

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

**CA. No. 118/98(F)**

D. C. Kurunegala Case No: 4965/M

Keangnam Enterprises Limited  
221/3, Pannipitiya Road,  
Battaramulla.

Presently at  
No: 815  
E. W.Perera Mawatha,  
Etul Kotte,  
Sri Jayawardenapura

**Defendant-Appellant**

**Vs.**

Karunaratne Wijsekera  
Koralegedara  
Kohilagedara

**Plaintiff - Respondent**

**IN THE COURT OF APPEAL****OF THE DEMCORATIC SOCIALIST REPUBLIC OF SRI LANKA****C.A 118/98 F****D.C Kurunegala 4965/M****BEFORE** : **K.T. CHITRASIRI, J.****COUNSEL** : Deeptha Perera for the Defendant-Appellant**ARGUED &** Plaintiff-Respondent is absent and unrepresented**DECIDED ON** : 05.03.2014**K.T. CHITRASIRI J.**

The Registrar of this Court has sent notices dated 12.12.2013 under registered cover to the Plaintiff-Respondent and to his Attorney-at-Law informing them to collect the appeal brief and also to be present in this Court on 20.01.2014. The Plaintiff-Respondent has not responded to the said notice. There had been several notices sent even before the aforesaid notices, directing the respondent to be present in this Court. He has not responded to those notices either. Therefore, this matter is taken up for argument in the absence of the Plaintiff-Respondent.

A motion had been filed moving to file a new proxy on behalf of the appellant and to have its earlier proxy revoked. An affidavit deposed to by Do Hee Kim who supposed to be a representative of the Plaintiff-Company has

been filed with the said motion and in that affidavit it is stated that the Attorney Neluka Mahinkanda who has filed the earlier proxy has left the country. Acting upon the said evidence contained in the affidavit, Court makes an order revoking the proxy given to Neluka Mahinkanda and accordingly Court accepts the new proxy of O.T. Abeynayake Attorney-at-Law on behalf of the appellant.

Counsel for the Appellant submits that the learned District Judge in his judgment which is being impugned by filing this appeal has decided that the second and the third causes of action have not been established by the plaintiff-respondent. He further submits that the judgment delivered in favour of the respondent is only in respect of the first cause of action. He then submits that the learned District Judge is in error when he awarded Rs. 125,000/- for the first cause of action when the claim for the said cause of action made by the Plaintiff –Respondent is only for a sum of Rs. 25,000/-. He, therefore submits that he will not argue the appeal on its merits if the judgment against the appellant is restricted to a sum of Rs. 25,000/- since it is the amount prayed for in the plaint for the first cause of action.

This is an appeal to have the judgment dated 09.12.1997 of the learned District Judge of Kurunegala set aside. In that judgment learned trial judge has declined to grant relief for the second and the third causes of action alleged to have accrued to the respondent. There is no appeal filed challenging the said decision.

In the impugned judgment, learned Judge has awarded a sum of Rs. 125,000/- for the first cause of action alone. However, in paragraph 15 of the plaint dated 06.09.1993 the Plaintiff –Respondent has prayed only for a sum of Rs. 25,000/- for the first cause of action. It is in the same manner that the issues of the respondent also have been raised. It is evident by the point of contest raised in the issue No: 11 and it is to have damages in terms of the prayer to the plaint. [*vide proceedings at page 57 in the appeal brief*],

In the circumstances, it is clear that the Plaintiff–Respondent has limited his claim to a sum of Rs. 25,000/- for the first cause of action which is the only cause of action decided in favour of the respondent. In such a situation, learned District Judge should not have awarded damages in a sum, more than the amount prayed for by the Plaintiff. Therefore, it is wrong to have awarded Rs.125,000/- as damages for the first cause of action. Accordingly, this Court makes an order varying the amount of damages awarded to the Plaintiff – Respondent limiting it to Rs. 25,000/-.

Subject to the above variation as to the amount of damages awarded by the learned District Judge this appeal is dismissed. Learned District Judge is directed to enter decree accordingly. No costs.

*Appeal dismissed.*

**JUDGE OF THE COURT OF APPEAL**

Vkg/-