

## IN THE DISTRICT COURT OF COLOMBO

HOTEL DEVELOPERS (LANKA) LTD.,  
Colombo Hilton Sports Complex,  
Echelon Square,  
Lotus Road,  
Colombo 1.

**PLAINTIFF**

Case No : 15322/MR

Vs

NIHAL SRI AMERESEKERE,  
No. 167/4, Sri Vipulasena Mawatha,  
Colombo 10.

**DEFENDANT**

Case No. 15322/MR

21.05.99

### **Order**

The Plaintiff in this Case has filed its Complaint in this Court through Mr. Hussain Ahamed, its Registered Attorney-at-Law. After the same having been accepted by Court, Summons had been issued on the Defendant. Thereafter the Defendant having marked his appearance has filed Answer. Thereafter, the Defendant having sought leave to serve interrogatories on the Directors of the Plaintiff Company, consequently the Case had been pending. By a Motion dated 11.10.96 it had been moved that the proxy granted to the Plaintiff's Registered Attorney-at-Law, Mr. Hussain Ahamed be revoked and a proxy granted by the Plaintiff to Mrs. P.A. Kumaraperu Peiris, submitted to Court be accepted on behalf of the Plaintiff.

It appears that this Application has been made upon a letter said to have been given by the Plaintiff to its aforesaid Registered Attorney-at-Law, without the consent of the said Attorney-at-Law for revocation. Under such circumstances, it had become necessary to make an Order to support the said Application in Court. According to facts adduced at that stage, it appeared that Mr. H. Ahamed, Plaintiff's Registered Attorney-at-Law still remained as the Registered Attorney-at-Law of the Plaintiff and that as per instructions received by him from the Plaintiff Company, the proxy given to him had not been revoked by the Plaintiff Company and that the facts submitted by the applicant making the present Application for such revocation were wrong.

Due to the situations that had accordingly arisen, two positions, one contradictory to the other have been disclosed. Both parties by Affidavits have submitted the relevant facts. Likewise Counter Affidavits too have been filed. Now the Order that is due to be made by Court is as to whether the proxy given to Mr. Hussain Ahamed still remains valid or else whether it ought to be revoked.

Upon consideration of all the writings and documents that have been filed and the submissions made, it appears that the said Attorney-at-Law, Mr. Hussain Ahamed had filed the Complaint in this Case in Court as the authorised Attorney-at-Law of the Plaintiff and that until the instant application was made on 11.10.96 (J.E.19) his appointment as such Registered Attorney-at-Law of the Plaintiff and that he had held a valid proxy on behalf of the Plaintiff stood undisputed.

Under the above circumstances, what needs to be considered is as to whether the proxy that had been granted to Mr. H. Ahamed, Attorney-at-Law has been revoked or as to whether the proxy that had been granted to the said Attorney-at-Law still stands valid on behalf of the Plaintiff in respect of this Case.

The instant application made for the revocation of the Plaintiff Company's proxy rests on the Minutes of a Meeting of the Board of Directors of the Plaintiff Company held on 28.06.'95. The very same Minutes have been filed annexed as "X3" to the Affidavit of Mr. Ishibashi, a Director of the Plaintiff Company and also annexed as "X1" to the Affidavit of Mr. U.L. Kadurugamuwa, a Director of Corporate Services Ltd., the Secretaries of the Plaintiff Company. Likewise the very same Minutes have been filed marked as "X3" together with an Affidavit of Mr. C.L. Perera, who had tendered an Affidavit in his capacity as the Chairman and Managing Director of the Plaintiff Company. Under Item 2 of the Minutes of the Meeting of the Board of Directors held on 28.06.'95, annexed marked "X1" to the Affidavit of Mr. U.L. Kadurugamuwa, it has been recorded that Mr. C.L. Perera had been removed from the post of Chairman. Also under Item 9 thereof, the agreed position in respect of this Case has been recorded. Thereby, attention having been given to have this Case settled, such settlement having been approved, it is observed that a Resolution had been passed authorising the Plaintiff Company to affix its seal thereto. The Minutes contained in "X1" referred to above having been confirmed by the Plaintiff's Board of Directors at their Meeting held on 23.02.'96, a certified copy of the said Minutes of the Meeting of 23.02.'96 has also been filed as "X2". Similarly, even according to the Minutes of the Meeting of the Board of Directors held on 25.10.'96 filed marked as "X5" together with the Affidavit of Mr. Kadurugamuwa it is apparent that it had been confirmed thereat that the proxy that had been granted to Mr. H. Ahamed, Attorney-at-Law had been revoked at the Meeting held on 28.06'95. It has also been recorded therein that the proxy granted to the Attorney General at a later stage had also been confirmed, whilst under Item No. 9 of the Minutes of the Meeting of the Board of Directors held on 28.06.'95 marked as "X1" the settlement of this Case had been approved, the first condition of the conditions pertaining to such settlement, had been, that it had been agreed to revoke the proxy granted to Mr. Husain Ahamed, Attorney-at-Law.

