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

S.C. (Appeal) No. 101^{A}/2009
S.C. H.C. (C.A.) L.A. No. 174/2008
H.C. Appeal WP/HCCA/COL No. 83/2008 (L.A.)
D.C. Colombo No. 428/T

2. S. Rajendran Chettiar,
10/1, Station Road,
Colombo 06.

3 S. Chithambaram,
339/5, 1/1, Galle Road,
Bambalapitiya,
Colombo 04.

4. Rm. Chockalingam Chettiar,
General Manager,
East-West Textiles (Pvt.) Ltd.,
No. 34-2/1, Bristol Street,
10/1, Station Road,
Colombo 01.

Defendants-Respondents-Appellants

Vs.

S. Narayanan Chettiar,
No. 266, Sea Street,
Colombo 11.

Plaintiff-Petitioner-Respondent

1. S. Subramaniam Chettiar,
No. 4/3, Seagull Apartments,
4th Floor,
Rohini Road,
Colombo 04.

Defendant-Respondent-Respondent

S.C. (Appeal) No. 101^{B}/2009
S.C. H.C. (C.A.) L.A. No. 175/2008
H.C. Appeal WP/HCCA/COL No. 83/2008 (L.A.)
D.C. Colombo No. 428/T

S. Subramaniam Chettiar,
No. 4/3, Seagull Apartments,
4th Floor,
Rohini Road,
Colombo 04.

1st Defendant-Respondent-Appellant

Vs.

1. S. Narayanan Chettiar,
No. 266, Sea Street,
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Plaintiff-Petitioner-Respondent

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10/1, Station Road,
Colombo 01.

Defendants-Respondents-Respondents

BEFORE : J.A.N. de Silva, CJ.
Dr. Shirani A. Bandaranayake, J.
N.G. Amaratunga, J.
Saleem Marsoof, PC., J. &
P.A. Ratnayake, PC., J.

COUNSEL : Romesh de Silva, PC, with N.R. Sivendran,
Sugath Caldera, K. Pirabakaran and
Eraj de Silva for 2nd, 3rd and 4th defendants-respondents-appellants in 101A/2009

P. Nagendran, PC, with A. Muthukrishnan and Pathmanathan for 1st defendant-respondent in 101A/2009 and 1st defendant-respondent-appellant in 101B/2009

K.Kanag-Iswaran, PC, with Avindra Rodrigo, Lakshman Jayakumar and H. Jayamal for plaintiff-petitioner-respondent

ARGUED ON: 03.03.2010

DECIDED ON: 10.06.2010

Dr. Shirani A. Bandaranayake, J.

This is an appeal from the order of the Provincial High Court of Civil Appeal of the Western Province (Holden in Colombo) (hereinafter referred to as the High Court) dated 21.11.2008. By that order learned Judges of the High Court overruled the preliminary objection raised by the 2nd to 4th defendants-respondents-appellants (hereinafter referred to as the appellants) on the basis that the plaintiff-petitioner-respondent's (hereinafter referred to as the plaintiff) leave to appeal application filed in the High Court was misconceived and that the respondent was only entitled to file a final appeal and fixed the case for support on the question of whether leave should be granted. The appellants preferred an application before this Court for which leave to appeal was granted and this appeal relates to the rejection of the aforesaid preliminary objection as to whether the order dated 14.05.2008 of the District Court of Colombo was a final order in terms of section 754 of the Civil Procedure Code.

At the time leave to appeal was granted, this Court had noted that the appeal relates to a matter in respect of which there are two decisions of this Court given by numerically equal Benches of this Court, viz., **Siriwardena v Air Ceylon Ltd.** ([1984] 1 Sri L.R. 286) and **Ranjit v Kusumawathi** ([1998] 3 Sri L.R. 232).

