

**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
read with Article 128 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.*

SC/Appeal/ 33/2021
SC/HC/CA/LA/209/2018
WP/HCCA/COL/170/2014(F)
DC Colombo 19159/L

1. Ven. Ahungalle Wimalananda
Thissa (Deceased)
- 1a. Ven Ahungalle Wimaladhamma Thissa
Samudraramaya, Dhammakusala Road,
Egodamulla, Kosgoda.
- 1b. Ven Mulleriyawe Subhuthi,
Neelamalikaramaya, Mulleriyawa
2. Ven. Rathgama Sumanananda (Deceased)
Ward Place, Borella, Colombo 7.

PLAINTIFFS

Vs.

1. Nalin Lal Nawulla,
No. 114, Ward Place, Colombo 7.
2. Nawullage Piyadasa (Deceased)
3. Hewagamage Sriya Ranjane,
Both of No. 21/10, Base Line Road,
Colombo 09.
4. Vinodh Ranga Nawulla,
No. 21/10, Baseline Road, Colombo 09.

DEFENDANTS

In the matter of an Application made under Section 86(2) of the Civil Procedure Code.

1. Nalin Lal Nawulla,
No. 114, Ward Place, Colombo 7.
3. Hewagamage Sriya Ranjane, No. 21/10,
Base Line Road, Colombo 09.

1ST AND 3RD DEFENDANTS-
PETITIONERS

Vs.

1. Ven. Ahungalle Wimalananda
Thissa (Deceased)
- 1a. Ven Ahungalle Wimaladhamma Thissa
Samudraramaya, Dhammakusala Road,
Egodamulla, Kosgoda.
- 1b. Ven Mulleriyawe Subhuthi,
Neelamalikaramaya, Mulleriyawa
2. Ven. Rathgama Sumanananda,
(Deceased)
Ward Place, Borella, Colombo 7.

PLAINTIFFS-RESPONDENTS.

AND

1. Nalin Lal Nawulla,
No. 114, Ward Place,
Colombo 7.
3. Hewagamage Sriya Ranjane,
No. 21/10, Base Line Road, Colombo 09.

1ST AND 3RD DEFENDANTS-
PETITIONERS-APPELLANTS

Vs.

1. Ven. Ahungalle Wimalananda
Thissa (Deceased)
- 1a. Ven Ahungalle Wimaladhamma Thissa
Samudraramaya, Dhammakusala Road,
Egodamulla, Kosgoda.
- 1b. Ven Mulleriyawe Subhuthi,
Neelamalikaramaya, Mulleriyawa
2. Ven. Rathgama Sumanananda,
(Deceased)
Ward Place, Borella, Colombo 7.

PLAINTIFFS-RESPONDENTS-

RESPONDENTS

AND NOW

- 1a. Ven Ahungalle Wimaladhamma Thissa
Samudraramaya, Dhammakusala Road,
Egodamulla, Kosgoda.
- 1b. Ven Mulleriyawe Subhuthi,
Neelamalikaramaya, Mulleriyawa

1st PLAINTIFF-RESPONDENT-

RESPONDENT-APPELLANT

Vs.

1. Nalin Lal Nawulla,
No. 114, Ward Place, Colombo 7.
- 1(a) Vishwa Sanka Naulla
- 1(b) Hewagamage Sriya Ranjane
- 1(c) Vinudh Ranga Nawulla
- 1(d) Buddhini Niroshi Ruwanthika Nawulla.

All of 114, Ward Place, Colombo 07

3. Hewagamage Sriya Ranjane,
No. 21/10, Base Line Road,
Colombo 09.

3d(I)Vishwa Sanka Naulla

3d(II)Vinudh Ranga Nawulla

3d(III)Buddhini Niroshi Ruwanthika Nawulla

All of No.114, Ward Place, Colombo 07.

1ST AND 3RD DEFENDANTS-
PETITIONERS-APPELLANTS-
RESPONDENTS

Before: Kumudini Wickremasinghe J.

Arjuna Obeyesekere J.

Dr. Sobhitha Rajakaruna J.

Counsel: Saumya Amarasekara, PC with Dhammika Welagedara for the Plaintiff-

Respondent-Respondent-Appellant

Amrit Rajapaksa for the 1st and 3rd Defendants-Petitioners-Appellants-

Respondents

Written Submissions: 1a and 1 b Plaintiffs-Respondents-Respondents-Appellants -

08.04.2021

1st and 3rd Defendants-Petitioners-Appellants-Respondents -

07.02.2022

Argued on: 03.11.2025

Decided on: 26.02.2026

Dr. Sobhitha Rajakaruna J.

This Court granted leave to appeal for the following questions set out in paragraph 17(I),17(II),17(III), 17(VI) and 17(VII) of the Petition dated 03.07.2018.

