

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

Meegahawatta Muhandiramlage  
Mohomad Junaid Mohomad Siddik,  
Moragala,  
Ehaliyagoda.

Plaintiff

C.A. No. 559 / 97 F

**Vs.**

D.C. Avissawella No. 201/L

1. Deni Weerakoon Ratnayake,
2. D.D. Kusuma Gunasekera,  
Moragala,  
Eheliyagoda.

Defendant

**AND**

Meegahawatta Muhandiramlage  
Mohomad Junaid Mohomad Siddik,  
Moragala,  
Ehaliyagoda.

Plaintiff Petitioner

1. Deni Weerakoon Ratnayake,
2. D.D. Kusuma Gunasekera,  
Moragala,  
Eheliyagoda.

Defendant Respondent

**AND NOW BETWEEN**

Meegahawatta Muhandiramlage  
Mohomad Junaid Mohomad Siddik,  
Moragala,  
Ehaliyagoda.

Plaintiff Petitioner Appellant

Vs.

1. Deni Weerakoon Ratnayake,
2. D.D. Kusuma Gunasekera,  
Moragala,  
Eheliyagoda.

Defendant Respondent-Respondent

BEFORE : UPALY ABEYRATHNE, J.

COUNSELS : T. Waragoda for the Plaintiff Petitioner Appellant  
S.A.D.S. Suraweera for the Defendant  
Respondent-Respondent

ARGUED ON : 27.06.2012

DECIDED ON : 05.07.2013

UPALY ABEYRATHNE, J.

The Plaintiff Petitioner Appellant (hereinafter referred to as the Appellant) instituted the said action against the Defendant Respondent-Respondent (hereinafter referred to as the Respondent) in the District Court of Avissawella praying for a declaration of title to the land described in the schedule to the plaint.

On the trial date the Appellant was absent in Court. Since there had been no application on behalf of the Appellant the learned trial Judge had

dismissed the action of the Appellant. Thereafter the Appellant had made an application to vacate the said order of dismissal of the action. The Respondent had filed her statement of objection to the said application. The learned District judge has dismissed the said Application of the Appellant on the basis that the Appellant has failed to explain the delay in filing the Application to vacate the Ex Parte decree. Being aggrieved by the said order dated 27.03.1997 the Appellant has appealed to this Court.

It is apparent from the case record that the case had been taken up for trial on 04.04.1995 and the Appellant was absent and unrepresented on that date. Accordingly the learned District Judge has dismissed the Appellant's action with costs. Thereafter the Appellant has made an application by way of petition supported with an affidavit dated 04.09.1995 seeking to purge the default and to vacate the said ex-parte order of dismissal of his action. It is apparent from the date of petition and the Affidavit that the said Application to purge default has been made more than 05 months after the order of dismissal.

It must be noted that the Appellant in his petition and affidavit has not explained the delay in coming to court. The Appellant has totally ignored to explain the delay. Even at the hearing of this Appeal the Appellant did not explain the delay in coming to Court. Subsection (3) of Section 87 read thus;

87(3) The plaintiff may apply within a reasonable time from the date of dismissal, by way of petition supported by affidavit, to have the dismissal set aside, and if on the hearing of such application, of which the defendant shall be given notice, the court is satisfied that there were reasonable grounds for the non-appearance of the plaintiff, the court shall make order setting aside the dismissal upon such terms as

to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the action as from the stage at which the dismissal for default was made.

According to Subsection (3) the Appellant must satisfy Court mainly on two grounds. Firstly; the application has been made within a reasonable time from the date of dismissal and secondly; there are reasonable grounds for the non-appearance of the plaintiff.

Therefore the Appellant's evidence should be considered within the framework set out in Subsection (3) of Section 87. The Appellant in his evidence has testified that he had a fall on 02.04.1995 and he had been under medical treatments and he was unable to walk for ten days. Peruwalpedi Liyanage, the Native Doctor, who treated the appellant, in his evidence, has testified that the Appellant could not walk for 6 to 7 days and he was treated for two weeks. It seems that after two weeks from 02.04.1995 the Appellant has recovered from his ailment. The Appellant in his evidence has admitted that he was aware that the case had been fixed for trial on 04.04.1995.

When I consider the said evidence it appears to me that the Appellant has failed to come to Court within a reasonable time as stipulated in Subsection (3) of Section 87. There are lashes on the part of the Appellant. The Appellant has slept over his rights for more than 05 months.

Hence I dismiss the Appeal of the Appellant with costs.

*Appeal dismissed.*

Judge of the Court of Appeal