Accordingly at that stage both learned President's Counsel had invited this Court that in order to resolve the apparent conflict between the aforesaid two judgments, that this appeal be

referred to a Bench of five (5) Judges. That Bench had also considered that this appeal to be a fit matter to be heard by a Bench numerically superior to the Benches, which had pronounced two lines of authority referred to in the aforementioned decisions. The Registrar was accordingly directed to submit the said decision to His Lordship the Chief Justice for an appropriate order.

His Lordship the Chief Justice had nominated a Bench of five Judges to hear this matter and the appeal was thereafter fixed for hearing.

The 1st defendant-respondent-appellant (hereinafter referred to as the 1st respondent) had also filed a leave to appeal application under Number S.C. H.C. (C.A.) L.A. 175/2008 against the order of the learned High Court Judge dated 21.11.2008, for which leave to appeal was granted by this Court along with the application under Number S.C. H.C. (C.A.) L.A. 174/2008, which is the present appeal.

At the time S.C. (Appeal) No. 101A/2009 was taken for hearing it was agreed that the decision in this appeal would be binding on S.C. (Appeal) No. 101B/2009.

The facts of Appeal No. 101A/2009, as submitted by the appellants, *albeit* brief, are as follows:

The plaintiff, by Plaint dated 11.12.2007, filed District Court case No. 428/T in the District Court of Colombo having prayed for the reliefs against the Trustees of the Hindu Temple known as "Sri Kathirvelayuthan Swami Kovil" in terms of section 101 of the Trusts Ordinance.

On 07.02.2008, the 2nd and 3rd appellants, by way of a motion, brought to the attention of Court that the plaintiff's action is barred by positive rule of law and that the Plaint ought to be rejected and the plaintiff's action be dismissed *in limine*, in view of section 46(2) of the Civil Procedure Code. By motion dated 11.02.2008 the 1st respondent also brought to the notice of Court that plaintiff's action is barred by positive rule of law and the 4th appellant also associated himself with the said objections.

By his order dated 14.05.2008, learned Additional District Judge upheld the preliminary objections and dismissed the action of the plaintiff.

On 02.06.2008 the plaintiff having titled 'Petition of Appeal', filed a leave to appeal application in terms of section 757 of the Civil Procedure Code. On 30.05.2008, the plaintiff had also filed Notice of Appeal in the Provincial High Court (A).

On 19.09.2008, when that matter was taken up for support, learned Counsel for the plaintiff admitted that the said plaintiff had taken steps to file the Final Appeal against the order dated 14.05.2008. At the same time both learned Counsel for the appellants raised a preliminary objection that the plaintiff is not entitled to maintain the leave to appeal application, as the order dated 14.05.2008 is an order having the effect of a Judgment and that the application of the plaintiff seeking leave to appeal in terms of section 757 of the Civil Procedure Code is misconceived in law.

Thereafter having heard the submissions of learned Counsel for the parties, on the question as to whether the order dated 14.05.2008 is a Final order or an Interlocutory Order, the Provincial High Court had delivered its order dated 21.11.2008 holding that the order dated 14.05.2008 was an interlocutory order and that in view of the test laid down by Sharvananda, J., (as he then was) in **Siriwardena v Air Ceylon Ltd.** (supra), the order of the learned Additional District Judge was not an order having the effect of a Final order. Accordingly the application was fixed for support for 24.03.2009 (Z).

The Provincial High Court of Civil Appeal, on its order dated 24.03.2009 had held that,

1. the impugned order in the present case is not in a special proceeding;

2. it is an order made in terms of section 46 of the Civil Procedure Code;

3. the rights of the parties have not yet been considered and therefore the rights of the parties have not yet been determined;

4. learned Additional District Judge had rejected the Plaint under section 46(2) of the Civil Procedure Code;

5. under section 46(2) of the Civil Procedure Code, the plaintiff is not precluded from presenting a fresh Plaint in respect of the same cause of action; and

6. in view of the test laid down by Sharvananda, J., (as he then was) in **Siriwardena v Air Ceylon Ltd.** (supra) the order of the learned Additional District Judge is not an order having the effect of a final order.

