

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

K.K.Karunawathie

C.A.No.513/99(F)

Plaintiff

D.C.Panadura 645/L

vs

L.B. Danasiri

Defendant

AND BETWEEN

K.K.Karunawathie

Plaintiff-Appellant

Vs

L.B. Danasiri

Defendant-Respondent

BEFORE

A.W.A. Salam, J.,

Sunil Rajapakse J.,

Counsel:

C. Hewamannage, for the Plaintiff-Appellant

C. Ladduwahetty with L.L.D.Siva for the Defendant
Respondent

Argued on

30.04.2013

Decided on

05.06.2013

Sunil Rajapakse, J.,

This is an appeal filed by the Plaintiff Appellant to set aside the impugned order dated 29.04.1999 (page 191 of the brief) of the District Court of Panadura., by which the Plaint filed by the Plaintiff in the District Court of Panadura was dismissed.

Learned Counsel for the Defendant Respondent (hereinafter referred to as "the Respondent") at the commencement of the case objections of law was raised as to the maintainability of the said appeal. On the question of the aforesaid preliminary objection, only the Plaintiff Appellant filed written submissions and both parties tendered oral submissions. When the matter was argued on 30th April 2013 the Respondent submitted that the Order dated 29.04.1999 which was given by the learned District Judge of Panadura was an ex-parte order. Therefore, the Plaintiff Appellant is not entitled to seek relief by way of final appeal. Further he submitted that the Plaintiff should invoke the jurisdiction of the court by way of a Revision as no appeal lies against an order made by default under Section 87 of the Civil Procedure Code. Respondent's main contention was that the Plaintiff Appellant had no locus standi, since the matter before the Court of Appeal is an appeal against an ex-parte order made by the District Court. Therefore, the Plaintiff without purging his default before the District Court had no status in law to present this appeal.

Replying to the Respondent's argument Plaintiff Appellant, submitted that the order of dismissal, which is inter-parte and Plaintiff's remedy lies in a final appeal. The Plaintiff's registered Attorney made an application for postponement, since the Plaintiff and her Senior Counsel were absent.

Application for a postponement was refused by the District Judge and still the proceedings were inter parte.

So the main issue to be decided in this appeal is whether the impugned order is inter-parte or ex-parte. In order to arrive at a reasonable conclusion this Court has perused all the documents and submissions tendered by both parties. Considering the submissions and documents submitted by both parties this Court is of the opinion that the Plaintiff need not appear in person at every trial date. It is sufficient if she is represented by a registered Attorney on a trial date. In this case, the Plaintiff Appellant's attorney appeared on the trial date and moved for a postponement. Therefore, there was no default or non-appearance on the part of the Plaintiff. In my view Plaintiff's registered Attorney had been authorised to appear on behalf of the Plaintiff.

The Plaintiff was absent on the day fixed for the trial and her registered Attorney on record was present in court and sought an adjournment which could have been given, the proceedings in the character of an inter-parte trial. In this regard I would like to cite the following authorities. In the case of Gargial vs Somasundaram Chetty – 9 NLR 26. It was held that the Proctor for the Defendant must be taken to have appeared for his client at the trial and that the judgment must be considered as pronounced inter parte and not ex-parte. Porolis Silva vs Porolis Silva – Times of Ceylon Law Reports, page 20, where on the trial date the Defendant's Proctor appeared and said that he has no instructions. Held that Judgment for the Plaintiff in these circumstances is a judgment inter-parties. Alima Umma vs Siyaneris –(2006) 1 SLR 22 held in terms of Section 24 of the Code, the Registered Attorney or an Attorney at Law, instructed by the Registered

Attorney can represent a party to the action in court. If the Registered Attorney is in Court and represents the party that is an appearance for the party even if the party is not physically present in Court. Court cannot dismiss the action for the absence of the party.

For the aforesaid reasons, I am of the view that the learned District Judge's order dated 29.04.1999 is an inter-partes Order.

Taking into consideration the submissions adduced by both parties, the Court over-rule the preliminary objection raised by the Respondent.

Case is fixed for argument.

Judge of the Court of Appeal

Salam J.,

I agree

Judge of the Court of Appeal..