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

C.A. Case No.796/2000

D.C. Horana Case No.6086/L

Warahenage Muninda Alwis
No.392, Dewalemulla,
Borelesgamuwa.
PLAINTIFF

-Vs-

P. L. H. Jayasinghe
of Olabotuwa, Gonapola Handiya.
DEFENDANT

AND

P. L. H. Jayasinghe
of Olabotuwa, Gonapola Handiya.
DEFENDANT-PETITIONER

-Vs-

Warahenage Muninda Alwis
No.392, Dewalemulla,
Borelesgamuwa.
PLAINTIFF-RESPONDENT

AND NOW BETWEEN

P. L. H. Jayasinghe
of Olabotuwa, Gonapola Handiya.
DEFENDANT-PETITIONER-APPELLANT

-Vs-

Warahenage Muninda Alwis
No.392, Dewalemulla,
Borelesgamuwa.
PLAINTIFF-RESPONDENT

BEFORE	:	A.H.M.D. Nawaz, J.
COUNSEL	:	Nimal Weerakkody with Inoka Weerakkody de Soysa for Defendant-Petitioner-Appellant Samudika Herath for the Plaintiff-Respondent-Respondent
Decided on	:	10.05.2019

A.H.M.D. Nawaz, J.

The Plaintiff-Respondent(hereinafter referred to as "the Plaintiff") sought the relief of declaration of title to the land more fully described in the 1st and 2nd schedule to the plaint together with a right of way to be granted as described in the 3rd schedule to the plaint. The Plaintiff also prayed for a commission to be issued to have the land surveyed and also for a declaration that the Defendant had no rights whatsoever to the land described in the plaint.

The Defendant filed his proxy to his Attorney-at-Law on 13th September 1996-the summons returnable date. On the same date, the Plaintiff moved for a commission which

was issued. It would appear that the case had been called on a number of dates but the answer had not been filed even by 22nd January 1999. Accordingly the *ex parte* trial was held on 23rd February 1999 and the judgment was delivered on 23rd March 1999. By way of a petition and affidavit dated 19th October 1999, the Defendant sought to vacate the *ex parte* judgment by pleading that he had been hospitalised owing to conditions relating to heart and lung for about six months and as a result he was not able to instruct his lawyers. In his petition the Defendant moved that the *ex parte* judgment delivered on 23rd February be set aside and that he be permitted to file answer. The Plaintiff filed the objections and at the inquiry that took place under Section 8(2) of the Civil Procedure Code, the defendant give evidence stating that he had been unwell for some time and due to the illness he could not give instructions to his Attorney-at-Law.

The learned District Judge of *Horana* had made his order on 28th July 2000 refusing the Defendant's application to have the *ex parte* judgment and decree set aside.

Needless to say, under Section 86(2) the Defendant has to satisfy Court that he had reasonable grounds for his default. The Journal Entry for 28th July 2000 states that the Defendant's application to have the *ex parte* judgment and decree has been refused. This appeal is against that order.

I do not find the order in the appeal brief. Section 88(2) of the Civil Procedure Code lays down that the order setting aside or refusing to set aside the judgment entered upon default shall be accompanied by a judgment adjudicating upon the facts and specifying the grounds upon which it is made, and shall be liable to an appeal to the Court of Appeal.

Thus it is crystal clear that an imperative requirement of Section 88(2) is that when a District Judge refused to set aside the judgment entered upon default, he must give reasons for his decision and if such reasons are not found, the order refusing to set aside the judgment entered upon default is liable to be set aside in this Court as if no reasons exist for the decision.

In the case of ***Padfield v. Minister for Agriculture, Fisheries and Food*** (1968) AC 997 (HL)-a seminal case on giving reasons Lord Upjohn observed-"if he does not give any reason for his decision, it may be, if circumstances warrant it, that a court may be at liberty to come to the conclusion that *he had no good reason of reaching that conclusion....*". In the same breath Lord Pearce too echoed the same notion-"If he gives no reason whatever for taking a contrary course, the court may infer that he had no good reason.....". Though *Padfield* is one of the leading administrative law cases, it was in fact an action for a declaration rather than an application for a prerogative order-*see* this reasoning in a civil appeal CA 203/2002 ***Upali Palitha Mahanama v. Wijayhenagedara Sumanawathie*** **(CA minutes of 25/05/2018).**

The first question in any inquiry under Section 86(2) is whether the *ex parte* default judgment was procedurally proper and this depends on whether a condition precedent has been satisfied namely whether a proper order for *ex parte* trial had been made and whether the defendant has failed to purge his default.

This examination must be manifest upon the order refusing to set aside the judgment entered upon default. If this order is not available for the review of this Court, there is no proper inquiry that has been conducted in regard to default.

In the circumstances I proceed to set aside the expression of a so-called order in the journal entry dated 28th July 2000 and consequently the *ex parte* judgment dated 23rd February 1999 has to be necessarily set aside.

So I allow the appeal directing the learned District Judge of *Horana* to permit the Defendant to file answer and proceed with the trial as expeditiously as possible.

JUDGE OF THE COURT OF APPEAL