

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

C.A. No.861/98 (F)

D.C.Colombo No.16758/L.

Pilip Standly Bosko
No: 38/5,
Sri Sivanandan Road,
Colombo 13.

APPELLANT

Vs.

Eeshwari Willipuram
No: 38/5,
Sri Sivanandan Road,
Colombo 13.

RESPONDENT

C.A.No.861/98(F)

D.C.Colombo No.16758/L.

Before : K.T.Chitrasiri,J.

Counsel : Viran Corea for the defendant-appellant
Plaintiff-respondent is absent and unrepresented.

Argued and

Decided on : 02.07.2013.

K.T.Chitrasiri,J.

The Registrar of this Court has sent notices to the plaintiff-respondent and to her Attorney-at-Law informing them that this matter is to be fixed for argument. Upon receiving the said notice, the Registered Attorney-at-Law Kumarage has informed court on the last occasion that he had not received instructions from the plaintiff or ^{from} his power of Attorney holder to appear in this appeal. Neither the plaintiff nor her power of Attoreny holder was present in any occasion though several notices have been sent to them.

Accordingly, this matter is taken up for argument today in the absence of the appellant.

This is an appeal seeking to set aside the judgment dated 19/11/1996 that was delivered on 27/10/1998 . Mr Viran Corea made his submissions in support of this appeal.

Basically the appeal is on the ground that the application made by the defendant-appellant on 07/6/1997 was not heard by Court. The journal entry made on 10/01/1997 indicates that no date was given to support the said application though the case was called on 24/01/1997. On that date the case was again postponed for 26/5/1997. Those journal entries do not indicate that the application of the defendant-appellant was heard. Thereafter the judgment had been delivered. Accordingly it is seen that the application dated 07/1/1997 made by the Defendant-appellant had not been heard at all. Mr. Viran Corea submits that such a matter amount to violation of natural justice. Therefore he further submits that the judgment is erroneous as the defendant was not given an opportunity to present his case.

The Learned District Judge should have allowed the defendant to support his application made on 07/01/1997. Failure to do so has resulted in preventing the defendant presenting his case. It amounts to violation of Natural Justice. Accordingly the judgment dated 19/11/1998 that was delivered on 27/10/1996 is set aside.

Having considered the circumstances, the learned District Judge is directed to allow the defendant to support his application made on 07/01/1997. The proceedings recorded up to the said application should remain as it is. Learned District Judge should first make an order as to the said application of the defendant made on 07/1/1997. If the learned District Judge decides to dismiss the said application, the judgment dated 23/9/1998 should stand intact. In the event the learned District Judge allows the application dated 07/01/1997 the defendant be allowed to call witness. Thereafter, the trial judge, should deliver judgment considering the evidence including the evidence already recorded on behalf of the plaintiff having adopted the same.

Appeal allowed no costs.

JUDGE OF THE COURT OF APPEAL

WC/-