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

Kotte Hewa Swarnamali Thilinika
Deshabandu,
No. 16, Gurugammanaya Ayurveda Road,
Pallekelle.

Presently of, "*okanda biru"* 3-22-2-201,
Maeyamacho, Showa, Nagoya Shi, Japan.
Appearing by her Power of Attorney Holder;
Ranjan Sumith Rathnapala, Pahala Kade,
Kiriwandala, Pelmadulla.
1st Plaintiff-Respondent-Appellant

**SC/APPEAL/130/2025**
**CA/RII/01/2021**
**DC KANDY 1482/2012/L**

Vs.

1. Ranatunga Arachchilage
   Sunil Harshadewa,
   No. 660/06/B, Sirimavo Bandaranayake
   Mawatha, Mulgampola, Kandy.
   Defendant-Petitioner-Respondent
2. Kotte Hewa Baladewa Deshabandu,
   No. 192, Gurugammanaya Ayurveda
   Hospital Road, Kundasale, Kandy.
   2nd Plaintiff-Respondent-Respondent

Before: Hon. Justice Mahinda Samayawardhena
Hon. Justice Menaka Wijesundera
Hon. Justice Sampath K.B. Wijeratne

Counsel: Sudarshani Coorey for the Plaintiff-Respondent-Petitioner.
Amindika Rathnayake for the Defendant-Petitioner-Respondent.

Argued on: 01.10.2025

Decided on: 18.12.2025

**Samayawardhena, J.**

The plaintiffs instituted this action against the defendant in the District Court of Kandy in 2012, seeking a declaration of title to the land described in the schedule to the plaint, the ejectment of the defendant therefrom, and damages. The defendant filed answer seeking dismissal of the action and made a cross-claim for compensation for improvements.

The case was fixed for trial on 13.10.2015. On that date, in the presence of both parties and their respective Attorneys-at-Law, admissions and issues were recorded. The first admission recorded was that the defendant had been residing in the premises with the leave and licence of the plaintiffs. The plaintiffs raised issues seeking the ejectment of the defendant on the basis of the termination of leave and licence. The defendant had virtually no defence, although some issues were raised. The case was thereafter fixed for further trial on 23.02.2016.

On 23.02.2016, in the presence of both parties and their Attorneys-at-Law, a settlement was recorded in open court. The settlement was to enter the decree in favour of the plaintiffs for declaration of title and ejectment of the defendant, except for damages; and the defendant to vacate the premises on 31.12.2016. According to the proceedings, the terms of settlement were explained to both parties in open court, and both parties signed the case record signifying their agreement to the settlement.

Four months after the aforesaid settlement, the defendant, having revoked the previous proxy, retained a new Attorney-at-Law and moved court to set aside the settlement and refix the case for further trial. His position was that he intended to obtain a sum of Rs. 500,000 as compensation for improvements, but this had not been recorded as a term of settlement. The District Judge rejected this application by order dated 07.06.2017.

The defendant, in my view with the intention of delaying the proceedings, filed a final appeal rather than seeking leave to appeal, against the said order to the High Court of Civil Appeal of Kandy. The High Court dismissed the appeal by judgment dated 11.12.2020.

One year and six months after the judgment of the High Court, the defendant filed an application for *restitutio in integrum* in the Court of Appeal in May 2022, seeking to set aside the settlement entered in the District Court on 23.02.2016, more than six years ago. A single Judge of the Court of Appeal allowed that application and set aside the settlement, mainly on the basis that it had not been entered in compliance with section 408 read with section 91 of the Civil Procedure Code, in that the settlement had not been notified to court by way of a motion.

Section 408 of the Civil Procedure Code reads as follows:

> *If an action be adjusted wholly or part by any lawful agreement or compromise, or if the defendant satisfy the plaintiff in respect to the whole or any part of the matter of the action, such agreement, compromise, or satisfaction shall be notified to the court by motion made in presence of, or on notice to, all the parties concerned, and the court shall pass a decree in accordance therewith, so far as it relates to the action, and such decree shall be final, so far as relates to so much of the subject-matter of the action as is dealt with by the agreement, compromise, or satisfaction.*

Section 91 of the Civil Procedure Code reads as follows:

