

Wanni Aratchige Emmanuel Fernando  
No.273, Dummaladeniya West,  
Wennappuwa.

**Defendant-Petitioner-Appellant  
VS**

Pannila Mohottalalage Sunil Gunadasa  
P.S.13960, Police Station,  
Wennappuwa.

**Plaintiff-Respondent-Respondent**

**Before** : K.T. CHITRASIRI, J.

**Counsel** : Sudarshani Cooray for the Plaintiff-Appellant  
Defendant is absent and unrepresented

**Argued and**

**Decided on** : 04.09.2013

**K.T. CHITRASIRI, J.**

Notice sent by the Registrar of this Court to the defendant-respondent-respondent informing him of the hearing of this appeal has been returned with the endorsement that there is no such person at the given address. It is the address of the respondent given in the petition of appeal as well as in the plaint filed in the District Court of Marawila. Hence, this appeal is taken up for hearing in his absence.

This is an appeal seeking to set aside the order dated 26.05.1998 of the learned District Judge of Marawila. It is an order made pursuant to an application made by the Defendant-Petitioner-Appellant (hereinafter referred to as the Defendant) seeking to

vacate the Judgment dated 24.04.1997 delivered, having taken up the trial *ex parte*. Admittedly, the case was fixed for *ex parte* due to the failure to file the answer by the Defendant. The Defendant has set out the reasons as to why he could not file the answer due by him, in the application made to have the *ex parte* Judgment vacated. The Defendant had not given evidence to support as to why he has failed to file the answer at the inquiry held to have the *ex parte* judgment vacated and then it was concluded having allowed the parties to file submissions.

The learned District Judge, upon considering the submissions and the application which was supported by an affidavit deposed to by the Defendant, has stated as follows:

“ විත්තිකරු රැකියා කටයුතු නිසා නිවසින් බැහැරව යාම හේතුකොටගෙන මෙම නඩුව සම්බන්ධයෙන් පියවර ගැනීමට හෝ උපදෙස් දීමට නොහැකි වූ බව ඔහු පෙන්වා සිටී. තවදුරටත් ඔහු කියා ඇත්තේ උත්තරය ගොනු නොකිරීමට හේතුවූනේ රක්ෂණ සංස්ථාව පියවර ගනී යැයි බලාපොරොත්තු වූ නිසා බවයි. එමනිසා මෙම නඩුවේ නියෝගය ඉටු කර උත්තරය ගොනුකර නඩුව ගෙන යාමට කියා සිටින ලදී. නමුත් විත්තිය විසින් පෙන්වා ඇති කරුණු උසාවියට පිලිගත නොහැකි කරුණු බව පෙනේ. ඔහුගේ නොසැලකිලිමත් කටයුතු නිසා මෙම උත්තරය ගොනු කිරීමට බැරී වූ බව ශ්‍රී ලංකා රක්ෂණ සංස්ථාව මෙම විත්තිකරුට දන්වා ඇත. එනම් අදාළ ලිපි ලේඛණ මෙම විත්තිකරු විසින් අවශ්‍ය කාලය ඇතුළත නොදීම නිසා විත්ති වාචකය සුදානම් කිරීමට නොහැකි වූ බව රක්ෂණ සංස්ථාව කියා සිටී. උසාවිය මගින් අවස්ථා 3 ක උත්තර ගොනු කිරීමට දින දී ඇත. ඔහු රැකියාව සඳහා නිවසින් පිට වී යාම නිසා එය නොකළ බව කියයි. මෙය කිසිසේත් පිලිගත නොහැකි වේ. එමනිසා විත්තිකරු විසින් ඉදිරිපත් කළ විරෝධතා ප්‍රතික්ෂේප කරන අතර නියෝගය ක්‍රියාත්මක කිරීමට ඉඩ දෙමි.”

The aforesaid reasoning of the learned District Judge shows that he has well considered the reasons for the failure to file the answer by the defendant. In that he has looked at the defendant's anticipation to have the assistance of the Insurance Corporation as well which had been a reason for the failure to file the answer. I do not see any wrong in the way that the learned Judge has considered those matters.

Therefore, the defendant's expectations to have the assistance of the Insurance Corporation in order to file the answer cannot be accepted as a reason for his failure to file the answer. Moreover, when the case was called before the learned District Judge on 17.09.1996, another date was given for the Defendant to file answer. In that Journal Entry, it is clearly stated that the date that was given had been the final date to file the answer. Accordingly, on the next date, it being the final date to file answer, the Defendant should have filed the same without fail. He has not done so. Reasons for his failure also had been correctly considered by the learned District Judge. Hence, it is clear that the defendant has not complied with the said direction of the Court. As such, this Court is not inclined to interfere with the decision of the learned District Judge as it will amount to ignore directives issued by a Presiding Judge. Moreover, it may lead to obstruct proper case management of the Court and also may cause hardships to the opposing parties. Also, it must be noted that such a decision though it would prevent the defendant presenting his case would not amount to violate the rule of *audi altera partem* since enough and sufficient time has been given for the defendant to file the answer.

As described hereinbefore, I do not see any error on the part of the learned District Judge when he declined to accept the reasons adduced by the defendant for his failure to file the answer on the date nominated as the final date to file the answer. In the circumstances, I am not inclined to interfere with the order made on 26.05.1998 of the learned District Judge of Marawila.

For the aforesaid reasons, this appeal is dismissed with costs.

*Appeal dismissed.*

JUDGE OF THE COURT OF APPEAL

Cr/-