Being aggrieved by the said order of 21.11.2008 of the Provincial High Court, the appellants sought leave to appeal from the Supreme Court.

The main contention of the learned President's Counsel for the appellants was that the order of the learned Additional District Judge dated 14.05.2008 is an order having the effect of a Final Judgment in terms of sections 754(1) and 754(5) of the Civil Procedure Code and therefore since the plaintiff's action has been dismissed, he could only make a final appeal and not a leave to appeal application. In support of this contention it was submitted that there can only be one judgment in a case and the other orders made would therefore be incidental orders. It was also submitted that the phraseology used in section 754(5) of the Civil Procedure Code stating that 'order having the effect of a Final Judgment' is only applicable in cases, where no judgments are given and that those are cases, which have been instituted under summary procedure. Accordingly the contention was that the term 'judgment' would mean judgments and decrees entered in terms of section 217 of the Civil Procedure code and orders having the effect of a Final judgment in terms of sections 387 and 388 of the Civil Procedure Code. Accordingly it was contended that a final appeal is only possible against a judgment (decree) entered in terms of section 184 read with section 217 of the Civil Procedure Code and final orders in terms of sections 387 and 388 of the Civil Procedure Code. The contention put forward therefore by the learned President's Counsel for the appellants was that as there could only be one judgment in a case, the definition of the decision of the Judge could be based on the procedure of an action. Accordingly it was contended that if the procedure is regular, then the decision given could be a judgment and when the procedure followed is summary, such a decision should be regarded as an order of Court.

Chapter LVIII of the Civil Procedure Code deals with Appeals and Revisions and section 753 to section 760 are contained in this Chapter. Section 754 refers to the modes of preferring appeals and the relevant sub-sections of section 754 are as follows:

> "754(1) Any person who shall be dissatisfied with any judgment, pronounced by any original court in any civil action, proceeding or matter to which he is a party may prefer an appeal to the Court of Appeal against such judgment for any error in fact or in law.
>
> (2) Any person who shall be dissatisfied with any order made by any original court in the course of any civil action, proceeding or matter to which he is, or seeks to be a party, may prefer an appeal to the Court of Appeal against such order for the correction of any error in fact or in law, with the leave of the Court of Appeal first had and obtained.
>
> (3) . . . .
>
> (4) . . . .
>
> (5) Notwithstanding anything to the contrary in this Ordinance, for the purposes of this Chapter –
>
> "Judgment" means any judgment or order having the effect of a final judgment made by any civil court; and

> "order" means the final expression of any decision in any civil action, proceeding or matter, which is not a judgment."

Sections 754(1) and 754(2) of the Civil Procedure Code defines the effect of a judgment and an order pronounced by any original Court. Whilst section 754(1) refers to any person, who is dissatisfied with any judgment pronounced by any original Court, section 754(2) refers to a situation, where a person is dissatisfied with an order made by such an original Court. In the first instance such a person could prefer an appeal to the Court of Appeal against such a judgment, where if it is against an order, he could prefer an appeal to the Court of Appeal with the leave of the Court of Appeal first had and obtained. The difference enumerated in section 754 of the Civil Procedure Code thus is between a judgment and an order given by the original Court.

In terms of section 754(5) of the Civil Procedure Code a judgment would mean any judgment or order having the effect of a 'final judgment' made by any Civil Court and an order would mean the final expression of any decision in any civil action, proceeding or matter, which is not a judgment.

Although section 754(5) of the Civil Procedure Code had laid down the meaning of the judgment and order, it had not been easy to give a comprehensive definition of the term 'final judgment' (**Viravan Chetty v Ukka Banda** ((1924) 27 N.L.R. 65).

The question of the test that should be applied to decide as to whether an order has the effect of a final judgment was considered by the Supreme Court in **Siriwardena v Air Ceylon Ltd.** (supra) **and Ranjit v Kusumawathi and another** (supra).