> *Every application made to the court in the course of an action, incidental thereto, and not a step in the regular procedure, shall be made by motion by the applicant in person or his counsel or registered attorney, and a memorandum in writing of such motion shall be at the same time delivered to the court.*

According to section 408, where an action is to be adjusted by a compromise, such compromise shall be notified to court by motion made in the presence of or on notice to the parties, and the court shall thereupon enter decree in accordance with the terms of settlement. This, however, does not mean that a compromise not notified by motion is invalid or unenforceable, if the substance of what is required to be done by motion is done before the Judge in open court. A statutory provision must be interpreted contextually, giving effect to its purpose and spirit. Section 91 merely identifies the type of applications that shall be made by motion in the course of an action, and it has no bearing on the recording of settlements.

It is well known to Judges and practitioners of the original civil courts that the overwhelming majority of settlements are recorded in open court in the presence of the parties and their respective Attorneys-at-Law. In most instances, the parties themselves sign the case record signifying their consent to the settlement. This long-standing practice constitutes the *cursus curiae* of our District Courts. *Cursus curiae est lex curiae*—the practice of the Court is the law of the Court.[1]

[1] In Sri Lanka Ports Authority v. JugoliniJa Boal East [1981] 1 Sri LR 18 at 24, Chief Justice Samarakoon stated "If no objection is taken when at the close of a case documents are read in evidence they are evidence for all purposes of the law. This is the *cursus curiae* of the original Civil Courts."

Where a settlement is recorded in open court by the District Judge, in the presence of the parties and their Attorneys-at-Law, and the parties sign the record signifying their consent to its terms, such settlement is final and binding. It constitutes a contract entered into among the parties, and once so entered, a party cannot thereafter resile from it merely because he later forms the view that the settlement is unfavourable to him. The only recognised grounds upon which such a settlement may be set aside are those applicable to the rescission of a contract, namely illegality, fraud, mistake, misrepresentation, coercion, undue influence, or other similar vitiating factors. Such instances are rare.

A settlement so recorded cannot be set aside on the sole ground that it was not notified to court by motion in the manner contemplated by section 408 of the Civil Procedure Code. Nor can it be vitiated as a matter of course on the basis that a party was not physically present when the settlement was recorded or that he did not sign the case record, provided his Attorney-at-Law acted on his instructions or had the general authority to act in the best interests of his client. Nevertheless, where a settlement is entered in open court, it is prudent to record the terms in the presence of the parties and to obtain their signatures on the record signifying their consent.

It is also relevant to observe that, where a party has a registered Attorney on record, such party cannot enter into a settlement independently of his Attorney-at-Law. Any such act shall be done through the Attorney-at-Law.

In *Sinna Veloo v. Messrs Lipton Ltd* (1963) 66 NLR 214, the defendant-appellant sought to resile from a settlement on the ground, *inter alia*, that it had been entered without his consent and notified to court in his absence. The Supreme Court held that the presence of parties in section 408 does not require their personal presence, as parties are represented by their Attorney-at-Law unless personal appearance is expressly mandated. Once the agreed terms are presented to court, notified thereto, and recorded, a

party cannot thereafter resile from the settlement, even if the case record has not been signed and decree has not yet been entered.

In *Lameer v. Senaratne* [1995] 2 Sri LR 13, it was held that where an Attorney-at-Law has been given a general authority to settle a case, the client cannot thereafter seek to set aside the settlement so entered, particularly where the client himself has signed the record.

As Sarker's *The Law of Civil Procedure*, Vol 2, 8th Edition 1992, at page 1203 states "*Non-inclusion of the clause that in the event of non-performance of conditions, the party concerned is entitled to for execution does not render decree inexecutable. The executing court can enforce such a condition.*"

On the facts and circumstances of this case, the defendant has failed to establish any ground that would vitiate the settlement. He has, in my view, abused the process of court in order to remain in the premises for as long as possible. I set aside the judgment of the Court of Appeal and allow the appeal with costs. The defendant shall vacate the premises on or before 30.02.2025. If he fails to do so, the plaintiff shall be entitled to have writ executed forthwith to eject the defendant and all those holding under him.

Judge of the Supreme Court

Menaka Wijesundera, J.
I agree.

Judge of the Supreme Court

M. Sampath K.B. Wijeratne, J.
I agree.

Judge of the Supreme Court