

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

In the matter of an appeal made in terms of  
Section 5 (C) of the High Court of the Provinces  
(Special Provisions) Act No. 19 of 1990 as  
amended by the High Court of the Provinces  
(Special Provisions) (Amendment) Act No. 54 of  
2006.

**SC / APPEAL / 67 / 2014**

**SC / HCCA / LA / 167 / 2013**

**EP / HCCA / Trinco / 146 / 2010**

**DC / Trinco / 2170 / 2007 / M**

**Hapan Pedige Abetunga,**

5, L.B. 01, Somapura,

Seruwila.

**PLAINTIFF**

**-Vs-**

**Central Finance Company PLC,**

54, King Street,

Kandy.

**DEFENDANT**

**AND THEN BETWEEN**

**Central Finance Company PLC,**

54, King Street,

Kandy.

**DEFENDANT – APPELLANT**

**-Vs-**

**Hapan Pedige Abetunga,**

5, L.B. 01, Somapura,

Seruwila.

**PLAINTIFF – RESPONDENT**

**AND NOW BETWEEN**

**Hapan Pedige Abetunga,**

5, L.B. 01, Somapura,

Seruwila.

**PLAINTIFF – RESPONDENT -  
APPELLANT**

**-Vs-**

**Central Finance Company PLC,**  
54, King Street,  
Kandy.

**DEFENDANT – APPELLANT –**  
**RESPONDENT**

**Before:** A.H.M.D. Nawaz, J.  
Mahinda Samayawardhena, J. &  
K. Priyantha Fernando, J.

**Counsel:** Shantha Karunadhara for the Plaintiff – Respondent – Appellant.

Kamran Aziz with Samadhi Mahagodage for the Defendant – Appellant –  
Respondent.

**Argued on:** 18.11.2024

**Decided on:** 29.04.2026

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

1. This appeal arises from the judgement of the High Court of Civil Appeal, Trincomalee, dated 20 March 2013. The High Court allowed the appeal of the Defendant – Appellant – Respondent, Central Finance Company PLC (hereinafter referred to as "the Defendant"), and set aside the order of the learned District Judge of Trincomalee dated 25 October 2010. The Plaintiff – Respondent – Appellant (hereinafter referred to as "the Plaintiff") now seeks to reverse the said judgement of the High Court and restore the order of the learned District Judge.

2. The quintessential question before this Court is whether the affidavit of a registered Attorney-at-Law, filed in support of a petition to set aside an *ex parte* judgement and decree under Section 86 (2) of the Civil Procedure Code (hereinafter the "CPC"), constitutes a valid affidavit in terms of Section 86 (3) of the CPC, in circumstances where the facts relevant to the default of appearance are peculiarly within the knowledge of that Attorney-at-Law and not of the Defendant Company. The argument of the learned counsel Mr. Shantha Karunadhara for the Plaintiff was that since the affidavit in support of the petition was not from the Defendant Company, there was no valid supporting affidavit and thus, the decision of the learned District Judge dismissing the application to purge default was right and must be restored.
3. Let me unpack the facts which are not all that complex. The Plaintiff instituted action against the Defendant in the District Court of Trincomalee, by a plaint dated 17 December 2007, praying for judgement in a sum of Rs. 1,500,000/-. The summons returnable date was fixed for 31 January 2008.
4. On 31 January 2008, the Defendant was absent and unrepresented. The learned District Judge thereupon fixed the case for an *ex parte* trial. An application by the Defendant to set aside this order, made by a petition dated 31 March 2008, was subsequently dismissed for want of appearance on 24 July 2008. The learned District Judge of Trincomalee, in dismissing the application of the Defendant to vacate the order for an *ex parte* trial observed that the previous order for the *ex parte* trial would be given effect to and that the *ex parte* trial would commence on 29 July 2008.
5. Accordingly, the *ex parte* trial commenced on 29 July 2008 and concluded on 5 June 2009. The Plaintiff, his brother, two mechanics, a clerk of the Magistrate's Court (Kantale) and a police officer testified for the Plaintiff. The learned District Judge of Trincomalee delivered judgement in favour of the Plaintiff on 17

December 2009 ordering the Defendant to pay a sum of Rs. 557,000/- to the Plaintiff. The decree was served on the Defendant on 17 December 2009.

