

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

**C.A. 121/00(F)**

D.C. Kandy 16071/L

W.W. Punchi Banda  
No. 02,  
Halyala,  
Ududumbara.

**Appellant**

**Vs.**

P.N.W. Premarathna  
Aluth Kumbura Watte,  
Peradeniya.

**Respondent**

4 C.A. 121/00(F) : D.C. Kandy 16071/L

Before : K.T. CHITRASIRI, J.

Counsel : R. Warodagan for the Defendant-Appellant  
Sandamal Rajapakshe for the Substituted Plaintiff-Respondent

Argued &

Decided on : 19.09.2013

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

This is an appeal seeking to set aside the order dated 07.03.2000. By that order, the learned District Judge of Kandy disallowed the application made by the Defendant-Appellant in order to have the ex parte Judgment dated 19.11.1998 vacated. Learned Counsel for the Appellant made his submissions in support of this appeal.

Trial in this case had been fixed in the lower Court for 13.08.1998. On that date the Defendant was absent. Attorney-at-Law who appeared on his behalf on that occasion had informed Court that he has not received instructions for him to appear for the appellant. Accordingly, the learned District Judge took up the trial ex parte and delivered the Judgment on 19.11.1998. Having received the decree, Defendant made application to have the ex parte Judgment vacated and the inquiry in that connection had been held on 07.12.1999. On the day of the inquiry, only the Defendant gave evidence in support of his application.

He, in his evidence has stated that he fell ill on the day previous to the trial date. However, he has admitted that he could not tender any document to support the illness. He also has stated that he had been a heart patient for five or six years before. However, the document submitted in support of his heart condition had been a diagnosis card issued in the year 1991 and it is a document issued 7 years before the date fixed for the

trial. When giving evidence, the Defendant-Appellant was asked whether he could produce a medical certificate even at a late date but he has answered the same in the negative form.

The learned District Judge has considered those circumstances and has decided that the Appellant has failed to establish the reasons for his absence on the trial date. The learned District Judge has also considered the illness that he has spoken of and has stated that the Defendant-Appellant has failed to produce any medical certificate though he was treated by a private dispensary.

It must be noted that the Defendant-Appellant has also failed to give instructions to his lawyers to appear on the trial date. He has not explained the reasons as to why he did not give instructions to his lawyers.

In the circumstances, I do not see any error on the part of the learned District Judge, when he disallowed the application of the appellant to have the *ex parte* judgment vacated.

For the aforesaid reasons, the appeal of the Defendant-Appellant is dismissed without costs.

*Appeal is dismissed.*

JUDGE OF THE COURT OF APPEAL

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