In **Siriwardena v Air Ceylon Ltd.** (supra), the appellant had filed an application for leave to appeal from an Order of the District Judge made under section 189 of the Civil Procedure Code directing the amendment of a decision and the question was whether the order of the District Judge dated 10.05.1982 amending the judgment and the decision dated 13.03.1980, is a 'judgment' within the meaning of sections 754(1) and 754(5) of the Civil Procedure Code or

an 'order' within the meaning of section 754(2) and section 754(5) of the Civil Procedure Code. In his judgment Sharvananda, J. (as he then was) had referred to the decisions in **Salaman v Warner** ((1891) 1 Q.B. 734), **Bozson v Altrincham Urban District Council** ((1903) 1 K.B. 547), **Isaacs & Sons v Salbstein** ((1916) 2 K.B. 139), **Abdul Rahman and others v Cassim & Sons** (A.I.R. 1933 P.C. 58), **Settlement Officer v Vander Poorten** ((1942) 43 N.L.R. 436), **Fernando v Chittambaram Chettiar** ((1949) 49 N.L.R. 217), **Krishna Pershad Singh v Moti Chand** ((1913) 40 Cal. 635), **Usoof v The National Bank of India Ltd.** ((1958) 60 N.L.R. 381), **Subramaniam v Soysa** ((1923) 25 N.L.R. 344), **Onslow v Commissioners of Inland Revenue** ([1890] 25 Q.B.D. 465) and **Exparte Moore** ([1885] 14 Q.B.D. 627).

After an examination of the aforementioned decisions, Sharvananda, J., (as he then was) had held that for an 'order' to have the effect of a final judgment and to qualify to be a 'judgment' under section 754(5) of the Civil Procedure Code,

> "1. it must be an order finally disposing of the rights of the parties;
>
> 2. the order cannot be treated to be a final order if the suit or action is still left a live suit or action for the purpose of determining the rights and liabilities of the parties in the ordinary way;
>
> 3. the finality of the order must be determined in relation to the suit;
>
> 4. the mere fact that a cardinal point in the suit has been decided or even a vital and important issue determined in the case, is not enough to make an order, a final one."

The meaning of "Judgment' for the purpose of appeal was also examined by Dheeraratne, J., in **Ranjit v Kusumawathi and others** (supra).

In that decision attention was paid to examine the test to determine a 'final judgment or order' or an 'order' within the meaning of section 754(5) of the Civil Procedure code.

Justice Dheeraratne in **Ranjit v Kusumawathi** (supra) had examined several cases including those which were referred to by Sharvananda, J., (as he then was) in **Siriwardena v Air Ceylon Ltd.** (supra), (**Subramanium Chetty v Soysa** (supra), **Palaniappa Chetty v Mercantile Bank of India et.al.** ((1942) 43 N.L.R. 352), **Settlement Officers v Vander Pooten** (supra), **Fernando v Chittambaram Chettiar** ((1948) 49 N.L.R. 217), **Usoof v Nadarajah Chettiar** ((1957) 58 N.L.R. 436), **Usoof v The National Bank of India Ltd.** (supra), **Arlis Appuhamy et. al v Simon** ((1947) 48 N.L.R. 298), **Marikar v Dharmapala Unanse** ((1934) 36 N.L.R. 201), **Rasheed Ali v Mohamed Ali and others** ([1981] 1 Sri L.R. 262) and **Siriwardena v Air Ceylon Ltd.** (supra)), and had come to the conclusion that the determination whether an order in a civil proceeding is a judgment or an order having the effect of a final judgment has not been an easy task for Courts.

An analysis of the English cases, further strengthens the point that the question of determining the status of a judgment or an order had not only been difficult, but many judges in different jurisdictions for centuries had been saddled with the complexity of the problem in differentiating a judgment from an order having effect of a final judgment and an interlocutory order. For instance in **Salaman v Warner** ((1891) Q.B.D. 734) the question before Court was to decide as to whether an order dismissing an action made upon the hearing of a point of law raised by the pleadings before the trial, is a final order.