6. Within fourteen days of service of the decree, namely on 23 December 2009, the Defendant filed a petition and affidavit in terms of Section 86 (2) of the CPC, seeking to set aside the *ex parte* judgement and decree. The petition dated 23 December 2009 was that of the Defendant Company but the supporting affidavit was sworn to by Mr. R.N.Varathan, the registered Attorney-at-Law of the Defendant (hereinafter "Mr. Varathan" or "the registered Attorney"). The Plaintiff objected to the affidavit filed by Mr. Varathan contending that the supporting affidavit must have come from an officer of the Defendant Company. It is this point that has given rise to this appeal all the way from the courts *a quo* holden in Trincomalee.
7. In his affidavit, Mr. Varathan set out the circumstances which led to the Defendant's absence and non-representation on both 31 January 2008 - the date on which the case had been first fixed for trial and 24 July 2008 - the day on which the petition of the Defendant to vacate the fixing of the case for an *ex parte* trial was dismissed. It has to be pointed out that the learned District Judge of Trincomalee fixed this matter for an *ex parte* trial because on the summons returnable date the Defendant was absent and unrepresented.
8. Mr. Varathan averred in his affidavit as to why he was not present in Court on 31 January 2008. I will set out briefly what Mr. Varathan stated as to the circumstances that led to his absence from Court.
9. On or about 29 January 2008, one Chaminda Jayawardena, the recoveries officer of the Defendant Company, had forwarded two copies of proxies by courier through the Manager of the Defendant's Kantale Branch, giving authority to Mr. Varathan to appear in the District Court in Case No. 2170/07/M. The said proxies were delivered to Mr. Varathan on 30 January 2008 at 5.30 pm. On 31 January 2008,

at approximately 9.35 am, Mr. Varathan left his office to proceed to Court. On his way, his vehicle was stopped by a police constable at the post office junction, as part of a cordon and search operation. Mr. Varathan waited approximately fifteen minutes, informed the police constable that he was an officer of Court and was required to appear before the District Court, but was unable to proceed as the police constable had received specific orders from higher authorities to stop and search all persons. The cordon and search operation concluded at approximately 10.25 am, whereupon Mr. Varathan proceeded to the District Court.

10. Before I turn to the formal objection that has given rise to this appeal, there is an aspect of the proceedings in the Court below that calls for observation, particularly in the light of a significant legislative development that has since come to pass. That aspect concerns what Mr. Varathan did in the immediate aftermath of the case being fixed for an *ex parte* trial on 31 January 2008 – a matter that has not been narrated in the judgements of the Courts below, but which this Court considers salutary to record and remark upon.
11. Upon learning that the learned District Judge of Trincomalee had fixed the case for an *ex parte* trial, Mr. Varathan did not remain passive. He made personal efforts to reach out to the counsel for the Plaintiff at Kantale in order to secure the Plaintiff's consent to set aside the order fixing the case for an *ex parte* trial and to restore the matter as an *inter partes* proceeding. This course of action was available to him under Section 86 (2A) of the CPC, which provides:

*“At any time prior to the entering of judgement against a defendant for default, the Court may, if the Plaintiff consents, but not otherwise, set aside any order made on the basis of the default of the defendant and permit him to proceed with his defence as from the stage of default upon such terms as to costs or otherwise as the Court shall appear fit.”*

12. Section 86 (2A) is, by its very terms, a provision that depends entirely upon the consent of the Plaintiff. Where that consent is withheld, the provision affords the Defendant no relief whatsoever. The door that Section 86 (2A) opens can only be unlocked from the Plaintiff's side. Mr. Varathan's endeavours to secure that consent met with no success. The Plaintiff's counsel declined to consent. The case therefore remained fixed for an *ex parte* trial.

