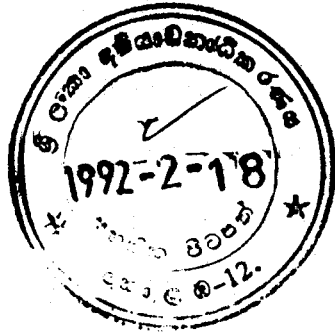


IN THE COURT OF APPEAL OF THE REPUBLIC OF SRI LANKA

In the matter of an Application for Leave
to Appeal under Section 754 (2) of the
Civil Procedure Code



1. Mitsui & Co.Ltd., 2-1 Ohtemachi 1
Chome Chiyoda Ku, Tokyo, Japan
1st Defendant-Petitioner-Appellant

2. Taisei Corporation 25-1 Nishi
Shinjuku 1 Chome, Shinjuku Ku,
Tokyo, Japan

2nd Defendant-Petitioner-Appellant

Vs.

Nihal Sri Ameresekara of No.167/4,
Sri Vipulasena Mawatha, Colombo 10

Plaintiff-Respondent

and others

C.A.206/91

C.A.206/91 17.1.92

Before : Palakidnar, J.(P/CA) & Dr.A.de Z.Gunawardena, J
Counsel : Eric Amarasinghe PC with I.A.Wickremanayake,
H.Soza, Anil Silva and R.Abdeen for Petitioner
K.Kanag-Isvaran PC with A.M.Illiyas, Anil
Tittawella and Harsha Cabral for Pl-Respondent.
Nihal Fernando for 5th 6th and 7th Respondents.
ASG S.Aziz PC with A.R.Wickremanayake S.C. for
4th Defendant-Respondent

Counsel for Plaintiff respondent took up the
preliminary objection that the 4th defendant
respondent should not be heard in this application
as he has not resisted the interim injunction
in the District Court. Mr.Aziz ASG states that
the 4th defendant is the holding company and the
1st and 2nd defendant petitioners are directors
and therefore he will be directly affected by
the order of this Court °

Mr.Kanag-isvaran cited the case reported in
1982 SLR page 647 Sadhwani and others Vs.
Sadhwani and others, where it had been held where
leave to appeal was sought from and order refusing

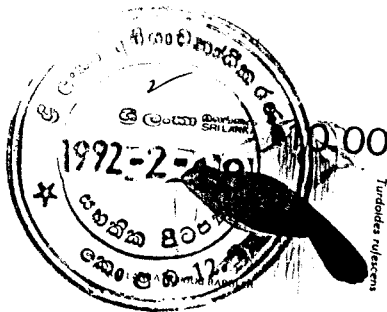
to discharge an injunction and the relief being sought affected only particular parties it was not necessary to make the other parties respondents if they will not be prejudicially affected by the result of the appeal. They were not necessary parties. Since counsel for the 4th defendant respondent has submitted that they will be prejudicially affected by the order of this application this authority does not support the contention of the Learned Counsel for the Plaintiff-respondent.

Accordingly we allow the 4th defendant respondent to continue as a party to this application. Counsel for the 5th 6th and 7th respondents states that he is not making any submissions in this application as his clients will not be affected by the order made in this application.

Mr. Amarasinghe P.C. points out that the 9th defendant is a director of the 1st defendant. Mr. Kanag-isvaran himself admits that the 1st and 2nd defendants are necessary parties to this application as they have objected to the interim injunction in the lower Court. The 9th and 11th Defendants being Directors of the said Company therefore have been properly included as respondents to this application. The 8th defendant and the 10th defendant are Directors of the 4th defendant company. Therefore they have been included as respondents to this application.

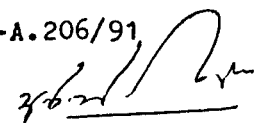
To be resumed on 20.1.92

SGD./--



* * * *

I do hereby certify that the foregoing is a true copy of the order dated 17.1.92 filed of record in C-A.206/91


Chief Clerk
Court of Appeal

Typed by : P

Comp. by : P

V
18 868608
18.1.92

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

1. Mitsui and Company Ltd.

1st Defendant-Appellant

2. Taisei Corporation

2nd Defendant-Appellant

C.A./L.A. No:206/91

-Vs-

Nihal Sri Amarasekera

Plaintiff-Respondent

and 3rd, 4th, 5th, 6th, 7th, 8th, 9th,
10th and 11th Defendants-Respondents

AND

Kanko Kikaku Sekkeisha Yozo
Shibata & Associates

3rd Defendant-Appellant

-Vs-

C.A./L.A. No:208/91

Nihal Sri Amarasekera

Plaintiff-Respondent

and 1st, 2nd, 4th, 5th, 6th, 7th, 8th,
9th, 10th and 11th Defendant-
Respondents.

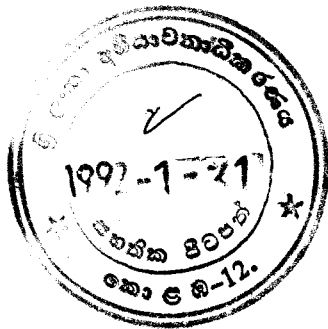
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BEFORE : PALAKIDNAR, J(P,C/A) &
DR. A. DE Z. GUNAWARDANA, J

COUNSEL : Eric Ameresinghe, P.C., with L.A. Wickramanayake,
H. Soza, Anil Silva and R. Abdeen for Petitioner.
K. Kanag-Iswaran, P.C., with A.M. Illiyas, Anil
Tittewela and H. Cabral for Plaintiff-Respondent.
Nihal Fernando for 5th, 6th and 7th Defendants-
Respondents.

