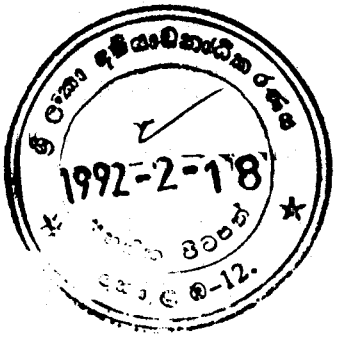
IN THE COURT OF APPEAL OF THE REPUBLIC OF SRI LANKA

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

C.A.206/91

Vs.

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

Plaintiff-Respondent

and others

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./--

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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 :

Comp. by :

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