13. Undeterred, and confronted with the finality that the Plaintiff's refusal imposed under the law as it then stood, Mr. Varathan took a further step. He filed an application in the District Court seeking to be permitted to enter the case and to have the matter restored as an *inter partes* trial - and he did so notwithstanding the Plaintiff's refusal of consent. In short, he attempted to invoke a procedure that, at the time of his application in 2008, had no statutory foundation whatsoever under the CPC. The CPC, as it then stood, provided no mechanism by which a Defendant, acting unilaterally and without the Plaintiff's consent, could apply to set aside an order fixing the case for an *ex parte* trial. The only recourse then available was either the consent route under Section 86 (2A), which had failed, or an application under Section 86 (2) after service of the decree. A standalone application to vacate an *ex parte* fixing order, made by the Defendant alone and against the Plaintiff's will, was a procedural step that the law had not yet contemplated.

14. Whatever the characterisation of that application in strict procedural terms, what is of significance is that the learned District Judge of Trincomalee entertained it - apparently without adverting to the fact that the CPC afforded no basis for such an application. The application was subsequently dismissed for want of appearance, and the *ex parte* trial followed its course. But the very fact that a learned District Judge was moved to entertain such an application reveals that the gap in the law was, at some intuitive level, perceived and felt by all concerned

- the practitioner who filed it and the Court that received it alike. Both were acting, it might be said, in advance of the legislature.

15. It is now both timely and appropriate to observe that the legislature has since filled that very gap. By the Civil Procedure Code (Amendment) Act, No. 14 of 2024, Section 86 (2) of the CPC has been repealed and replaced by the following:

*“86 (2) Where,*

- a) at any time after the case is fixed for ex parte trial against the defendant for default; or*
- b) any time after the decree is entered against him for default but without the service of the decree on him; or*
- c) within fourteen days of the service of the decree entered against him for default,*

*the Defendant, with notice to the Plaintiff makes application to and thereafter satisfies Court, that he did not receive the summons or that he had reasonable grounds for such default, the Court shall set aside the order fixing the case for ex parte trial, the judgement and decree as the case may be and permit the Defendant to proceed with his defence as from the stage of default upon such terms as to costs or otherwise as to the Court shall deem fit.”*

16. The significance of this amendment, for the purposes of the present observation, lies in Section 86 (2) (a). For the first time in the legislative history of the CPC, a defendant is now expressly empowered to apply to set aside the order fixing the case for an *ex parte* trial - unilaterally, on notice to the Plaintiff, and without requiring the Plaintiff's consent. This is precisely the procedure that Mr. Varathan attempted to invoke in 2008, without any statutory hook on which to hang it. The law has now accommodated what was then, at best, a counsel's instinct and, at

worst, a procedural *non liquet*. The 2024 amendment may be said to have vindicated both the desperation of the practitioner and the impulse of the Court that received his application.

17. This Court records this aspect of the matter not to cast any criticism upon the learned District Judge who entertained the application in 2008, but to draw attention to the salutary progression of the law in this domain. The amendment of 2024 represents a considered legislative response to a lacuna that practitioners and Courts had long encountered in the field of *ex parte* proceedings. The new provision recognises that a Defendant who is shut out of his own case, through no fault of his own, ought not to be required to obtain the very concurrence of his adversary in order to seek re-entry into the proceedings. The law has moved towards greater procedural justice, and this Court is compelled to record that movement with approval.

18. Turning to the affidavit of Mr. Varathan dated 23 December 2009 *post* service of the decree, he offered his explanation as to why he could not file his proxy on the summons returnable date namely 31 January 2008. This was the date when the case was fixed for an *ex parte* trial on account of the default. It has to be recalled that Mr. Varathan's affidavit setting out the relevant circumstances was in support of the petition of the Defendant to set aside the *ex parte* decree and judgement that had been served on the Defendant.