- I. Has the Civil Appellate High Court erred in law in holding that there was no negligence on the part of the Registered Attorney of the Defendants?
- II. Are the reasons for the Defendant's non-appearance before Court alone sufficient in order to vacate an ex parte decree when there is a Registered Attorney on record?
- III. Is the failure on the party in default to give instructions due to ill health a sufficient ground to excuse the Registered Attorney from not appearing in Court?
- VI. Can the Court absolve the Attorney-at-Law on record of negligence without hearing his evidence, where a case has been fixed for an ex parte trial for want of appearance of a Party and his Attorney?
- VII. In an application to set aside an order for ex-parte trial, is the burden of proof on the party on default?

The original 1st Plaintiff in the case before the District Court of Colombo ('District Court') died pending the trial, and 1a and 1b Plaintiffs were substituted in his place. Subsequently, the 2nd Plaintiff also passed away, but the other Plaintiffs chose to proceed with the action without substituting any other party for him. On 11.09.2008, the District Court set the matter for an ex parte trial against the 1st and 3rd Defendants, who were absent and unrepresented on that day. However, the trial against the 4th Defendant, who was represented, was postponed to 15.10.2008. On that date, the 4th Defendant too was absent and unrepresented, so the court scheduled the matter for an ex parte trial against the said Defendant.

After the ex parte trial concluded and the decree was served, the 1st and 3rd Defendants-Petitioners-Appellants-Respondents (collectively referred to as 'Defendants') made an application to set aside the ex parte decree. An inquiry was subsequently conducted into their application. The District Court on 25.09.2014 dismissed the application of the Defendants who thereafter challenged the said order in the Provincial High Court of the Western Province, holden in Colombo ('High Court'). The High Court, delivering its judgment on 22.05.2018, set aside the District Court's order dated 25.09.2014. Being aggrieved by the said

judgement of the High Court, the 1st Plaintiff-Respondent-Respondent-Appellant (collectively referred to as 'Plaintiffs') filed the instant application before this Court.

The District Court took the view that the Defendants and their Registered Attorney had negligently failed to appear in court. Furthermore, the court decided that the Defendants had not shown any reasonable cause for their absence on the trial date. The District Court observed that the evidence presented by the Defendants regarding their alleged inability to attend due to ill health was contradictory and lacking in truthfulness, and accordingly, the court could not, under any circumstances, accept such evidence. In reaching its conclusion, the District Court invoked the observations made in the cases of *Daniel v. Chandradeva* [1994] 2 Sri LR 1, along with *Manaperi Somawathie v. Buwaneswari* [1990] 1 Sri LR 223 and *Andiappa Chettiar v. Sanmugam Chettiar* [1932] 33 NLR 217

In contrast, the High Court, referencing, inter alia, the judgement of *Manaperi Somawathie v. Buwaneswari* [1990] 1 Sri LR 223 and *Andiappa Chettiar v. Sanmugam Chettiar* [1932] 33 NLR 217, decided that the Defendants had established that there was a reasonable ground for the absence and there was no negligence on the part of the Registered Attorney.

The Defendants' version for their non-attendance to court on such trial date is due to both Defendants being unwell, as the 1st Defendant was allegedly hospitalised at OASIS Hospital from 03.09.2008 to 10.09.2008 for pneumonia, while the 3rd Defendant (the 1st Defendant's wife) was suffering from high blood pressure and diabetes. In support of their position the Defendants placed reliance on the judgement of *Elle Gedara Pinehi Amma and Another v. Bulughamulle Gedara Seelawathie (deceased) and Others* C.A. Case No. 641/1999 (F) decided on 24.05.2017 in which the Court of Appeal took the view that the plaintiff therein had proven her inability to appear in court due to illness on the specified day and the judge was bound to act upon the evidence of the two men who spoke to a continuous stroke of ill health on the part of the Plaintiff.

The Plaintiffs claim that the Registered Attorney on record for the 1st and 3rd Defendants (husband and wife) was Mr. Vijitha Meegahawatta, while the 4th Defendant (their son) was represented by the law firm Leads Legal Consultants, whose Senior Partner was Mr. P. A. Gunaratne. Even on the trial date of 05.10.2007, immediately preceding the default, the

Registered Attorney on record for the 1st and 3rd Defendants (husband and wife) was Mr Vijitha Meegahawatta, while the 4th Defendant (their son) was represented by the law firm Leads Legal Consultants, whose Senior Partner was Mr P. A. Gunaratne. On the trial date of 05.10.2007, Mr. Rohana Jayawardane appeared for all three Defendants upon the instructions of their respective Registered Attorneys. However, as the 1st and 3rd Defendants were absent and unrepresented on 11.09.2008, the court made an order for an ex parte trial against them. In contrast, Mr. K. W. Karalliyadde appeared for the 4th Defendant and moved to refix the trial, citing the indisposition of Mr. P. A. Gunaratne, the senior counsel scheduled to represent that Defendant. Subsequently, on 18.09.2008, shortly after the matter had been fixed for ex parte trial against the 1st and 3rd Defendants, the proxy of Mr. Vijitha Meegahawatta was revoked, and on 22.09.2008, a new proxy was tendered by Mr. P. A. Gunaratne on behalf of the 1st and 3rd Defendants. On the next trial date fixed against the 4th Defendant, namely 15.10.2008, there was no appearance for that Defendant either, leading the court to make an order for an ex parte trial against the 4th Defendant as well.