Furthermore, the said terms of settlement of Case No. 15322/MR has been filed marked "X4" to the Affidavit of Mr. Ishibashi. The Minutes contained in "X1" of the Meeting of the Board of Directors of the Plaintiff Company having being held as aforesaid on 28.06.'95, have not been disputed by the submissions made by Attorney-at-Law, Mr. Ahamed or by facts set out in the Affidavit of Mr. C.L. Perera of the Plaintiff Company. Furthermore, it is observed from the document dated 07.10.'96 marked as "X4" which has been filed with Mr. U.L. Kadurugamuwa's Affidavit, that Attorney-at-Law, Mr. Husain Ahamed, had signed the said document giving his consent to the revocation of the proxy granted to him.

From facts adduced it is apparent that the said Affidavit establishes that Mr. C.L. Perera has had no authority whatsoever to have sent the writing dated 10.10.'96 purported to have been sent by him to Attorney-at-Law, Mr. H. Ahamed against the decisions of the Board of Directors. Under the foregoing circumstances, Court will have to take steps on the basis that the Minutes of the Meeting of the Board of Directors held on 28.06.'95 are prima-facie valid.

Even though it does not appear in the said Minutes of the Meeting that a resolution had been passed directly to revoke the proxy of Attorney-at-Law, Mr. Husain Ahamed, it is recorded therein that it had been agreed clearly on that day to settle this Case on the written conditions which by then had been presented and that the 1<sup>st</sup> condition therein had been to revoke the appointment of this Attorney-at-Law.

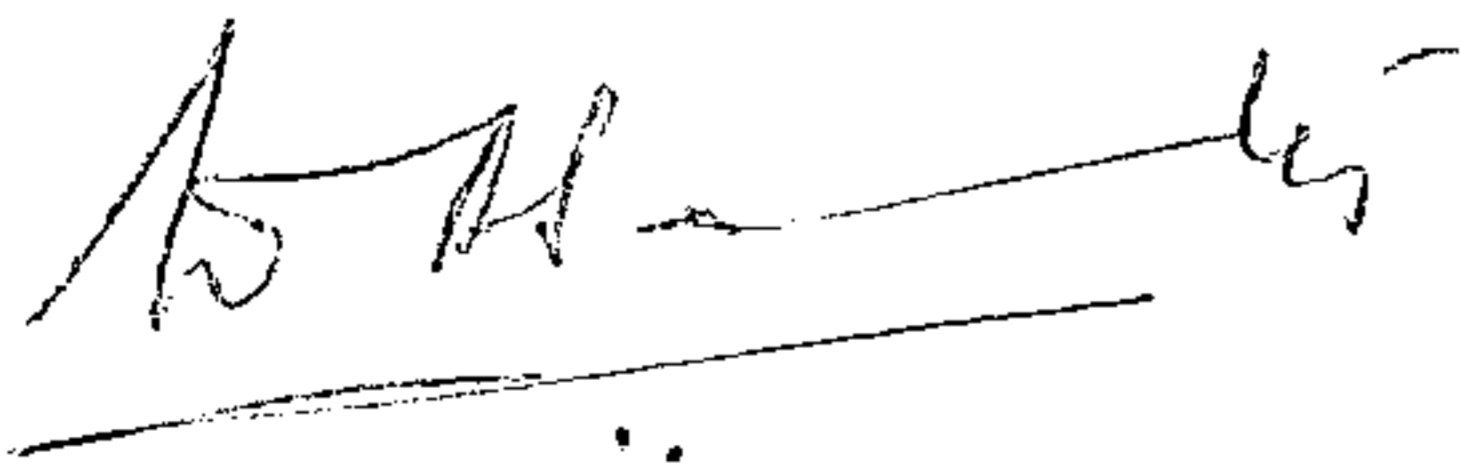
It is observed that in terms of the provisions of Section 27(2) of the Civil Procedure Code that after the appointment of an Attorney-at-Law in the manner set out under Section 27 (1), such appointment shall be in force until revoked with the leave of the Court by a writing signed by the Client with notice to the Attorney-at-Law and filed in Court, or under other circumstances set out in the said sub-section (2) or until all proceedings in the action are terminated.