19. Before the District Court could go into the reasonableness or otherwise of Mr. Varathan's grounds, the Defendant objected to the affidavit. The objection was upheld by the learned District Judge but overruled subsequently by the Judges of the High Court of Civil Appeal.

20. As I said before, the pith and substance of the objections raised by the Plaintiff goes as follows; the affidavit filed with the petition was contrary to law on the ground that it was not the affidavit of the Defendant Company itself. Since the affidavit was not from an officer of the Defendant Company, the application to purge default must be dismissed *in limine*.
21. It is significant that the Plaintiff did not contest the veracity of the averments contained in Mr. Varathan's affidavit as regards the circumstances of the default on 31 January 2008.
22. Upon the parties tendering written submissions, the learned District Judge delivered his order dated 25 October 2010 dismissing the Defendant's application on the preliminary objection, without proceeding to conduct an inquiry in terms of Section 86 (2) of the CPC. The learned District Judge held, in effect, that no proper application had been made under Sections 86 (2) and 86 (3) of the CPC because there was no valid affidavit in support, since the affidavit had been filed by Mr. Varathan and not by the Defendant Company.
23. The Defendant preferred his appeal to the High Court of Civil Appeal, Trincomalee. By its judgement dated 20 March 2013, the High Court allowed the appeal, set aside the order of the District Judge, and directed the learned District Judge to proceed with an inquiry under Section 86 (2) of the CPC with the petition supported by the affidavit of Mr. Varathan dated 23 December 2009.
24. It is against this judgement of the High Court that the Plaintiff has preferred this appeal to the Supreme Court.

25. The statutory provisions central to this appeal are Sections 86 (2), 86 (3), and 181 of the Civil Procedure Code, together with Sections 59 and 60 of the Evidence Ordinance and Section 183A (b) of the Civil Procedure Code.

Section 86 (2) of the CPC provides as follows;

*"Where, within fourteen days of the service of the decree entered against him for default, the Defendant with notice to the Plaintiff makes application to and thereafter satisfies Court, that he had reasonable grounds for such default, the Court shall set aside the judgement and decree and permit the Defendant to proceed with his defence as from the stage of default upon such terms as to costs or otherwise as to the Court shall appear proper."*

Section 86 (3) of the CPC provides:

*"Every application under this section shall be made by petition supported by affidavit."*

Section 181 of the CPC provides:

*"Affidavits shall be confined to the statement of such facts as the declarant is able of his own knowledge and observation to testify to, except on interlocutory applications in which statement of his belief may be admitted, provided that reasonable grounds for such belief be set forth in the affidavit."*

26. Section 183A (b) of the CPC provides that where any person is required under the CPC or any other law in force to make an affidavit, and the action is brought by or against a corporation, board, public body, or Company, then any secretary,

director, or other principal officer of such corporation, board, public body, or Company may make the affidavit. The *proviso* to that section specifies that the person who makes the affidavit instead of the party to the action must be a person having personal knowledge of the facts of the cause of action, and must in his affidavit swear or affirm that he deposes from his own personal knowledge of the matter therein contained.

27. The following questions arise for determination in this appeal;

- i. *Whether Section 86 (3) of the CPC requires that the supporting affidavit must necessarily be that of the Defendant Company itself, in the sense of being sworn by a Company officer, director, or secretary;*
- ii. *Whether the affidavit of a registered Attorney-at-Law, sworn from his own personal knowledge of the circumstances that prevented his appearance in Court on the relevant date, constitutes a valid affidavit in support of a petition under Section 86 (2) read with Section 86 (3) of the CPC;*
- iii. *Whether the learned District Judge erred in law in dismissing the application on a preliminary objection without proceeding to an inquiry under Section 86(2) of the CPC.*

### **The Scope and Construction of Section 86(3)**

28. The starting point is the plain language of Section 86 (3), which simply requires that every application under that section "*shall be made by petition supported by affidavit.*" The provision is frugal in its terms. It does not specify that the affidavit must be that of the Defendant alone. It does not limit the universe of competent deponents to Company officers, directors, or secretaries. The legislature, in

enacting Section 86 (3), confined its mandatory requirement to two things: a petition, and an affidavit in support of that petition.

