

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

**C.A. No. 881/98 F**

D.C.Ratnapura Case No. 9625/L

Haduwalage Somarathne,  
Willuliya,  
Madalagama.

**Appellant**

**Vs.**

Haduwalage Kiritheris  
Willuliya,  
Madalagama.

**Respondent**

**C.A. No. 881/98 F**

- D.C.Ratnapura Case No. 9625/L

BEFORE : K.T. Chitrasiri J.

COUNSEL : Parties are absent and unrepresented

ARGUED &

DECIDED ON : 03.04.2014

K.T. CHITRASIRI J.

The Registrar of this Court has sent notices under registered cover to both parties and to their Registered Attorneys directing them to be present in this Court today. The letter sent to the Plaintiff- Respondent had been returned with the endorsement that he has left the given address. It is to the address given by the Appellant that this notice had been sent.

The Defendant Appellant is not present even though the notice that were sent by the Registrar directing him to appear in this Court today has not been returned. The said notice had been sent to the address given in the petition of appeal. Therefore, it is seen that the Appellant is not prosecuting this appeal diligently. Hence this appeal is taken up for consideration now.

This is an appeal seeking to set aside the order dated 30.03.1998 of the learned District Judge of Ratnapura. By that order learned District Judge disallowed an application to vacate the ex-parte judgment entered in this case. Being aggrieved by the said order, the Defendant-Appellant has filed this

appeal to have the ex-parte decree vacated and to have the case taken up for trial a fresh.

The application made by the Appellant to have the ex-parte decree vacated is on the basis that he did not hear the trial date when the case was mentioned on 20.01.1997, to fix the case for trial. On that date, not only the appellant but his wife and the mother also was present in Court. Therefore, the next date could have been heard by the wife and the mother of the Appellant as well. In the circumstances, the reasons adduced by the appellant for not attending Court on the trial date cannot be accepted.

Those are the very reasons given by the learned District Judge when he disallowed the application of the Appellant. I do not see any error in those findings. Accordingly, this appeal is dismissed without costs.

*Appeal dismissed.*

JUDGE OF THE COURT OF APPEAL

CN/-