

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

CA 53/98 (Final)

DC Colombo 8120/RE

Mohomed Praweis Mohamed Roofed
No: 265,
Kelin Weediya,
Colombo 11.

Complainant-Appellant

Vs.

M.Riswi
No: 197,
Kelin Weediya,
Colombo 11.

Defendent-Respondent

Case No. CA 53/98 (Final)

DC Colombo 8120/RE

BEFORE : K.T. Chitrasiri, J.

COUNSEL : Hussain Ahamed with Vishwajith Munasinghe for
the Plaintiff Appellant.

No appearances for the Respondent.

Both the Appellant and the Respondent are
absent.

ARGUED &

DECIDED ON : 08.02.2013

K. T. CHITRASIRI, J.

Counsel for the Appellant informs Court that he has not received instructions from the Appellant to appear in this case. He further submits that the registered Attorney of the Appellant has written to the Appellant stating that this appeal would be dismissed in the event he does not instruct the Attorneys to appear in this case. A copy of the said letter along with the registered article is being tendered to Court today. In

that letter it is clearly informed to the Appellant that the appeal would be dismissed if he does not give instructions to the lawyers to appear.

The Registrar of this Court has sent several notices to the Appellant directing him to be present in this Court. The last letter that was sent is dated 25.08.2012. The above circumstances show that the Appellant is not prosecuting this appeal diligently. Therefore, this appeal should stand dismissed in terms of Rule 34 of the Supreme Court Rules.

However, since the Appellant has filed this appeal and has paid the brief fees, I decide to consider the merits of the appeal. This is an action filed by the Plaintiff-Appellant to obtain possession of the premises referred to in the schedule to the plaint. The plaint had been filed on the basis that the premises in suit is not covered under the provisions contained in the Rent Act No. 7 of 1972. However, the learned District Judge has declined to accept that position and had decided that the premises in suit does come under the purview of the Rent Act. When he came to the said conclusion, he has carefully considered the evidence having looked at the evidence of the officials from the Colombo Municipality and the contents of the relevant documents.

In the circumstances, I do not see any reason to interfere with the findings of the learned District Judge. Accordingly, the appeal of the Appellant is dismissed with costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

KRL/-