According to the facts adduced, it is evident, that there had been a writing signed by the Plaintiff Company and tendered to Court for the revocation of this proxy. In any event, it is observed that the Attorney-at-Law in question by his letter dated 07.10.96 addressed to the Plaintiff Company, with copy to the Attorney General, had given his consent to revoke the proxy. The said writing also is now before Court. The said document has been filed as "X4" with the aforementioned Affidavit dated 08.01.'97 of the Director of the Plaintiff's Secretaries. However, on facts adduced, it is seen, that on a later date, Attorney-at-Law, Mr. Ahamed had moved to withdraw his consent given by the said letter to revoke the proxy. However, consent once so given cannot be allowed to be withdrawn. Nor are there provisions to permit such an application. Neither the submissions made by Mr. H. Ahamed nor the submissions made on behalf of the Plaintiff Company reveal that the decisions made at the Meeting of the Board of Directors held on 28.06.'95, have since been set aside and/or made ineffective. The only conclusion that could be drawn according to facts before Court is that the decisions that had been made at the Meeting of the Board of Directors on 28.06.'95 had been confirmed at the Meeting of the Board of Directors held on 23.02.'96. It is evident that the letter dated 10.10.'96 had been written to Attorney-at-Law, H. Ahamed, whilst a resolution had been passed to remove Mr. C.L. Perera from the post of Chairman of the Plaintiff under Minute No 2 of the Minutes of the Meeting that had been held on 28.06.'95. It is by the said letter that he had been informed that the proxy that had been granted to him on behalf of the Plaintiff is still in force. It is seen that, even the said letter had been written subsequent to the decisions of the Board of Directors on 28.06.'95.

The circumstances being so, upon a consideration of all facts adduced, it is evident, that requirements laid down in Sub-section 27(2) of the Civil Procedure Code have been complied with by the Plaintiff Company concerning the proxy that had been granted to Attorney-at-Law, Mr. Ahamed. The decision taken by the Company to revoke the proxy granted to him had been conveyed by the letter dated 24.07.'96 addressed to the Registered Attorney-at-Law Ahamed by the Plaintiff, which has been marked "X3" and annexed to the Affidavit of Mr. Kadurugamuwa, a Director of the Secretaries to the Plaintiff Company. The writing to duly revoke the proxy was also attached to the Motion of Mrs. P.A.K. Peiris, Attorney-at-Law, who filed the Motion dated 11.11.'96 on behalf of the Attorney General. Accordingly, the Court grants leave to revoke the proxy given to Mr. H. Ahamed, Attorney-at-Law by the Plaintiff Company. I accept the proxy of Attorney-at-Law, Mrs. P.A. Kumaraperu Peiris, which has been filed on behalf of the Plaintiff.

Sgd.  
[Chandra Ekanayake]  
Add. District Judge  
Colombo

Translation certified correct.



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