29. This Court must give the provision its plain and natural meaning. Where the legislature has chosen not to restrict the identity of the deponent, Courts should not engraft such a restriction by construction. To interpret Section 86 (3) as requiring that only the Defendant or its officers may swear the supporting affidavit would be to read words into the statute that are simply not there. Such an interpretation would be impermissible as a matter of statutory construction.

30. It is instructive to compare Section 86 (3) with other provisions of the CPC where the legislature has explicitly identified who must swear the affidavit. Section 662 of the CPC, which governs applications for injunctions, expressly requires "*an affidavit of the applicant or some other person having knowledge of the facts.*" Section 705 (1) requires the Plaintiff to "*make affidavit that the sum which he claims is justly due to him from the Defendant.*" The contrast is telling. Where the legislature intended to specify the deponent, it did so in express terms. The silence of Section 86 (3) on this point is therefore deliberate and significant, not accidental. This Court declines to supply a restriction that the legislature itself chose not to impose.

### **The Requirement of Personal Knowledge under Section 181 of the CPC**

31. The requirement that an affidavit be confined to matters within the deponent's own knowledge and observation, as required by Section 181 of the CPC, read with Section 60 of the Evidence Ordinance, is not in dispute. What is in dispute is the identity of the person who possessed that personal knowledge in the circumstances of this case.

32. The facts relevant to the default in this case are the circumstances that prevented the Defendant's registered Attorney from appearing in the District Court of

Trincomalee on 31 January 2008. It was Mr. Varathan himself who was on his way to Court. It was Mr. Varathan himself who was stopped at the post office junction by the police cordon and search operation. It was Mr. Varathan himself who waited, remonstrated with the constable, and was unable to proceed until approximately 10.25 am. These are facts peculiarly within Mr. Varathan's own knowledge and observation. They are not facts within the knowledge of the directors or secretaries of the Defendant Company, who were not present at the scene.

33. In this context, any affidavit sworn by a director, secretary, or officer of the Defendant Company would have been, to the extent it purported to depose to what occurred at the post office junction, Trincomalee on the morning of 31 January 2008, precisely the hearsay evidence that Section 181 prohibits. As was observed in *Kanagasabai v. Kirupamoorthi*<sup>1</sup>, when affidavits relate to matters not within the declarant's own knowledge because they relate to what took place at a time when he was not there, they violate the rule governing affidavits in Section 181. A Company director swearing to the events of 31 January 2008 would have been doing exactly that, namely deposing to matters of which he had no personal knowledge, which is the very mischief Section 181 is designed to prevent.

34. It follows, as a matter of both logic and law, that in circumstances such as those obtaining in this case, the registered Attorney who was present and personally experienced the impediment to his appearance is the only person who can swear a valid affidavit in terms of Section 181 as to the facts relevant to the default. This is not a technical nicety. It goes to the heart of the evidentiary purpose of the affidavit requirement, which is to place before the Court the best available evidence of the circumstances of the default. Mr. Varathan was that best evidence.

35. The Plaintiff has contended that Section 183A (b) of the CPC provides an exhaustive list of persons who may file an affidavit in the place of a corporate

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<sup>1</sup> 62 N.L.R. 54

Defendant, limited to secretary, director, or other principal officer, and that a registered Attorney-at-Law falls outside that category.

36. This Court would not accept that contention. Section 183A (b) is a facilitative provision, not a restrictive one. It enables specified officers of a Company to make affidavits on behalf of the Company in place of the corporate entity. It does not purport to exclude all other persons from ever swearing affidavits in proceedings to which a Company is a party. Such an interpretation would lead to absurd results, as it would preclude a witness who is not an officer of the Company from ever swearing any supporting affidavit in any application, which is plainly not the legislative intent.