A.S.G., S. Aziz P.C., with A.R. Wickramanayake, SSC
for 4th Defendant-Respondent.

ARGUED ON: 17.1.92, 20.1.92, 21.1.92 and 22.1.92.



DECIDED ON: 31.1.92.

PALAKIDNAR, J (P,C|A)

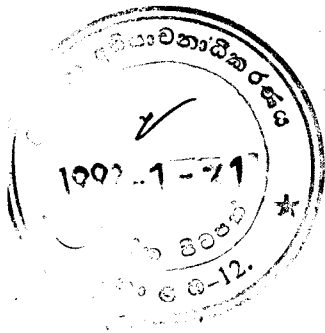
The plaintiff -respondent who is a shareholder of the 4th defendant-respondent Company (Hotel Developers (Lanka) Ltd.) has filed this action in the District Court of Colombo. He has claimed that the said Company has ^{acted} ~~noted~~ in fraud of the shareholders, in accepting and making payments to the 1st, 2nd and 3rd defendants-respondents for the building constructed for the Hilton Hotel, when in fact the said building was not in conformity with building plans forming part of the building construction agreement entered into between the 4th defendant-respondent Company and the 1st, 2nd and 3rd defendant-respondents. The plaintiff-respondent alleged that, in effect, the 4th defendant-respondent Company was paying a larger sum of money for lessor amount of work done. Therefore he sought an injunction from the District Court restraining the 4th defendant-respondent Company making any further payments to the 1st, 2nd and 3rd defendant-respondents.

W

The District Court made an enjoining Order in the first instance, restraining the 4th defendant-respondent Company making any further payments to the 1st, 2nd and 3rd defendants-respondents. Thereafter an interim injunction was granted for the same purpose. This leave to appeal application is against the said Order.

W

According to the provisions of section 54 of the Judicature Act, the Court must satisfy itself, "that sufficient grounds exist" before injunctive relief is granted. It does not appear from the Order of the learned District Judge that he has addressed his judicial mind to the question whether the plaintiff-respondent has adduced sufficient evidence to make out a prima facie case, although



reference to some documents by name has been made, in passing.

The Counsel for the 1st and 2nd defendant-respondents submitted that the plaintiff-respondent has no locus standi to bring this action. He contended that the facts urged by the plaintiff-respondent does not disclose a cause of action. He also submitted that plaintiff-respondent does not have a right to bring a derivative action. The Counsel for the 7th defendant-respondent submitted that right to bring a derivative action does not exist under the Sri Lankan Law. He submitted that the Companies Act of Sri Lanka is comprehensive on the rights of the shareholders. He further argued that only rights available to a shareholder are those specified in section 210 and 211 of the Companies Act, in this regard. Those rights he pointed out could only be exercised by a shareholder having a minimum of five percent of shares of the Company. The learned Counsel for the plaintiff-respondent cited section 3 of the Civil Law Ordinance, and contended that law applicable in regard to this matter is the English Law. He pointed out that in the case of Wallersteiner Vs. Moir (no.2) (1975) 1 All ER 849, this right has been recognised in England. Therefore he argued that a right to bring a derivative action exist in Sri Lanka.

In our view these are fit questions of law to be decided in appeal and we accordingly grant leave to appeal.

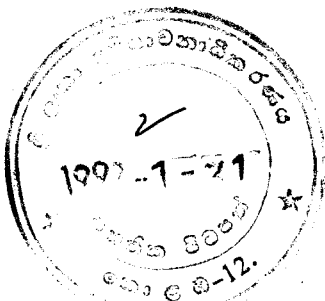
The parties in C.A.L.A. 208/91 agreed to be bound by the decision in this case. Accordingly the Order in

✓ C.A.L.A. 208/91 will be the same.

We make no order as to costs. ✓

Sgd.,

PRESIDENT OF THE COURT OF APPEAL



A. DE Z. GUNAWARDANA J:

I agree.

Sgd.,

JUDGE OF THE COURT OF APPEAL

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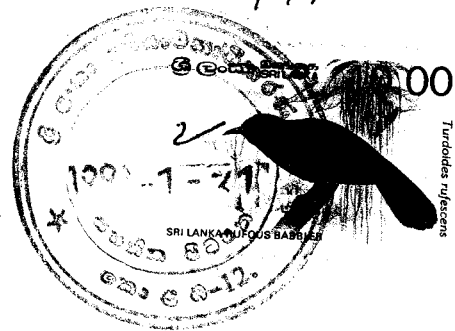
I do hereby certify that the foregoing is a true copy of the Court of Appeal Judgment dated 31.1.92 filed of record in Case No: CA/LA 206/91. with @ A.L.A 208/91/

[Handwritten signature]
Chief Clerk

Y
TC 868264
31/1/92

Typed By: *[Handwritten initials]*

Compd. With: *[Handwritten signature]*



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