Considering the test that should be adopted to decide a 'final judgment or order' or an 'order' in terms of section 754(5) of the Civil Procedure Code, Justice Dheeraratne in **Ranjit v Kusumawathi and others** (supra) had referred to the two tests, which was referred to as the 'Order approach' and the 'application approach' by Sir John Donaldson MR., in **White v Brunton** ([1984] 2 All E.R. 606).

The order approach had been adopted in **Shubrook v Tufnell** ((1882) 9 Q.B.D. 621) whereas the application approach was adopted in **Salaman v Warner** (supra). Later in **Bozson v Altrincham Urban District Council** (supra), the Court had considered the question as to whether an order made in an action was final or interlocutory and reverted to the order approach. In deciding so, Lord Alverstone, C.J., stated thus:

> "It seems to me that the real test for determining this question ought to be this: Does the judgment or order, as made, finally dispose of the rights of the parties? If it does, then I think it ought to be treated as a final order: but if it does not, it is then, in my opinion, an interlocutory order."

The watershed in the long line of decisions, which considered the test to determine a 'final judgment or order' or an 'order', in my view, was the decision of Lord Denning, MR., in **Salter Rex and Co. v Ghosh** ([1971] 2 All ER 865). After considering the decisions in **Bozson** (supra), **Hunt v Allied Bakeries Ltd.** ([1956] 3 All E.R. 513) and **Salaman v Warner** (supra), Lord Denning, MR., had held that in determining whether an application is final or interlocutory, regard must be had to the nature of the application and not to the nature of the order, which the Court eventually makes and since an application for a new trial if granted would clearly be interlocutory and where it is refused it is still be interlocutory. Examining the question at issue, Lord Denning, MR, not only described the difficulties faced, but also pointed out the test to determine such issues. According to Lord Denning MR.,

> "There is a note in the Supreme Court Practice 1970 under RSC Ord. 59, r 4, from which it appears that different tests have been stated from time to time as to what is final and what is interlocutory. In **Standard Discount Co. v La Grange** and **Salaman v Warner**, Lord Esher MR said that the test was the nature of the application to the Court and not the nature of the order which the Court eventually made. But in **Bozson v Altrincham Urban District Council,** the Court said that the test was the nature of the order as made. Lord Alverstone C.J. said that the test is: 'Does the judgment or order, as made, finally

> dispose of the rights of the parties?' Lord Alverstone C.J. was right in logic but Lord Esher MR was right in experience. Lord Esher MR's test has always been applied in practice. For instance, an appeal from a judgment under RSC Ord. 14 (even apart from the new rule) has always been regarded as interlocutory and notice of appeal had to be lodged within 14 days. An appeal from an order striking out an action as being frivolous or vexatious, or as disclosing no reasonable cause of action, or dismissing it for want of prosecution – every such order is regarded as interlocutory: See **Hunt v Allied Bakeries Ltd.**, so I would apply Lord Esher MR's test to an order refusing a new trial. **I look to the application for a new trial and not to the order made. If the application for a new trial were granted, it would clearly be interlocutory. So equally when it is refused, it is interlocutory**. It was so held in an unreported case, **Anglo-Auto Finance (Commercial) Ltd. V Robert Dick**, and we should follow it today.
>
> **This question of 'final' or 'interlocutory' is so uncertain, that the only thing for practitioners to do is to look up the practice books and see what has been decided on the point. Most orders have now been the subject of decision. If a new case should arise, we must do the best we can with it. There is no other way**" (emphasis added).