37. It is trite law that a registered Attorney-at-Law, once duly appointed and holding a proxy on behalf of a Company, becomes the lawful representative of that Company for the purposes of the proceedings in question. As the Company's registered Attorney before the District Court of Trincomalee, his role in the case was not that of an external stranger to the action. He was the very person authorised to appear and act on behalf of the Defendant. The proxy executed by the Defendant and forwarded to Mr. Varathan was the formal instrument of that representation.

38. Moreover, and more fundamentally, it is not merely because of his status as registered Attorney that Mr. Varathan was the appropriate deponent. It is because he was the person who personally experienced the circumstances of the default. The question is not one of title or designation. The question is one of personal knowledge. Mr. Kamran Aziz, the learned counsel for the Defendant drew the attention of this Court to the case of *Chandrawathie v. Dharmaratne and Another*<sup>2</sup> - a case that the learned High Court Judge himself has alluded to.

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<sup>2</sup> (2002) 1 Sri.L.R. 43

39. In this case there were two affidavits - one from the party to the case and the other from the registered Attorney. The affidavit of the party was rejected while the affidavit of the Attorney-at-Law was relied upon. This Court observed that the affidavit of a party may be found wanting or unacceptable, but the affidavit of a registered Attorney who possesses personal knowledge of the facts relevant to the default should be considered sufficient to explain those facts. That principle applies with even greater force to the present case, where there is no defect in the affidavit of the registered Attorney-at-Law. There was simply no affidavit of the Defendant at all, because the Company itself could not have personal knowledge of what transpired on 31 January 2008 in respect of its registered Attorney's journey to Court.

40. Let me expatiate on the facts of *Chandrawathie v. Dharmaratne and Another* (supra) - an analogous situation as in this case. In that case, the affidavit of the party was found to be defective because the deponent, who was a non-Christian, had failed to specify in the affidavit that he was affirming rather than swearing, thereby denying the document its essential characteristics as an affidavit. Despite that defect in the party's own affidavit, this Court held that the affidavit of the registered Attorney should have been considered sufficient to explain the facts relevant to the default, since the wrong date in Court had been taken down by the registered Attorney and the party was not in Court on that day and therefore could not testify to the relevant matters of his knowledge and observations as required by Section 181.

41. The principle extracted from that judgement is clear and binding: where the facts relevant to the default are within the knowledge of the registered Attorney and not of the party, the affidavit of the registered Attorney is sufficient to explain those facts and to support the petition. In the present case, the facts relevant to the default are the circumstances on the morning of 31 January 2008, which are within the knowledge of Mr. Varathan alone. The learned District Judge was

therefore obliged to treat Mr. Varathan's affidavit as sufficient and to proceed to an inquiry under Section 86 (2) of the CPC.

42. The learned District Judge, in his Order dated 25 October 2010, took the position that there was no proper application before the Court because there was no valid affidavit, and dismissed the Defendant's petition on the preliminary objection without proceeding to an inquiry under Section 86 (2) of the CPC.
43. In my view, that decision was erroneous in law for the foregoing reasons. First, as discussed above, Section 86 (3) does not specify that the supporting affidavit must be that of the Defendant Company. The learned District Judge imported a restriction into the provision that the legislature chose not to include.
44. Second, the learned District Judge failed to appreciate that Section 181 of the CPC, properly applied to the facts of this case, actually supports the affidavit of Mr. Varathan. It was Mr. Varathan who had personal knowledge of the events of 31 January 2008. A Company officer would have had no such knowledge. Insisting on an affidavit from the Company itself would have produced precisely the hearsay evidence that Section 181 prohibits.
45. Third, the learned District Judge failed to consider the binding authority of this Court in *Chandrawathie v. Dharmaratne and Another* (supra), which directly governs the situation where the registered Attorney's affidavit is the appropriate vehicle for explaining the facts of the default.
46. Fourth, the Plaintiff's preliminary objection did not dispute the truth or accuracy of a single averment in Mr. Varathan's affidavit. The objection was purely technical in nature. The High Court of Civil Appeal correctly observed, and I recall the timeless dictum of Chief Justice Sir Sydney Abrahams "*This is a Court of Justice, it is not an academy of law*" - *Vellupillai v. The Chairman, Urban*

*District Council*<sup>3</sup>. The learned District Judge's approach elevated a technical objection of form over the substantive right of the Defendant to have its explanation for the default heard and adjudicated on its merits.

