

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

Rohan W. Welangalle,
No. 19, Halkotayawatta Lane,
Welangalle.

C.A. No. 627 / 99 F
D.C. Avissawella No. 20013/ M

Plaintiff

Vs.

1. Okandapola Arachchillage Wasantha Kumara,
Aluth Ambalama, Kosgama.
2. Hasantha Priyadarshana Ranasinghe,
“Madavi Technicians”
Ukwatta, Avissawella.
3. R. D. A. M. Priyadarshana,
No. 236, Galle Road,
Colombo 3.

Defendants

And Now Between

Hasantha Priyadarshana Ranasinghe,
“Madavi Technicians”
Ukwatta, Avissawella.

2nd Defendant Appellant

Vs

Rohan W. Welangalle,
No. 19, Halkotayawatta Lane,
Welangalle.

Plaintiff Respondent

Okandapola Arachchillage Wasantha
Kumara,
Aluth Ambalama, Kosgama.

1st Defendant Respondent

R. D. A. M. Priyadarshana,
No. 236, Galle Road,
Colombo 3.

3rd Defendant Respondent

BEFORE : UPALY ABEYRATHNE, J.

COUNSEL : Pradeep Kumarasinghe for the 2nd
Defendant Appellant.
: S.A.D.S. Suraweera for the Plaintiff
Respondent

ARGUED ON : 29.10.2013

DECIDED ON : 25.11.2013

UPALY ABEYRATHNE, J.

The present appeal has been preferred by the 2nd Defendant Appellant (hereinafter referred to as the Appellant) from the order made by the learned District Judge of Avissawella dated 01.04.1999. The facts of the case are briefly as follows;

The Plaintiff Respondent (hereinafter referred to as the Respondent) instituted an action against the Appellant in the District Court of Avissawella claiming a sum of Rs.100,000/ from the Appellant as damages caused to him at a motor traffic accident. After the institution of the action summons had been issued on the Appellant. The Appellant had appeared before Court, had filed a proxy and obtained a date to file an answer. On the date of filing the answer the Appellant was absent and unrepresented and since there had been no application on behalf of the Appellant the case had been fixed for an ex-parte trial. It seems from the proceedings of the said date namely 04.07.1997 that even the attorney on record of the Appellant was absent from court.

Thereafter an ex-parte trial has been held and an ex-parte decree has been entered accordingly. A copy of the said ex-parte decree has been served on the Appellant. Upon the receipt of the said the ex-parte decree the Appellant has preferred an application under section 86(1) of the Civil Procedure Code (CPC) seeking to have the said ex-parte judgement and the decree vacated. The learned District Judge after inquiry has dismissed the Appellant's said application.

The learned counsel for the Appellant submitted that the Appellant has led sufficient evidence to prove that his absence was beyond his control and the learned District Judge has failed to consider the said evidence.

It was common ground that the Appellant was absent and unrepresented on the day fixed for the filling of the answer. It is also seen from the minuets of the relevant date i.e. 04.07.1997 that the answer had not been tendered to court on that day and also the Attorney on record of the Appellant was absent and since there had been no application the case had been fixed for an Ex-Parte

trial. It can be assumed from the said minutes that if there had been an application moving court to grant further time to file answer that application would have been considered by court. In this regard it seems that the Appellant has led medical evidence to justify his absence. In addition the Appellant in his evidence has stated that the answer was not filed on that day for the reason that his Lawyer had forgotten the date.

The Appellant has led the evidence of Gamaralalage Gunaratne, Attorney At Law, who was the registered Attorney on behalf of the Appellant. In his evidence he has stated that he was aware of the day the answer to be filed but since he had taken down a wrong date in his diary he could not tender the answer on that day. It was apparent from the said evidence of the Appellant that he had relied upon the negligence of his Attorney At Law.

Under the present context of law can the Appellant plead the negligence of his Attorney At Law as reasonable grounds for the default of the filling of the answer?

In terms of Section 84 of the Civil Procedure Code if a defendant fails to file his answer on or before the day fixed for the filling of the answer, or on or before the day fixed for the subsequent filling of the answer then the court shall proceed to hear the case ex-parte forthwith or on such other day as the court may fix. It seems that Section 84 does not require proof of intentional default as a condition precedent to an ex-parte trial. The failure to file answer on or before the day fixed for the filing of the answer or to apply for an extension of time to file answer is *per se* a default within the meaning of Section 84 of the Code. (See: ABN Amro Bank NV vs. Conmix (Pvt) Ltd [1996] 1 SLR 8)

It is crystal clear from Section 84 that a Defendant needs not to wait until the day due for the filling of the answer. The answer can be filled on or before the day fixed for the filling of the answer. In such a situation ill health of the Defendant or negligence of the Defendant's Attorney At Law is not reasonable grounds for such default.

In the case of Karunawathie Ekanayake vs. Gunasekera [1986] 2 CALR 250 it was held that "A distinction could not be drawn between the various reasons for which a party may default. It made no difference that the Appellant's failure to file answer was occasioned by her ill health or negligence of her Attorney At Law. The wording of Section 86(2) of the Civil Procedure Code and Section 418(2) of the Administration of Justice Law remaining the same, the legislature could not have intended a different interpretation to that which had been judicially expounded in relation to Section 86(2) of the Civil Procedure Code".

In the said circumstances I see no reason to interfere with the order of the learned District Judge dated 01.04.1999. Therefore I dismiss the appeal of the Appellant with costs.

Appeal dismissed.

Judge of the Court of Appeal