

In the Court of Appeal of the Democratic
Socialist Republic of Sri Lanka.

CA 484/96 (F)

DC Kagalle 3475/L

K G Roslin,

Batawela, Hingula

1D Defendant-Appellant

Vs

M R Sriyani Udawela,

Owatta,

Hingula

Plaintiff-Respondent

M W Podineris,

631, Colombo-Kandy Road,

Hingula and others

Defendant-Respondents

Before: AWA Salam J.

Counsel: Sunil Abeyratna for 1D Defendant-Appellant and C J
Ladduwahetti for Plaintiff-Respondent.

W/S tentedered on : 17.01.2011

Decided on :08.03.2011

A W Abdus Salam, J

This appeal has been preferred by K.G.Roslin – 1D defendant-appellant seeking to set aside the order dated 10.7.1996 refusing her application to set aside the judgment entered after exparte hearing.

The appellant contends that the impugned order is contrary to the weight of evidence adduced at the inquiry and the learned district judge had erred in rejecting the evidence of the native physician who treated her.

According to the evidence led at the inquiry into the application to purge default, the appellant (1D defendant) stated that on the day the answer was due, she was suffering from fever and stomach disorder and therefore, unable to be present in court. In proof of her illness she produced a medical certificate which was marked as P1.

As regards the treatment given by the native physician the evidence given by the appellant and the physician before the learned district judge was glaringly contradictory. The appellant maintained that she was given some pills and a mixture while the physician stated that he treated her with a decoction. Further, the appellant failed to produce or cause to be produced the register claimed to have been maintained by the physician. Taking all these matters into consideration, the learned district judge has rightly concluded that the appellant had failed to adduce any plausible explanation for her default. In the circumstances, this Court sees no reason to interfere with the impugned judgment of the learned district judge. Accordingly, this appeal stands dismissed without costs.

Judge of the Court of Appeal