

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

In the matter of an application
for leave to appeal

Court of Appeal No: CALA 289/2004

District Court of Kurunegala No: 5496/L

R.A.Y.S. Ramani

Defendant-Petitioner

Vs.

W.S. Jayasooriya and another

Plaintiffs-Respondents

Before: Eric Basnayake J

K.T. Chitrasiri J

Counsel : Lakshman Perera for the Defendant-Petitioner

A.M.M. Iliyas for the Plaintiff-Respondent

Argued On: 13.11.2010

Written submissions tendered on: 24.3.2010

Decided On: 14.10.2011

Eric Basnayake J

The defendant-petitioner (defendant) filed this leave to appeal application to have the order dated 22.7.2004 of the learned District Judge of Kurunegala set aside.

The plaintiff-respondent (plaintiff) filed this action to determine the width of a roadway. The action was valued at Rs.25000/-. The defendant filed answer moving for a dismissal of the plaintiff's action. In the answer the defendant has stated that the plaintiff cannot have and maintain this action in terms of the provisions of the Mediation Boards Act. In terms of the Mediation Boards Act, if the value of the action is less than Rs.25000/-, it shall be referred to a mediation board for settlement. In the event there is no settlement a certificate of non-settlement shall be filed. In this case no such certificate was filed. When this case was taken up for trial the following three issues were raised namely:-

1. Is the value of the action Rs.25000/-?
2. In terms of the provisions of the Mediation Boards Act does the court have jurisdiction to hear this case?

3. If the answer to the above is yes should the plaint be dismissed?

The learned District Judge after inquiry answered issues 1 and 2 in the affirmative and the third issue was not answered as it did not arise. The Court of Appeal granted leave to appeal on the following two questions, namely:-

1. When the value of the subject matter of an action instituted in the District Court does not exceed Rs.25000 is it mandatory for the plaintiff to comply with section 7(1) of the Mediation Boards Act No. 72 of 1988 before instituting an action in the District Court in respect of that property?
2. When there is non compliance with the provision of section 7 (1) of the Mediation Boards Act is it absolute for the institution or maintenance of an action in a court of First Instance in respect of properties where the value does not exceed Rs. 25000/-?

The learned counsel for the defendant submitted that the court has failed to consider the mandatory provisions of sections 7 (1), 12 and 14 (2) of the Mediation Boards Act. The learned counsel submitted that the court has failed to consider the legal position, that the Mediation Boards Act created a latent want of jurisdiction as opposed to patent want of jurisdiction (Rodrigo vs. Raymond (2002) 2 Sri L.R.78, Beatrice Perera vs. The Commissioner of National Housing 77 N.L.R. 361, Baby vs. Banda & Others (1999)3 Sri L.R. 416). Latent jurisdiction can only be validated by the conduct of the parties such as waiver, acquiescence and inaction. In the present case the defendant in his answer has taken up the objection that there is a want of jurisdiction and raised the preliminary issues.

The learned counsel for the plaintiff submitted that the defendant had waived the objection by seeking redress on the same issue in the Primary Court of Kurunegala by instituting action No.81109/L by way of a private plaint. The learned counsel submitted that in terms of the Mediation Boards Act a certificate is required for one to institute proceedings in a court of First Instance. When the defendant filed action in the Primary Court without such certificate, the defendant thereby waived the objection to the jurisdiction. The learned counsel further submitted that when the plaintiff filed action in the District Court as required by the Primary Court, the defendant cannot then raise an objection to jurisdiction.

The learned counsel submitted that once an order is made in the Primary Court there is no “dispute” as contemplated by section 6 of the Mediation Boards Act. He submitted that the parties are bound by the Primary Court order until the matter is finally adjudicated in a court of competent jurisdiction. The learned counsel submitted that if one were to insist that the parties be referred to mediation after a Primary Court made an order, it would have the effect of eroding the powers and jurisdiction of the Primary Court and making the Primary Court subservient to the Mediation Board.

The learned Counsel submits that it is mandatory for the Primary Court to make every effort to bring about a settlement (Section 66 (6)). The learned counsel submitted that the parties have already gone through this process and need not go through it again. The Primary Court had to make an order in this case after an inquiry as there was no settlement. The learned counsel submitted that having

gone through this process once, to go before the Mediation Board would be condemning the litigants to a needlessly time consuming, circuitous and expensive road to justice. He submitted that such a course would encourage “a defendant to subvert civil litigation to a game of hide and seek (Dheeraratne J in Joonus vs. Chandraratne (1993) 1 Sri L.R. 86 at 91).

The Primary Court shall under sections 68 or 69 prohibit all disturbances otherwise than under the authority of an order or decree of a competent court. In this case the Primary Court had made such order. The plaintiff had filed this action in the District Court in pursuance of that order.

Section 7 (1) of the Mediation Boards Act states as follows:

7 (1):..... no proceedings in respect of any dispute... shall be instituted in any court of First Instance if (a) the dispute is in relation to immovable property and does not exceed Rs.25000 in value or (b) the dispute gives rise to a cause of action in a court not being an action specified in the Third Schedule to this Act ((c) Not reproduced) **unless the person instituting such action produces a certificate of non settlement...(14A) stating that it has not been possible to settle such dispute by mediation..(emphasis added).**

I am of the view that the order made under section 68 or 69 of the Primary Court Procedure Act is tantamount to a certificate issued under section 14A of the Mediation Board Act. Therefore once an order is made under the Primary Court Procedure Act prohibiting all disturbances, such cases need not be referred for mediation under the Mediation Boards Act. For the above reason I am of the view that the learned Judge was correct in holding that the District Court has

jurisdiction to hear this case without a certificate from the Mediation Board.
Therefore I answer the two questions raised as follows:

Question (1): Yes.

Question (2): No. When the parties have invoked the Primary Court jurisdiction and an order has been made by such court prohibiting disturbance otherwise than under the authority of an order or decree of a competent court, section 7 (1) of the Mediation Boards Act can be disregarded and under those circumstances it is not necessary to file a certificate as required by section 7 (1).

For the above reasons this appeal is without merit and the same is dismissed with costs.

Judge of the Court of Appeal

K.T. Chitrasiri J

I agree

Judge of the Court of Appeal