

ORDER REGARDING INTERROGATORIES

IN THE DISTRICT COURT OF COLOMBO

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

PLAINTIFF

No.3155/Sp1.

- VS -

1. MITSUI AND COMPANY LIMITED, a Company organized and existing under the Laws of Japan and having the Principal Place of business at 2-1, Ohtemachi 1-Chome, Chiyoda-Ku, Tokyo, Japan and having a Liaison office and/or a Place of business in Sri Lanka at No.315, Vauxhall Street, Colombo 02, and 10 others.

DEFENDANTS

14.10.'92

D.C. Colombo
3155/Special

ORDER

Mr. Kanag-Isvaran, P.C., Counsel for Plaintiff has filed a Motion on 06.03.1992 that Court be pleased to grant leave to deliver interrogatories for the examination of the 1st & 2nd Defendants and 3rd & 4th Defendants interms of section 94 of the Civil Procedure Code read with section 95. Consequent upon this application Court made Order that the Motion and the interrogatories which are annexed to the Motion be served on the registered Attorney-at-Law under section 95 of the Civil Procedure Code returnable on 20th March 1992. Thus the interrogatories were served upon the proctor or the registered Attorney of the 1st, 2nd & 3rd Defendants on 19.03.1992 Attorney-at-Law for the 1st, 2nd, 9th & 11th Defendants filed a Motion in Court that the case be called on 20th March 1992. Mr. Soza appearing for 1st & 2nd Defendants took up the objection that the notice referred to above has not been served on the relevant Defendants.

Mr. Eric Amerasinghe., P.C. appeared for 1st, 2nd, 9th & 11th Defendants and argued that there is no provision anywhere in the Civil Procedure Code for trial to be interrupted or stopped at this stage.

It must be mentioned that this case was fixed for four dates of trial namely, 27th, 30th, 31st of March and 1st of April 1992, until 9th March 1992 there had been no application for service of notice.

Mr. Eric Amerasinghe., P.C. and Mr. Shibly Aziz, Additional Solicitor-General both in their submissions objected to the trial being postponed for interrogatories and inspection.

The gravamen of Mr. Amerasinghe's arguments was that notwithstanding the order of Court that interrogatories annexed to the notice be served on the registered Attorney-at-Law under section 95 of the Civil Procedure Code, the notice in question has not been properly delivered to these Defendants. Section 97 of the Civil Procedure Code make special provision vis-a-vis corporate bodies joint stock companies whether incorporated or not or an other body of persons empowered by law to sue or be sued. This section provides that "Any opposite party may apply to the Court for an order allowing him to deliver interrogatories to any member or officer of such corporation, company or body".

Now the question arises whether section 97 of the Civil Procedure Code signifies the deviation from section 95 to the exclusion of the mandatory provisions contained in section 95 namely the delivery of interrogatories to the "Proctor if any" of the party interrogated. Section 95 whilst setting out the method of delivery of interrogatories does not in any way come in conflict with the special provisions of section 97. Section 97 gives the further opportunity for an opposite party to deliver interrogatories to any member or officer of such corporation, company etc., in addition to the proctor or (Attorney-At-law) referred to in section 95.



Mr. Amerasinghe admits that interrogatories have been served on Mr. Abdeen the Registered Attorney. His contention is that Mr. Abdeen is neither a member or officer of the defendant company. This does not in anyway render the step taken by the plaintiff under section 95 illegal or irregular or the order made by the Court as per Journal entry 57 has been made without jurisdiction.

The word " may apply to the Court for an order" in section 97 renders morex exquisitely the intention of the legislature to make steps under section 97 optional and not mandatory as under section 95. Therefore this Court finds itself in disagreement with the submissions that section 95 is modified by section 97 so as render provisions of section 97 mandatory.

The purpose of serving interrogatories is to obtain admission of facts relevant to facts in issue. Interrogatories cannot be permitted after the trial had begun. Therefore to the extent that the plaintiff seeks to obtain for the party interrogated admission of fact which is necessary for the party interrogating to prove in order to establish his case, the interrogatories must be answered.

Therefore I allow the application, the interrogatories, discovery and inspection as prayed for by the plaintiff.

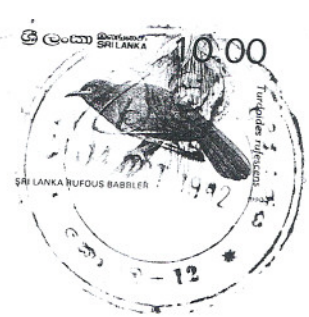
I.M. Liyanage
Addl. District Judge
Colombo.

ආදායම් ලිපිවෙහි: 
සාදා බැලූවේ: 

ඉහත සඳහන් විෂයේ කෙළඹ දිසා අධිකරණයේ අංක 3155/විනෝද නඩුවේ
12.10.14 දිනැති (ඉංග්‍රීසි) විධිමත්ව සහ පිටපතක් බව මෙහිත් සඳහන් කරමි.




රෙජිස්ට්‍රාර්.



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