In **Ranjit v Kusumawathi and others**, (supra), Dheearatne, J. specifically stated that, Sharvananda, J. (as he then was) in **Siriwardena v Air Ceylon** (supra) had followed the decision in **Bozson** (supra), which had clearly reverted to the order approach. Justice Dheeraratne, in **Ranjit v Kusumawathi and others** (supra) had carefully considered the decision of Lord Denning, MR., in **Salter Rex. and Co. v Gosh** (supra) and had applied the test stipulated by Lord Esher in **Standard Discount Co. v La Grange** ((1877) 3 CPD 67) and **Salaman v Warner** (supra), that is known as the nature of the application made to the Court (application approach) in deciding the question, which was at issue in that case.

Considering the two approaches, based on the order made by Court, and the application made to the Court, one cannot ignore the comment made by Lord Denning, MR., in **Salter Rex and Co.** (supra) that Lord Alverstone, who preferred the test based on the nature of the order as made (**Bozson v Altrinchem Urban District Council** (supra), although was correct in logic, the test applied by Lord Esher (**Standard Discount Co. v La Grange** (supra) and **Salaman v Warner** (supra)) is a test that had always been applied in practice.

It is to be borne in mind that both the words 'Judgment' and 'order' are defined in section 5 of the Civil Procedure Code. Section 5 begins by stating thus:

> "The following words and expressions in this Ordinance shall have the meanings hereby assigned to them, unless there is something in the subject or context repugnant thereto."

Section 754(5) of the Civil Procedure Code however is specific about the meaning that should be given to the words 'Judgment' and 'order' as it has clearly specified that,

> "Notwithstanding anything to the contrary in this Ordinance, for the purpose of this Chapter –
>
> 'Judgment' means any judgment or order having the effect of a final judgment made by any civil court;
>
> and
>
> 'order' means the final expression of any decision in any civil action, proceeding or matter, which is not a judgment."

It is therefore quite obvious that a final judgment or order should be interpreted for the purpose of Chapter LVIII of the Civil Procedure Code not according to the meaning given in section 5 of the Civil Procedure Code, but that of the definition given in section 754(5) of the Civil Procedure Code.

Considering the provisions contained in section 754(5) of the Civil Procedure Code, it is abundantly clear that a decision of an original civil Court could only take the form of a judgment or an order having the effect of a final judgment or of the form of an interlocutory order. It is also vital to be borne in mind that clear provision had been made in section 754(5) in defining a judgment and an order made by any civil Court to be applicable only to the Chapter in the Civil Procedure Code dealing with Appeals and Revisions. Accordingly in terms of section 754(5) there could be only a judgment, order having the effect of a final judgment and an order, which is not a judgment and therefore only an interlocutory order.

In these circumstances, it is abundantly clear that, in interpreting the words, Judgment and Order in reference to appeals and revisions, it would not be possible to refer to any other section or sections of Civil Procedure Code, other than section 754(5), and therefore an interpretation based on the procedure of an action cannot be considered for the said purpose.

Therefore to ascertain the nature of the decision made by a civil Court as to whether it is final or not, in keeping with the provisions of section 754(5) of the Civil Procedure Code, it would be necessary to follow the test defined by Lord Esher MR in **Standared Discount Co. v La Grange** (supra) and as stated in **Salaman v Warner** (supra) which reads as follows:

> "The question must depend on what would be the result of the decision of the Divisional Court, assuming it to be given in favour of either of the parties. If their decision, whichever way it is given, will, if it stands, finally dispose of the matter in dispute, I think that for the purposes of these rules it is final. On the other hand, if their decision, if given in one way, will finally dispose of the matter in dispute, but, if given in the other, will allow the action to go on, then I think it is not final, but interlocutory."

In **Salaman v Warner** (supra), Fry, L.J., also had expressed his views regarding an appropriate interpretation that had to be given to final and interlocutory decisions. Considering the difficulties that had been raised regarding the correct interpretation for final and interlocutory orders, it was stated that the attention must be given to the object of the distinction drawn in

the rules between interlocutory and final orders on the basis of the time for appealing. Fry, L.J. had accordingly stated thus:

> "I think that the true definition is this. I conceive that an order is "final" only where it is made upon an application or other proceeding which must, whether such application or other proceeding fail or succeed, determine the action. Conversely I think that an order is "interlocutory" where it cannot be affirmed that in either event the action will be determined."

