

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

In the matter of an Appeal made in terms of  
Section 754 of the Civil Procedure Code.

C.A. Case No. 1144/1999 (F)

D.C. Kurunegala Case No. 8113/Spl.

**Kaluthara Soma Thero,**

KP/Siri Wijaya Pirivena, Paramulla,

Alawwa.

**PLAINTIFF**

1. **Divisional Secretary,**  
Divisional Secretariat Office,  
Alawwa.
2. **Commissioner of Buddhist Affairs,**  
Department of Buddhist Affairs,  
No. 135, Dharmapala Mawatha,  
Colombo 7.
3. **District Secretary,**  
District Secretariat Office,  
Kurunegala.
4. **Asst. Cultural Officer-Kurunegala,**  
Divisional Secretariat Office,  
Kurunegala.
5. **Hon. Attorney General,**  
Attorney General's Department,  
Colombo 12.
6. **Konweweve Sirisumana Thero,**  
Purana Viharaya, Nugawela,  
Maharachchimulla.

7. **Ranmuthugala Gnanarathana Thero,**  
Pushparamaya, 1<sup>st</sup> Miles Post,  
Alawwa.
8. **Balalle Seelarathana Thero,**  
Purana Viharaya, Palagala,  
Yatigaloluwa.
9. **Venoruwe Vijaya Sri Saranankara Thero,**  
Agra Bodhi Viharaya,  
Agbowwa, Alawwa.

**DEFENDANTS**

**AND BETWEEN**

1. **Divisional Secretary,**  
Divisional Secretariat Office,  
Alawwa.

**DEFENDANT-APPELLANT**

**-Vs-**

**Kaluthara Soma Thero,**  
KP/Siri Wijaya Pirivena,  
Paramulla, Alawwa.

**PLAINTIFF-RESPONDENT**

2. **Commissioner of Buddhist Affairs,**  
Department of Buddhist Affairs,  
No. 135, Dharmapala Mawatha,  
Colombo 7.

3. District Secretary,  
District Secretariat Office,  
Kurunegala.
4. Asst. Cultural Officer-Kurunegala,  
Divisional Secretariat Office,  
Kurunegala.
5. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.
6. Konweweve Sirisumana Thero,  
Purana Viharaya, Nugawela,  
Maharachchimulla.
7. Ranmuthugala Gnanarathana Thero,  
Pushparamaya, 1<sup>st</sup> Miles Post,  
Alawwa.
8. Balalle Seelarathana Thero,  
Purana Viharaya, Palagala,  
Yatigaloluwa.
9. Venoruwe Vijaya Sri Saranankara Thero,  
Agra Bodhi Viharaya,  
Agbowwa, Alawwa.

**DEFENDANT-RESPONDENTS**

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

COUNSEL :  
Nayomi Kahawita, SC for the 1<sup>st</sup> Defendant-Appellant  
Hemantha Botheju for the Plaintiff-Respondent

Decided on : 28.11.2016

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

The 1<sup>st</sup> Defendant-Appellant (hereinafter sometimes referred to as “the 1<sup>st</sup> Defendant”) has preferred this appeal against the judgment of the learned District Judge of *Kurunegala* dated 18.10.1999.

The Plaintiff-Respondent (hereinafter sometimes referred to as “the Plaintiff”) instituted this action in the District Court of *Kurunegala* seeking *inter alia* a declaration that the election of the *Alawwa Sasanarakshaka Bala Mandalaya* (ASBM) held on 28.08.1997 was null and void and a fresh election be held according to the Constitution of the ASBM.

When the matter came up for trial on 01.06.1999, the parties recorded fifteen admissions and raised twenty seven issues, among which the 1<sup>st</sup> to 17<sup>th</sup> issues were raised on behalf of the Plaintiff, whilst the 18<sup>th</sup> to 26<sup>th</sup> issues were raised on behalf of the 1<sup>st</sup> Defendant. The 27<sup>th</sup> issue was raised as a consequential issue by the Plaintiff. (*see pages 94-101 of the brief*)

The Plaintiff testified first and the examination in chief of the Plaintiff was concluded on the 2<sup>nd</sup> day of the trial namely 17.08.1999. Even though the cross-examination of the Plaintiff did not conclude on the said 2<sup>nd</sup> day of trial, it was decided that the parties would dispose of their respective cases by way of written submissions. The learned District Judge delivering his judgment dated 18.10.1999 allowed the relief prayed for in the Plaintiff.