It appears that Mr. P. A. Gunaratne was the counsel retained for the 4th Defendant, and the application to refix the trial was made on his personal grounds of indisposition. I observe that the 1st Defendant's evidence regarding who appeared for the 1st and 3rd Defendants on the relevant date is contradictory. Significantly, none of the relevant Attorneys, Mr Vijitha Meegahawatta, Mr. P. A. Gunaratne, Mr. P. L. Gunaratne, or Mr K. W. Karalliyadde, were called to explain the failure to appear for the Defendants. Consequently, the finding of the High Court that Mr Vijitha Meegahawatta was not negligent, despite neither appearing himself nor retaining counsel to appear, cannot be accepted.

As asserted by the Plaintiffs, in an inquiry under Section 86(2) of the Civil Procedure Code to purge default and vacate an ex parte judgment, default encompasses both the absence of the party and the absence of representation. Had the 1st and 3rd Defendants been legally represented, sometimes, the matter would not have been fixed for an ex parte trial against them. Upon careful perusal of evidence, I am not satisfied that the Defendants' absence was not due to their negligence but arose from unavoidable circumstances; and that the absence of their Attorney was similarly not attributable to negligence but to unavoidable circumstances.

His Lordship Justice Mahinda Samayawardhena in *Rev. E.H. Palitha and Others v. Kurugamage Kingsley Perera* SC Appeal No. 30/2022 SC Minutes on 31.01.2024 referring to evidence laid down at the purge default inquiry decided that the High Court should not have cavalierly interfered with the factual findings of the trial judge and reversed the order. The Supreme Court in the said case observed that:

“It is trite law that, the findings of fact of the trial judge who has the priceless advantage of seeing and hearing witnesses giving evidence, thereby getting the opportunity to observe inter alia the demeanour and deportment of the witnesses, are regarded as sacrosanct and should not be lightly disturbed unless there are compelling reasons. There are no live witnesses before the appellate Court but only printed evidence. It is important to bear in mind that the trial Judge has the benefit of assessing the evidence in its overall context to reach the final decision, unlike the piecemeal approach adopted in presenting the case before the appellate Court.”

I hold that the reasons advanced solely for the Defendants' non-appearance do not discharge the burden to purge the default. It is a well-settled principle, supported by a steady line of judicial authorities, that a Registered Attorney, while his proxy remains on record, is under a positive duty to represent the interests of his client, which includes appearing in court or, at the very least, making a suitable application on the client's behalf. The concurrent absence of both the party and the Registered Attorney provide lawful grounds for the court to fix the matter for an ex parte trial. In the present context, any failure by the defaulting party to furnish instructions to the Registered Attorney, whether on account of ill health or for any other reason, does not relieve the Registered Attorney of his obligation to attend court. Without hearing evidence from the Registered Attorney, the High Court could not properly reach the conclusion absolving him of negligence.

The Supreme Court in *Edirisinghe Mudiyanseelage Gunamal Ethana Edirisinghe v. Dharmaratne Perera and Others* S.C. Appeal No. 50/2010 SC Minutes on 02.06.2016 and *Mohammed Ali Abdul Wadood v A.L. A. Ahamed Lebbe* S.C. Appeal No. 153/2014 SC Minutes on 10.06.2016 have highlighted the importance of the Registered Attorney giving evidence at the relevant

inquiry, as it is the responsibility and duty of the Registered Attorney to represent his client in court, on all days the case is called, or on the trial dates. Anil Gooneratne J. in the said *Mohammed Ali Abdul Wadood* case, observed that the Registered Attorney's absence, along with the Defendant's, would be a ground to fix the case ex parte.

For the foregoing reasons, I take the view that the High Court erred in law and in its appreciation of the evidence by setting aside the District Court order dated 25.09.2014. The District Court, having had the advantage of hearing and observing the witnesses, rightly concluded that the evidence adduced by the Defendants at the purge default inquiry was contradictory, unreliable and could not be accepted beyond reasonable doubt to establish reasonable grounds for their non-appearance. Moreover, the Defendants failed to discharge the burden upon them under Section 86(2) of the Civil Procedure Code to demonstrate that their default, including the concurrent absence of their Registered Attorneys, was not attributable to negligence, but arose from circumstances beyond their control. In the circumstances, I proceed to answer the above questions of law in favour of the Plaintiffs and affirm the District Court judgement dated 25.09.2014 while setting aside the High Court judgement dated 22.05.2018. The instant Appeal is allowed without costs.

Judge of the Supreme Court

Kumudini Wickremasinghe J.

I agree.

Judge of the Supreme Court

Arjuna Obeyesekere J.

I agree.

Judge of the Supreme Court