

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

In the matter of an Application for Leave to Appeal under Section 754(2) of the Civil Procedure Code, from the Order made by the learned Additional District Judge on 17th October 2006 in D.C. Colombo Case No.50523/M.

C.A. L.A. Case No.436/2006

D.C. Colombo Case No.
50523/M

Gamini Rajapakse

No.8/12, Gemunu Mawatha,

Sri Subuthipura,

Battaramulla.

DEFENDANT-APPELLANT

-Vs-

M.S.M. Najimudeen

No.66/1, Vajira Road,

Colombo 05.

PLAINTIFF-RESPONDENT

In the matter of an Application for Leave to Appeal under Section 754(2) of the Civil Procedure Code, from the Order made by the learned Additional District Judge on 17th October 2006 in D.C. Colombo Case No.50524/M.

C.A. L.A. Case No.437/2006

D.C. Colombo Case No.
50524/M

Gamini Rajapakse

No.8/12, Gemunu Mawatha,

Sri Subuthipura,
Battaramulla.

DEFENDANT-APPELLANT

-Vs-

M.L. Fauz
No.66/1, Vajira Road,
Colombo 05.

PLAINTIFF-RESPONDENT

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

COUNSEL : Srinath Perera, PC for the Defendant-Appellant
Thushani Machado for the Plaintiff-Respondent

Decided on : 19.07.2019

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

The Plaintiff-Respondent (hereinafter sometimes referred to as “the Plaintiff”) instituted this action in the District Court of Colombo against the Defendant-Appellant (hereinafter sometimes referred to as “the Defendant”) and sought a sum of Rs.500 million as damages from the Plaintiff.

The basis on which the defamation action was initiated was a letter sent by the Defendant to His Excellency the President, copies of which were sent to certain other persons to the effect that the said fraud was committed by Companies and/or Partnerships owned and/or connected with the Plaintiff in Customs Inquiry Case No. SIIU/MISE/47/92.

The essence of the Plaintiff's case was that the Defendant in the said letter had maliciously and falsely alleged that the Plaintiff-Respondent had fraudulently imported textiles into the country. The Plaintiff further averred that the truth was to the contrary in that no fraud had been established on the part of the Plaintiff. The chronology of events that took place in the District Court becomes material;

1. Consequent to the institution of the action, summons was served on the Defendant and the summons returnable date was 19.05.2006.
2. On the summons returnable date namely 19.05.2006, proxy was filed on behalf of the Defendant and upon the application of the Attorney-at-Law of the Defendant for a date to file the answer, the Court granted a date for the filing of the answer namely 01.09.2006.
3. On 01.09.2006, the Attorney-at-Law for the Defendant moved for a further date to file an answer and the learned Additional District Judge granted a final date to file answer namely, 17.10.2006.
4. On 10.10.2006, a motion was filed on behalf of the Defendant stating that 17.10.2010 was the final date for answer and since it was necessary to obtain certain documents from abroad for the preparation of the answer, a further date was required and in the circumstances, the motion moved for a long date to file the answer.
5. Consequent to the said motion, the learned Additional District Judge made an order that the said motion be supported after notice to the Plaintiff-Respondent. (*Vide* Journal Entry-page 53 of the Appeal brief)
6. On 17.10.2006, the Counsel for the Defendant supported the motion but the Counsel for the Plaintiff objected to the application on 2 grounds namely:
 - a) The Plaintiff had no notice of the motion.
 - b) The Court had given a final date for the filing of the Answer. (*Vide* proceedings dated 17.10.2006)

7. The learned Additional District Judge of Colombo refused the application of the Defendant for a further date to file the answer and made order that the case be called on 05.12.2006. It is against this order of the learned Additional District Judge made on 17.10.2006 that this application for Leave to Appeal was made to this Court and Leave was granted on 15.02.2010.

In this appeal that is before this Court, the order of the learned Additional District Judge is sought to be set aside and the Defendant-Appellant seeks an order from this Court to file answer and defend the action.

In my view merely because a District Court gives a final date for answer, it does not mean that it has to be perforce final. Litigants undergo difficulties even in this modern times and age to obtain documents necessary for the preparation of their pleadings and it is consonant with justice and fairplay that a litigant must have sufficient time to formulate his pleadings. The grant of a date towards this end goes a long way towards alleviating the woes and travails in getting ready for a cause and the Court is empowered to show latitude to a litigant where it is fair and reasonable that sufficient time must be granted.