When this matter was taken up for argument in this Court, the learned State Counsel brought to the notice of court that since the year 1999, a number of changes had taken place and therefore at present none of the 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Defendants held office in the ASBM, and moreover, the 8<sup>th</sup> Respondent has since passed away. The term of office of the 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Respondents in the ASBM had ended a long time ago, and several elections to the ASBM have been subsequently held since the delivery of the judgment on 18.10.1999.

When this Appeal was taken up for argument, the learned State Counsel Ms. Nayomi Kahawita on behalf of the 1<sup>st</sup> Defendant-Appellant informed the court that despite her best endeavours to settle this matter, she was unable to do so as the learned trial Judge in delivering his impugned judgment dated 18.10.1999 had collectively answered all the issues raised by the Plaintiff-Respondent in the affirmative, and among such answers the answer to Issue No.26, includes amongst others, a relief for cost of litigation against the State and in the circumstances she could not effect a settlement, least of all a withdrawal of the appeal. However, since the Plaintiff was not inclined to waive the claim for cost of litigation against the State, the parties intimated that the Court could proceed to pronounce its judgment on the written submissions of parties.

The learned State Counsel has sought to impugn the judgment dated 18.10.1999 on the following grounds.

**The judgment dated 18.09.1999 does not fulfill the requirements stipulated in Section 187 of the Civil Procedure Code**

The complaint is that both the issues raised on behalf of the Plaintiff-Respondent as well as those of the Defendant-Respondent have been answered collectively and there are no separate answers to each issue raised by the Plaintiff and the Defendant. The learned State Counsel has contended that the court is bound to provide answers to all the questions raised in a civil case. She has drawn attention of court to *Hanaffi v. Nallamma* (1998) 1 Sri L.R. 73 at page 77 wherein the oft cited pronouncement of His Lordship G.P.S. De Silva, CJ occurs-

*“..... once issues are framed, the case, which the court has to hear and determine becomes crystallized in the issues and the pleadings recede to the background...”.*

Germane to the above is Section 187 of the Civil Procedure Code which stipulates the requirements of a judgment thus:

*“ The judgment shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision, and the opinion of the assessor (if any) shall be prefixed to the judgment and signed by such assessors respectively...”.*

In the case of *Warnakula v. Ramani Jayawardene* 1990 (1) Sri L.R. 206 it has been held:

“.....bare answers to issues without reasons are not in compliance with the requirements of section 187 of the Civil Procedure Code. The evidence germane to each issue must be reviewed or examined. The Judge must evaluate and consider the totality of evidence, giving a short summary of the evidence of the parties and witnesses and stating that he prefers to accept the evidence of one party without giving reasons are insufficient....”.

Therefore, it is indubitable that there is a bounden legal duty cast upon the Court to answer and/or provide answers to the issues raised in a case. Whether there is a legal duty entrusted upon the court to answer each issue separately has been discussed in a number of reported cases. In the case of *Horagalage Sopinona v. Kumara Ratnakeerthi Pitipannarachchi and others* SC Appeal No. 49/2003, His Lordship Marsoof J. in his judgment made the following observations under the sub-heading “Duty to answer all issues .....if the answer to a single issue is in effect a complete answer to all the issues arising for determination in this action whether it is necessary and incumbent on the District Judge to give specific answers to other issues. In this context, it is relevant to note that in terms of section 187 of the Civil Procedure Code, a judgment should contain a concise statement of the case, points for determination and the decision thereon and the reasons for such decision. As was observed by Court in *Warnakula v. Ramani Jayawardene* 1990 1 Sri L.R. 206 at page 208, “bare answers to issues without reasons are not in compliance with the requirements of section 187 of the Civil Procedure Code”. The judge must evaluate and consider the totality of evidence giving short summary of the evidence of the parties and witnesses and stating the reasons for his preference to accept the evidence of one party as opposed to that of the other. The learned District Judge in this case has totally failed to discharge this duty by failing to even attempt answering all of the very material issues raised on behalf of the Respondents and has also failed to explain why in this view it is not necessary to answer other very important issues...”.

Furthermore, in the case of *Mohideen and Another v. BOC* 2001 1 Sri L.R. 290 at page 299 Hector Yapa J. citing with approval the following dicta of WIjeratna J. in *Muthukrishna v. Gomes and others* 1994 3 Sri L.R. at page 8 has observed as follows:

“..... Judges of original courts should, as far as practicable, go through the entire trial and answer all the issues unless they are certain that a pure question of law without the leading evidence apart from formal evidence can dispose of the case....”

Upon a careful perusal of the judgment of the learned District Judge of *Kurunegala* dated 18.10.1999, it is abundantly clear that the said judgment has not been delivered in due compliance with the requirements of Section 187 of the Civil Procedure Code, and that the learned trial Judge has failed in his duty to answer all the issues raised in the case but instead provided a collective affirmative answer to the issues of the Plaintiff, and an all embracing negative answer to the issues of the Defendant without having evaluated each and every issue. Thus the judgment is vitiated by its non-compliance with imperative requirements being followed.

Let me advert now to what the State Counsel said was the inhibiting factor in the way of a settlement namely the imposition of fine.

#### Issue No.26

The learned State Counsel has called in question the answer to Issue No. 26 raised by the Plaintiff, which purports to deal with the relief pertaining to the cost of litigation and any other relief that the Court may deem fit to grant. The contention of the State Counsel is that the imposition of cost on the state has been mechanically made, as issue No 26 along with all other issues has not been answered in the judgment dated 18.10.1999 in due compliance with the requirements of Section 187 of the Civil Procedure Code. I cannot help but agree with that contention. If a financial burden is imposed on a Defendant, there must be a legal basis and there is nothing that has been mentioned by way of a rationale for this imposition of such cost on the state.

A careful scrutiny of Issue No.26 will bear out that the said issue is so broadly couched that it would operate as an all-inclusive and omnibus last issue. In my view the over

breath of this issue cannot include a plea for a cost of litigation which in my view should be a specific issue. This reasoning is consistent with the fact that the cost of litigation has been prayed for by the Plaintiff-Respondent in the prayer to the plaint filed in the District Court of *Kurunegala*. Therefore a specific issue should have been raised on cost of litigation and tried. Evidence should have been placed before the learned District Judge and a specific answer to that issue should have been elicited. Therefore I hold that in the absence of a specific issue raised and/or framed by the Plaintiff pertaining to the relief of cost of litigation as prayed for in the plaint, the Plaintiff would not be entitled to claim any cost of litigation as a relief against the Appellant. If there was no specific issue raised in respect of cost of litigation, the learned District Judge cannot make use of an omnibus issue to engulf it and award it as a relief. This situation is reminiscent of the converse of what happened in the case of *Surangi v. Rodrigo* (2003) 3 Sri L.R. 35. In that case there was an issue that was attempted to be raised on the question of permanent alimony but there was no prayer for permanent alimony and so Gamini Amaratunga J. decided that the learned District Judge was quite correct in refusing to allow the Plaintiff to frame an issue relating to alimony. The mantra was that there would be no relief if there was no prayer. There converse must also hold true. In this case there was a prayer for cost of litigation but no issue was raised and no evidence was led to establish the issue of cost of litigation.

The above two questions of law which are pivotal to the resolution of the issues in this appeal are also dispositive of the appeal and the judgment pronounced by the learned District Judge of *Kurunegala* cannot be permitted to stand as it teems with illegalities and I thus proceed to set aside the Judgment dated 18.10.1999 of the learned District Court of *Kurunegala* and allow the Appeal.

JUDGE OF THE COURT OF APPEAL