

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

In the matter of an Appeal from  
the High Court of Civil Appeal  
holden in Avissawella dated  
29.12.2008.

Pattinige Abayadasa,  
95/9, Godagamawatte,  
Godagama.

Plaintiff

Vs

SC APPEAL No. 176/ 2010

SC.HC.( CA) LA No. 21/2008

WP/HCCA/AV/13/2008 (LA)

D.C. HOMAGAMA No. 6342/ D

Welisarage Chandrawathie Perera,  
No. 476/4/A, Arawwala,  
Pannipitiya.

Defendant

AND BETWEEN

Welisarage Chandrawathie Perera,  
No. 476/4/A, Arawwala,  
Pannipitiya

Defendant Petitioner

Vs

Pattinige Abayadasa,  
95/9, Godagamawatte,  
Godagama.

Plaintiff Respondent

AND BETWEEN

Pattinige Abayadasa,  
95/9, Godagamawatte,  
Godagama.

Plaintiff Respondent Appellant

Vs

Welisarage Chandrawathie Perera,  
No. 476/4/A, Arawwala,  
Pannipitiya

Defendant Petitioner Respondent

AND NOW BETWEEN

Welisarage Chandrawathie Perera,  
No. 476/4/A, Arawwala,  
Pannipitiya

Defendant Petitioner Respondent  
Petitioner

Vs

Pattinige Abayadasa,  
95/9, Godagamawatte,  
Godagama.

Plaintiff Respondent Appellant  
Respondent

**BEFORE : S.EVA WANASUNDERA PCJ.  
SISIRA J. DE ABREW J.  
UPALY ABEYRATHNE J.**

**COUNSEL** : Manohara de Silva, PC with Rajitha Hettiarachchi for the Defendant Petitioner  
Respondent Petitioner  
Ranjan Suwandaratne for the Plaintiff Respondent Appellant Respondent

**ARGUED ON** : 15. 02. 2016.

**DECIDED ON** : 30. 03 .2016.

**S. EVA WANASUNDERA PCJ.**

In this matter this court had granted leave to appeal on the 13<sup>th</sup> of December, 2010, on the questions of law set out in paragraph 13 of the amended Petition dated 12<sup>th</sup> February, 2010. The questions of law are nine in number, running from sub paragraphs (a) to (i) but I find that all the questions have been framed in such a manner that all of them challenge the quantum of alimony pendente lite granted by the Civil Appellate High Court Judge when he reduced the amount of Rs 7500/- given by the District Judge to Rs. 2600/- per month.

The facts in summary are as follows: The Plaintiff Respondent Appellant Respondent (hereinafter referred to as Plaintiff) filed action to get a divorce from his wife , the Defendant Petitioner Respondent Petitioner (hereinafter referred to as the Defendant) by plaint dated 18.06.2002. They had two children by this marriage, born on 06.07.1980 and 27.05.1986. Both of them were daughters. After the case was filed the elder daughter went to live with the father and the younger daughter lived separately with the mother. At the maintenance case the Plaintiff was ordered to pay Rs. 2500/- for this younger child who lived with the Defendant. In the divorce case, the Defendant asked for alimony pendent lite and an inquiry was held. Both the Plaintiff and the Defendant as well as one friend of theirs also had given evidence at the inquiry. Having heard the evidence , having seen the demeanour of the witnesses and having considered the documents produced in evidence, the District Judge ordered that the Plaintiff should pay Rs. 7500/- per month as alimony pendente lite to the Defendant. The Plaintiff appealed against that order to the Civil Appellate High Court and the High Court reduced the amount to Rs. 2600/- taking the basis as Rs. 13000/- to be the monthly income of the Plaintiff.

I observe that the evidence before the District Court was lengthy. The Defendant, wife had produced documents to prove that the Plaintiff was the owner of the house they were living in and that he had sold that house to a known female and he is also living there which he had admitted. He was a mathematics teacher and had retired from government service and was getting a pension. He was the owner of a 'communication center'. He ran a business of taking people on pilgrimages to India. The advertisements regarding that business was also produced at the inquiry. He also had a shop which was given on rent. None of these was denied by the

Plaintiff before court but he had continued to state that the business was run at a loss, which I feel had no basis. He did not place before court the accounts to show that it is run at a loss. Even the communication center, he said, was run at a loss. He did not place any evidence as to how it was run at a loss. The District Judge had considered all these matters and fixed the alimony pendente lite at Rs. 7500/- per month even though the Defendant had asked for much more i. e. double the amount granted by courts, in her affidavit which was placed before court at the inception of the pleadings before court. The District Judge has given this amount on 05.02.2008 in a well analyzed order. She had not even taken the money earned through pilgrimage trips to India organized by the Plaintiff due to the reason that the income from that was not proved. I am of the opinion that the order of the District Judge was correct.

Going through the order given by the High Court, I find that the reasoning behind the reduction has no basis. The analysis is wrong. In this instance I hold that the District Court which heard the evidence and saw the cross examination etc. has judged the situation, properly and the High Court having changed the amount without giving good reasons for the same has acted wrongly.

I set aside the order of the High Court dated 29.12.2008 and direct the Plaintiff Respondent Appellant Respondent to pay a sum of Rs. 7500/- per month as originally ordered by the learned District Judge of Homagama by his order dated 05.02.2008.

The Appeal is allowed. I order no costs.

Judge of the Supreme Court

**SISIRA J. DE ABREW J,**

I agree.

Judge of the Supreme Court

**UPALY ABEYRATHNE J**

I agree.

Judge of the Supreme Court