Considering all the decisions referred to above, the aforesaid statement clearly has expressed the true meaning that could be given to a judgment and an order in terms of section 754(5) of the Civil Procedure Code.

The order made by the Additional District Judge on 14.05.2008, was in terms of section 46(2) of the Civil Procedure Code and it is not disputed that the rights of the parties were not considered by the District Court. In such circumstances it would not be probable to state that the said order made by the District Court had finally settled the litigation between the appellants and the plaintiff. Considering the circumstances of the appeals it is abundantly clear that at the time the said order was made by the District Court, the litigation among the parties had just begun as the plaintiff as a Trustee of the 'Puthiya Sri Kathiravelayuthan Swami Kovil' and its temporalities had instituted action before the District Court of Colombo, seeking *inter alia*,

1. the appointment of Receiver under section 671 of the Civil Procedure Code for the preservation and maintenance of the Trust property;

2. the removal of the 2nd to 4th appellants and the 1st respondent as trustees of the Trust;

3. the 2nd to 4th appellants and the 1st respondent to account for Rs. 34,000,000/- of Trust money which had been illegally and immorally appropriated by the 2nd to 4th appellants and the 1st respondent for their personal use.

It must also be borne in mind that the District Court had accepted the Plaint in terms of section 46 of the Civil Procedure Code and had issued summons on the 2nd to 4th appellants and the 1st respondent returnable on 02.01.2008. The 2nd and 3rd appellants and the 1st respondent had filed their proxy on 02.01.2008 and had sought time to file their objections and Answer and the 4th appellant had not appeared before Court as summons had not been served on him. On 08.02.2008 without notice to the plaintiff, an ex-parte application had been made on behalf of the 2nd and 3rd appellants by way of a motion dated 07.02.2008 stating that the plaintiff's action was not maintainable and Court had issued notice on the plaintiff returnable on 13.02.2008. On 13.02.2008 learned Counsel for the plaintiff had made submissions stating that the application of the 2nd and 3rd appellants was misconceived in law and therefore the order made by Court was *per incuriam*. The District Court had directed the parties to file written submissions. Thereafter learned Additional District Judge had delivered his order dated 14.05.2008 rejecting the Plaint.

Considering all the abovementioned it cannot be said that the decision given by the District Court could have finally disposed the matter in litigation. In **Ranjit v Kusumawathi** (supra), Dheeraratne, J. after considering several decisions referred to earlier and the facts of that appeal had stated thus:

> "The order appealed from is an order made against the appellant at the first hurdle. Can one say that the order made on the application of the 4th defendant is one such that whichever way the order was given, it would have finally determined the litigation? Far from that, even if the order was given in favour of the appellant, he has to face the second hurdle, namely the trial to vindicate his claim."

Considering the decision given by Dheeraratne, J., in **Ranjit v Kusumawathi** (supra) it is abundantly clear that the order dated 14.05.2008 is not a final order having the effect of a judgment within the meaning of sub-sections 754(1) and 754(5) of the Civil Procedure Code, but is only an interlocutory order.

For the reasons aforesaid, both appeals (S.C. (Appeal) No. 101^{A}/2009 and S.C. (Appeal) No. 101^{B}/2009), are dismissed and the judgment of the High Court dated 21.11.2008 is affirmed.

I make no order as to costs.

Judge of the Supreme Court

J.A.N. de Silva, CJ.

I agree.

Chief Justice

N.G. Amaratunga, J.

I agree.

Judge of the Supreme Court

Saleem Marsoof, PC., J.

I agree.

Judge of the Supreme Court

P.A. Ratnayake, PC., J.

I agree.

Judge of the Supreme Court