In this case no doubt 17th October 2006 was a final date to file answer and one week prior to the date, on 10th October 2006 a date was moved for by way of a motion to grant a long date. When the motion was supported on 17th October 2006, the same reason as in the motion was urged before the learned Additional District Judge. The reason that was advanced before the learned Additional District Judge was that he needed certain documents from abroad that would help him prepare his answer in the two suits that had been filed against the Appellant for defamation.

The provision that becomes applicable in this situation is Section 91A(1) of the Civil Procedure Code, which reads as follows:-

“Where a day is fixed or time appointed for doing any act or taking any proceeding by a party to the action, the court may, from time to time, upon the motion of such party and, if sufficient cause is shown, fix another day or enlarge or abridge the time appointed, upon such terms, if any, as to it may seem proper.”

This provision invests the District Court with a discretion to fix another day or enlarge or abridge the time that has already been granted.

It is for this reason I opined that a date, albeit final, can yet be extended in normal course provided sufficient cause is shown by the party applying for extension of time. If the requirement of sufficient cause is satisfied, the Court can cast the party applying for an extension, in costs in order to mitigate the hardships on the other party. In fact in *ABN-Amro Bank v. Conmix (Pvt) Ltd.*, (1996) 1 Sri L.R. 08-the Supreme Court stated that Section 91A empowers the Court to grant further time to a defendant who has failed to file answer, and this is so even if the plaintiff objects.

Jameel, J. alluded to Section 91A in *Rajapakshe v. Senanayake* (1987) 1 CALR 146.

So the quintessential question before this Court is whether the Defendant showed sufficient cause before the learned Additional District Judge in order to obtain a further extension beyond 17th October 2006.

When I examine the order made by the learned Additional District Judge (Court No.8) dated 17th October 2006 for refusing to grant a date, I find that the following considerations have been set out by him.

1. Nearly 7 months has been given to the Defendant to file answer.
2. The necessity to obtain documents from abroad is brought to the notice of Court just a week before the date fixed finally for answer.
3. The motion is without any notice to the Plaintiff.
4. What document is sought to be transmitted from abroad for the purpose of preparing the answer is not intimated to Court.
5. If the Defendant is in the process of obtaining the said documents, steps taken to obtain them have not been established.

In the circumstances the genuineness of the application for an extension is called in question and accordingly the learned Additional District Judge rejected the application.

Therefore the learned Additional District Judge treated this as a failure to file answer and fixed a date 05th December 2006 to have the matter appointed for an *ex parte* trial.

I have given my anxious considerations to the order dated 17th October 2006 of the District Court and I am not inclined to the view that the learned Additional District Judge of Colombo exercised his discretion wrongly and unfairly.

If a document is vital to the preparation of an answer, true enough it is vital to the defence of the Defendant. He should be afforded sufficient time to secure the document and either plead it or use it in the answer. One wonders why it has not been possible to obtain the document/documents within a space of 7 months. No explanation has been given to the learned Additional District Judge nor has it been afforded to this Court.

The nature and relevance of the document/documents have not been brought home to the District Court and when Section 91A imposes the burden of demonstrating sufficient cause it is incumbent upon the party seeking an extension of time to adduce before the District Court the impact that the document lying outside Sri Lanka will have on the case and in the absence of such material before Court, I am disinclined to hold that the learned Additional District Judge acted unfairly in concluding that there was no adequate reasons to grant a further date to file answer.

When the learned Additional District Judge stated in his order dated 17th October 2006, that the significance of the document was not brought home, one could conclude that he was open to take into account the materiality of the documents and consider the grant of a further date but the application made on 17th October 2006 did not urge any material other than the submission that the documents were required to be secured from abroad.

Analogously I bear in mind as to how this Court allows fresh evidence to be taken provided the evidence must be such that, if given, it would probably have an important influence on the result of the cause, although it need not be decisive-*see* Denning, L.J in *Ladd v. Marshall* (1954) 3 A.E.R 745 at 748.

In the same way it could have been shown to this Court that these documents have since been obtained and their relevance is such that the Defendant should be permitted to plead it in his answer. This has not been forthcoming even in this Court. Whether any steps or communication was made to obtain the documents is a question that goes

begging even in this Court. At the most this Court could have been apprised of the steps taken and in the absence of such material, this Court too does not feel fortified that this document would ever be pleaded at all.

So I am constrained to hold that the learned Additional District Judge of Colombo did not act unfairly when he refused the application of the Defendant and I proceed to affirm the order made by the learned Additional District Judge dated 17th October 2006 and dismiss the appeal.

The learned Additional District Judge of Colombo is directed to take further steps according to law.

JUDGE OF THE COURT OF APPEAL