47. Fifth, and of particular concern, Section 86 (2) of the CPC expressly grants a Defendant an avenue to set aside an *ex parte* judgement and decree within fourteen days of service, upon satisfying the Court that there were reasonable grounds for the default. This right is one of fundamental procedural importance. The object of Section 86 (2) is to ensure that a Defendant who was absent through no fault of its own, or through circumstances beyond its control, is not permanently shut out from defending itself. To deny the Defendant even a hearing on its explanation, on a purely technical objection to the form of the supporting affidavit, when the Defendant had complied with the substance of the requirement by placing before the Court the evidence of the only person who could speak to the circumstances of the default, was contrary to law and contrary to the principles of natural justice and fairness.

48. The High Court of Civil Appeal set aside the Order of the District Judge and directed that an inquiry under Section 86 (2) of the CPC be held. The reasoning of the learned High Court Judges were sound. The High Court correctly identified that Section 86 (3) does not restrict the deponent of the supporting affidavit to the Defendant alone. The High Court correctly concluded that the District Judge erred in law by upholding the preliminary objection and dismissing the application without inquiry.

49. This Court affirms and endorses the reasoning and the conclusion of the High Court in its entirety. In the circumstances, this Court holds as follows;

*a) Section 86 (3) of the Civil Procedure CPC does not require that the affidavit in support of a petition to set aside an ex parte judgement*

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<sup>3</sup> (1936) 39 N.L.R 464 at 465.

*and decree under Section 86 (2) must necessarily be sworn by the Defendant Company or its officers. The provision requires only that the petition be supported by an affidavit. The identity of the appropriate deponent is governed by Section 181 of the CPC, which requires the deponent to possess personal knowledge of the facts deposed to.*

- b) In circumstances where the facts relevant to the default of appearance are within the personal knowledge of the registered Attorney-at-Law of the Defendant, and not within the personal knowledge of the Defendant's directors, secretaries, or other officers, the affidavit of that registered Attorney-at-Law, sworn from his own personal knowledge, constitutes a valid and sufficient affidavit in support of the petition under Section 86 (3) of the CPC.*
  
- c) The affidavit of Mr. R.N. Varathan, Attorney-at-Law, dated 23 December 2009, filed in support of the petition of the Defendant under Section 86 (2) of the CPC, is a valid affidavit for the purposes of Section 86 (3) of the CPC. It satisfies the requirements of Section 181 of the CPC because it deposes to facts within Mr. Varathan's own knowledge and observation.*
  
- d) The learned District Judge erred in law in upholding the preliminary objection and in dismissing the Defendant's application without proceeding to an inquiry under Section 86 (2) of the CPC.*

*e) The Judgement of the High Court of Civil Appeal, Trincomalee, dated 20 March 2013, in Case No. EP/HCCA/TRN/146/2010, was correct, and this Court affirms the same.*

50. The Judgement of the High Court of Civil Appeal, Trincomalee, dated 20 March 2013, is affirmed. The questions of law are answered against the Plaintiff and the appeal of the Plaintiff is dismissed. The Plaintiff shall pay the costs of this appeal to the Defendant.

51. The learned District Judge of Trincomalee is directed to proceed with an inquiry under Section 86 (2) of the Civil Procedure in respect of the petition of the Defendant supported by the Affidavit of Mr. R.N. Varathan dated 23 December 2009, and to make all orders in accordance with law.

**Judge of the Supreme Court**

**Mahinda Samayawardhena, J.**

**Judge of the Supreme Court**

I agree.

**K. Priyantha Fernando, J.**

**Judge of the Supreme Court**

I agree.