedure Code contemplate of adjustment of action out of court. Civil cases generally has a continuous process of settlement, and courts would not generally interfere in this process. It appears that the inquiry held by the District Judge does not strictly fall within Section 408 of the code. However in the absence of the Appellant at least to urge the points raised in the Petition of Appeal, this court need not interfere with the order of the District Court.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL