

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

In the matter of an appeal in terms of section 5 C of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended by Act No. 54 of 2006 against a judgment delivered by the Provincial High Court exercising its jurisdiction under section 5 of the said Act.

S C Appeal No. 234/2014

SC/HCCA/LA No. 505/2013

High Court Case No: NWP/HCCA/KUR/20/2013 (Rev)

District Court of Chillaw Case No: No. 1105/M

L Ajith Thilakarathne De Silva,
Senevirathne Road,
Madampe.

DEFENDANT - PETITIONER - APPELLANT

Warnakulasuri Josep Victor Daberera,
Anita Magrat House,
Mepals Road,
Uhitiyawa,
Wennapuwa.

**PLAINTIFF - RESPONDENT -
RESPONDENT**

Before: BUWANEKA ALUWIHARE PC J
VIJITH K. MALALGODA PC J
P. PADMAN SURASENA J

Counsel: Pulasthi Rupasinghe with Ms. Nilma Abeysuriya for the
Defendant - Petitioner - Appellant.

Chandana Wijesuriya with Chinthaka Hettiarachchi for the
Plaintiff - Respondent – Respondent

Argued on: 2019 - 02 - 22

Decided on 2019 - 04 - 04

P Padman Surasena J

The Plaintiff - Respondent - Respondent (hereinafter sometimes referred to as the Plaintiff) filed in the District Court of Chilaw, a plaint in terms of provisions in chapter LIII of the Civil Procedure Code. This is to recover a sum of money amounting to Rs. 4,000,000/= from the Defendant – Petitioner - Respondent (hereinafter sometimes referred to as the Defendant). The said amount is the amount mentioned in the cheque dated 1998-10-21 bearing No. 205090 handed over to the Plaintiff by the Defendant as a settlement of a debt obtained by the Defendant from the Plaintiff.

The Defendant had thereafter sought leave of Court in terms of the provisions contained in the said chapter of the civil Procedure Code, to appear and defend the action without any condition. However, the learned Additional District Judge by his order dated 16th August 2006 had only granted the Defendant leave of Court to appear and defend the action subject to the condition of depositing in Court, the full amount (Rs. 4,000,000/=) claimed by the Plaintiff. The said order dated 16th August 2006 has been produced marked (**P 4**) in this Court.

Admittedly, the Defendant has never challenged the above order. Thus, the said order dated 16th August 2006 pronounced by the learned Additional District Judge remains valid to date.

Perusal of the journal entries¹ of the District Court case record clearly shows that the learned District Judge has granted on the application of the Defendant, several further opportunities for the Defendant to deposit the said amount of money and file answer in order that he could defend the action. However, the Defendant without making use of the said opportunities (granted to him by the learned Additional District Judge) had thereafter chosen to default appearing in Court. It was in these circumstances that the learned Additional District Judge on 2007-03-28, had proceeded to enter a decree in favour of the Plaintiff as per the prayers of the plaint.

The Appellant had thereafter, up until the year 2013, for the reasons only known to him had maintained a stoic silence. It was on 27 - 08 - 2013,² that the appellant had filed the revision application bearing No. NWP/ HCCA/ KUR/ 20/ 2013 (Rev), in the Provincial High Court of North Western Province holden at Kurunegala to challenge the order dated 16th August 2006 pronounced by the learned Additional District Judge. Upon the said revision application being supported, the Provincial High Court by its order dated 22nd October 2013 has refused to issue notices on the Respondent. The Provincial High Court has based the said refusal on the following grounds.

- i. The Petitioner has not placed any exceptional circumstance, which warrants the Provincial High Court to invoke its revisionary jurisdiction.
- ii. There is no merit in the said application.

¹ Journal entries dated 2006-10-04, 2006-11-08 and 2007-01-10.

² According to the order dated 22-10-2013 of the Provincial High Court.

- iii. There is an undue delay in filing the said revision application.

This Court by its order dated 03-12-2014 has granted special leave to appeal on the following questions of law.

- i. "Their Lordships in the Civil Appellate High Court of North Western Province erred in law by coming to a wrong conclusion that they are barred by its predecessor's decision as exceptional circumstances have not been established."
- ii. "Have their Lordships in the Civil Appellate North Western Province erred in law by not judicially evaluating the facts pertaining to this case."
- iii. "Has the learned Additional District Judge of Chillaw erred in law by making judgment dated 16th August 2006 as it was not supported by evidence?"

Before this Court lays its hands on the above questions of law, it would be prudent to briefly consider some of the provisions in chapter LIII of the Civil Procedure Code under which the learned Additional District Judge had made the order dated 16th August 2006. Section 704 of the Civil Procedure Code states as follows;

Section 704

- (1) In any case in which the plaint and summons are in such forms respectively, the defendant shall not appear or defend the action unless he obtains leave from the Court as hereinafter mentioned so to appear and defend; and in default of his obtaining such leave or of appearance and defence in pursuance thereof, the Plaintiff shall be entitled to a decree for any sum not exceeding

the sum mentioned in the summons, together with interest to the date of the payment, and such costs as the Court may allow at the time of making the decree.

- (2) The defendant shall not be required, as a condition of his being allowed to appear and defend, to pay into Court the sum, mentioned in the summons, or to give security therefor, unless the Court thinks his defence not to be *prima facie* sustainable, or feels reasonable doubt as to its good faith.

This Court has perused the affidavit filed (in the District Court) by the Plaintiff, the copies of the documents the Plaintiff had referred to in his affidavit, the affidavit filed by the Defendant seeking leave of Court to appear and defend the action without any condition and the order dated 16th August 2006 made by the learned Additional District Judge only granting the Defendant leave of Court to appear and defend the action subject to the condition of depositing the full amount (Rs. 4,000,000/=) claimed by the Plaintiff in Court. It is the view of this Court that the learned Additional District Judge is correct when he made the order dated 16th August 2006 as the material the Plaintiff has produced before Court and the contents of the affidavit filed by the Defendant enable the Court to form a view;

- a) that the defence advanced by the Defendant is not *prima facie* sustainable, and
- b) that there is a reasonable doubt as to its good faith.

It would suffice for this Court to stop at that since this is only an appeal against an order of refusal by the Provincial High Court to issue notices

in a revision application when it was supported before Court and not an appeal against a final judgment.

In these circumstances, this Court answers the question of law No. (iii) in the negative.

This Court has also perused the order dated 22nd October 2013 made by the Provincial High Court refusing to issue notices on the Respondent. The basis upon which the Provincial High Court has refused to issue notices on the Respondent has already been stated in this judgment. The Provincial High Court has given detailed reasons for refusing to entertain the revision application. The Defendant has not adduced before this Court any valid basis for this Court to interfere with the said Provincial High Court order. Thus, it is the view of this Court that this is a frivolous appeal lodged by the Defendant for collateral purposes. Thus, in the above circumstances this Court answers the question of law No. (ii) also in the negative.

This Court observes that the question No. I formulated by the Defendant is not sufficiently clear. On the other hand this Court is of the view that the nature of question No (i), despite whatever its real meaning, would not be directly relevant for the disposal of this appeal and that answering the questions of law No I and II would be more than sufficient to dispose this appeal. Therefore, this Court would not proceed to answer the question of law No. (i).

In these circumstances, this Court affirms both the order dated 22nd October 2013 pronounced by the Provincial High Court of North Western Province holden at Kurunegala and order dated 16th August 2006

pronounced by the learned Additional District Judge of Chillaw. This Court proceeds to dismiss this appeal with costs fixed at Rs. 50,000/= payable by the Defendant to the Plaintiff.

JUDGE OF THE SUPREME COURT

BUWANEKA ALUWIHARE PC J

I agree,

JUDGE OF THE SUPREME COURT

VIJITH K. MALALGODA PC J

I agree,

JUDGE OF THE SUPREME COURT