

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

In the matter of an Application for Writs of *Certiorari* and *Prohibition* under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal Case No.

CA/WRT/0442/2020

Sinhaputhra Finance PLC,
11, Kande Veediya,
Kandy.

Petitioner

Vs.

1. H. M. W. Herath,
85/5, Pallethalawinna,
Katugasthota.
2. G. M. D. M. Bandare,
Senior Labour Officer,
District Labour Office,
Kandy-South,
Kandy.
3. B. A. S. P. K. Balasuriya,
Assistant Commissioner of Labour,
District Labour Office,
Kandy South,
111, Yatinuwara Veediya,
Kandy.
4. Commissioner General of Labour,
Labour Department,

Labour Secretariat,
Narahenpita.

Respondents

Before: **M. T. MOHAMMED LAFFAR, J.**

S. U. B. KARALLIYADDE, J.

Counsel: Shantha Jayawardane for the Petitioner.

Ms. Avanthi Weerakoon S.C. for the 2nd to 4th Respondents.

Written Submissions tendered on: 20.12.2022 by the Petitioner
02.12.2022 by the 2nd to 4th Respondents.

Decided on: 08.02.2023

MOHAMMED LAFFAR, J.

By the Petition dated 07-12-2020, the Petitioner invoked the Writ Jurisdiction of this Court, challenging the decision of the 3rd Respondent dated 07-10-2020 marked as P12, by which the 3rd Respondent (Assistant Commissioner of Labour-Kandy-South) ordered the Petitioner to make the payment of Rs. 2,249,610/- (EPF payment).

When the matter was taken up for support on 11-10-2021, the Petitioner was absent and unrepresented and the 2nd, 3rd and 4th Respondents were represented by the Hon. Attorney General. As such, the Court ordered to reissue notices on the Petitioner and the registered Attorney, returnable on 19-01-2022. It is borne out from the case record that the notices were dispatched to the Petitioner and its registered Attorney by registered post (JE dated 11-10-2021). When the matter was taken up for support on 19-

01-2022, the Petitioner was absent and unrepresented, and therefore, the Application was dismissed on the footing that the Petitioner was not interested in proceeding with the Application with due diligence.

Being aggrieved by the said Order, the Petitioner having tendered the Petition dated 07-02-2022 moved this Court to set aside the dismissal Order on the basis that the Petitioner as well as its registered Attorney had no notices to appear in Court on 19-01-2022.

It is evident, that the Court issued notices on the Petitioner and its registered Attorney by registered post on 28-10-2021, apprising that the case would be mentioned in Court on 19-01-2022. It is to be noted that the said notices have not been returned. In those circumstances, under Section 114, of the Evidence Ordinance, it is to be presumed that the said notices have duly been served on the Petitioner and its registered Attorney.

In the case of **Gomes Vs. Shakir**¹ the Supreme Court observed that

“when there is a fact that the letter is duly addressed and posted, under section 114 (e) of the Evidence Ordinance, the trial Judge can have the presumption that the letter is duly served on the defendant.”

In these circumstances, it is the view of this Court that the contention of the Petitioner stating that its Representatives could not appear in Court on 19-01-2022, as there were no notices to the registered Attorney or the Petitioner, is not tenable.

It is settled law, that a Petitioner who is seeking relief in an Application for the issue of a Writ is not entitled to relief as a matter of course, as a matter of right, or as a matter of routine. Even if he is entitled to relief, still the Court has the discretion to deny him relief having regard to his conduct, delay, laches, waiver, and submission to jurisdiction. These are valid impediments that stand against the grant of relief. (*Vide: Jayaweera v. Assistant Commissioner of Agrarian Services Ratnapura and Another [1996] 2 SLR 70*).

In the written submissions, the learned Counsel for the Petitioner asserted that due to the Covid-19 quarantine curfew imposed from time to time, the Petitioner failed to find the rescheduled date of this Application. It is

¹ 1997-2SLR-113.

pertinent to note that, it is not the reason averred in the Petition of the Petitioner for not being present in Court on 19-01-2022. Having scrutinized the Petition it appears to this Court that the Petitioner has not averred specific reasons as to why he failed to appear or give instructions to its' registered Attorney to appear on its behalf, and no sufficient justification has been given as to why the Petitioner failed to appear in Court on the date of argument.

Moreover, there is no evidence before Court to substantiate the fact that the registered Attorney of the Petitioner had attempted to reach the Court of Appeal Registry to ascertain the next date of hearing. There is a duty cast upon the registered Attorney to ascertain the next steps of each and every case from the Court Registry. Failure to partake in such due diligence would constitute negligence by the registered Attorney.

In **Jayasingha Vs. Pedris**² it was held that

“.....the only excuse given is that the defendant's attorney-at-law had taken down the wrong date, it is not an excuse, and his negligence cannot be considered as an exceptional circumstance.”

In the case of **Pakeer Mohideen Vs. Mohamed Cassim**³ it was decided that

“..... it was the duty of his proctor to have informed him of the proper date of trial and to have asked for instructions, and that as the proctor did not appear to have done his duty, he was to blame for the absence of the defendant and the defendant must suffer for the fault of his proctor.”

In the case of **Pakiyanathan Vs. Singarajah**⁴ it was observed that;

“the default has resulted from the negligence of the attorney-at-law in which event the principle is that the negligence of the attorney-at-law is the negligence of the client and the client must suffer for it. As the applicant's default appeared to be the result of his own negligence as well as the negligence of his attorney-at-law the conduct of the

² 2005-1SLR-290.

³ 04 NLR 299.

⁴ 1991-2SLR-205.

appellant and his attorney-at-law cannot be excused. The appellant had failed to adduce sufficient cause for a re-hearing of the appeal.”

In these circumstances, I see that there is no basis to set aside the dismissal Order of this Court dated 19-01-2022. Thus, the Application seeking to set aside the Order dated 19-01-2022 is dismissed. No costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

S. U. B. KARALLIYADDE, J.

I agree.

JUDGE OF THE COURT OF APPEAL