

IN THE DISTRICT COURT OF COLOMBO

Nihal Sri Ameresekere
of 167/4, Sri Vipulasena Mawatha,
Colombo 10.

PLAINTIFF

Case No. : 19849/MR

Vs

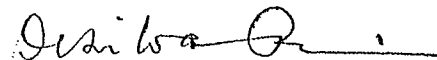
Gamini Lakshman Peiris,
of "Visumpaya", Staples Street,
Colombo 2, and also of
37, Kirula Place, Colombo 5.

DEFENDANT

I tender herewith Petition, Affidavit of the Plaintiff and the Document marked "C", in terms of Section 109(1) of the Civil Procedure Code and respectfully move that Court be pleased to grant the Reliefs prayed for therein.

I further move that this matter be mentioned in Open Court on 14th May 1998 to enable Counsel for the Plaintiff to support this Application.

Colombo, this 7th day of May 1998



Attorney-at-law for Plaintiff

IN THE DISTRICT COURT OF COLOMBO

In the matter of an Application under Section
109(1) of the Civil Procedure Code.

Nihal Sri Ameresekere
Of 167/4, Sri Vipulasena Mawatha,
Colombo 10.

PLAINTIFF

Case No. : 19849/MR

Vs

Gamini Lakshman Peiris,
of "Visumpaya", Staples Street,
Colombo 2, and also of
37, Kirula Place, Colombo 5.

DEFENDANT

On this 7th day of May 1998

The Petition of the Plaintiff abovenamed, appearing by J.W.D. Perera, practising under the name and style of DE SILVA & PERERA, his Attorney-at-law, states as follows:

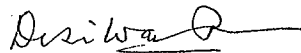
1. The Plaintiff by Motion dated 5.3.'98 [copy annexed hereto marked "C"], setting out the circumstances, made Application to Court for an Order under Section 102(1) of the Civil Procedure Code, directing the Defendant to declare by Affidavit all documents, which are in his possession or power, relating to all the matters in question in this Action, and the Court having allowed such Application on 9.3.'98, issued Notice on 10.3.'98 under Section 102(1) of the Civil Procedure Code on the Defendant through his Registered Attorneys-at-law.
2. The Defendant has failed to comply with the aforesaid Order of Court and has filed a Statement of Objections dated 17.3.'98, received in the post by the Plaintiff on 27.4.'98, supported by an Affidavit of the Defendant affirming, inter-alia, that;
 - i. there are no documents in his possession and/or power relating to any matter in question in this Action
 - ii. the documents referred to in the Notice are not in his possession in his personal capacity and/or in any event they are privileged.
3. The Plaintiff states that;
 - i. for the Defendant to have intervened, to have caused the suspension of the Hilton Settlement, making pronouncements and/or statements thereon, as morefully referred to in the Plaint, which mainly and/or basically relate to the matters in question in this Action, the Defendant ought to have had in his possession or power, the documents relating to all matters in question in this Action.
 - ii. Defendant could not have intervened as aforesaid and made the said pronouncements and/or the statements without having in his possession or power the relevant documents and having read them.
 - iii. the Defendant in paragraph 39 of his Answer filed in this Action has averred

"In any event and without prejudice to the aforesaid the Defendant pleads that at all times material he acted in his capacity as the Deputy Minister of Finance."

- iv. the Defendant ought therefore to have had and/or has the documents relating to matters in question in this Action in his possession and power. The Defendant is not entitled under the provisions of the Civil Procedure Code to have claimed, as he does that the documents are "privileged".
 - v. the Defendant was not entitled under the provisions of the Civil Procedure Code to have filed a Statement of Objections to an Order made by Court directing him to answer. This is contempt of Court under Section 109(2) of the Civil Procedure Code.
4. The Defendant has deliberately failed and/or wilfully refused to comply with the said Order of Court made under Section 102(1) of the Civil Procedure Code, making the Defendant liable to have his defence (Answer) struck out and to be placed in the same position, as if he had not appeared and answered. The Plaintiff reserves his right to make Application to Court under Section 109(2) of the Civil Procedure Code.

WHEREFORE the Plaintiff respectfully prays that Your Honour's Court be pleased to:

- a). reject the Statement of Objection of the Defendant,
- b). make Order under Section 109(1) of the Civil Procedure Code striking out the Answer of the Defendant,
- c). proceed to trial, as if the Defendant had not appeared and answered,
- d). grant costs and,
- e). grant such other and further reliefs as to Your Honour's Court shall seem meet.



Attorney-at-law for Plaintiff

"C"

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PLAINTIFF

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DEFENDANT

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Whereas the cause of action referred to in the Plaint in this Action had arisen from matters attended to and/or actions taken by the Defendant, inter-alia, in the course of his duties, as Deputy Minister of Finance which said matters and/or actions have been recorded and/or documented and filed of record in certain files maintained by and kept at the Ministry of Finance/Treasury under the supervision and/or control and/or authority of the Defendant, as the Deputy Minister of Finance, and accordingly, the said files are in the possession or power of the Defendant

And whereas the documents in the said files directly relate to the matters in question in this Action and are very necessary to effectively dispose of the issues in this Action.

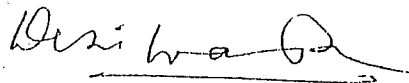
In the above circumstances, we MOVE that the Court be pleased to make an Order under Section 102(1) of the Civil Procedure Code, directing the Defendant abovenamed, to declare by Affidavit all the documents, which are thus in his possession or power, relating to all the matters in question, in this Action.

WE ALSO MOVE that the Court be pleased to direct the Notice of Order (in the Form annexed hereto marked "B") be served on the said Defendant through his Registered Attorneys-at-law.

WE further MOVE that the Court be pleased to call this Case on 6th March 1998, to enable the Plaintiff's Counsel to support this Motion.

TRUE COPY

Colombo, 5th March 1998



Attorneys-at-law for Plaintiff

DE SILVA & PERERA

Attorneys-at-law & Notaries Public
Nos. 34/64, 65 & 1/49, New Lawyers Complex,
SAN SEBASTIAN HILL

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