

IN THE DISTRICT COURT OF COLOMBO

Nihal Sri Amarasekere
of 167/4, Sri Vipulasena
Mawatha,
Colombo 10

PLAINTIFF

Case No. 21819/MR

Vs.

1. Gamini Lakshman Peiris
of "Visumpaya", Staples
Street, Colombo 2
and also of 37, Kirula Road ,
Colombo 05
2. Hotel Developers (Lanka) Ltd.,
C/o Colombo Hilton Sports
Complex,
Echelon Square,
Lotus Road,
Colombo 1

On this 15th day of July 1999

The statement of objections of the 1st Defendant above named appearing by James Henry Paul Ratnayeke, Uswatteliyanage Sudath Nilupul Prasansa Perera and Punyakanthi Navaratne practising in partnership under the name style and firm of **PAUL RATNAYEKE ASSOCIATES** and their assistants Chandrani Sooriyarachchi Gamage, Ruchira Anthony, Amali Alawwe, Sureni Wirasinha, Iresha Fernando, Charmalee Weerasesekera, Shantha Hewa Kosgodage, Gamini Balasuriya and Rozani Rodrigo its Attorneys-at-Law states as follows:

1. The 1st Defendant states that
 - a) the 1st Defendant filed a motion dated 16th February 1999 praying, inter alia, that the Court be pleased to reject the plaint and/or dismiss the action;
 - b) the order on the said motion was delivered on or about 17th May 1999;
 - c) the case was fixed for trial on or about 17th May 1999.
2. In the circumstances, in any event, this application dated 1st June 1999 cannot be entertained at this stage until the Court first determines the preliminary objections taken by the 1ST Defendant in his answer dated 22nd January 1999.
3. The Defendant's position taken hereinafter is strictly without prejudice to the aforesaid.

4. The 1st Defendant states that the notice requiring the discovery of documents is vague and/or is wide in scope and/or is not in conformity with section 102 of the Civil Procedure Code.
5. The 1st Defendant states that the order directing discovery has been made per incuriam.
6. The 1st Defendant states that in any event, documents in the Ministry of Finance are and have been in the possession and power of the Hon. Minister of Finance.
7. In any event, and without prejudice to the aforesaid, the 1st Defendant states that
 - (i) documents in the Ministry of Finance are in general of a confidential and/or sensitive nature;
 - (ii) the divulging of such documents may cause jeopardy to and would be against the public interest.
8. In any event, the 1st Defendant states that the application for discovery has been made and order obtained to circumvent the provisions of Section 103 of the Civil Procedure Code.
9. In any event, the 1st Defendant pleads that the Plaintiff has failed to establish and/or even to prima facie demonstrate that the documents (sought to be discovered) is relevant and/or sufficiently material to the facts in the case.
10. The 1st Defendant pleads that the application for discovery is of a speculative nature.
11. The 1st Defendant further states that the alleged notice dated 4th May 1999 has been issued per incuriam and/or any order made has been made per incuriam.
12. In any event, and without prejudice to the aforesaid, the Plaintiff is on the face of the notice not entitled to discovery of documents as set out therein.
13. In any event, in law, no order for discovery as set out in the notice can be made.
14. The 1st Defendant states that in the circumstances, the application has not been made bona fide for the purposes of the action.
15. The affidavit of the 1st Defendant is annexed in support of the averments morefully contained herein.

WHEREFORE the 1st Defendant prays :

- a) that the application of the Plaintiff purportedly made under Section 102 of the Civil Procedure Code be dismissed and/or disallowed;
- b) for costs;
- c) for such further and other reliefs as to Your Honour's Court shall seem meet.

Sgd. Paul Ratnayake Associates

Registered Attorneys-at-Law for the 1st Defendant

Documents annexed

1. Affidavit of the 1st Defendant

Sgd. Paul Ratnayake Associates

Registered Attorneys-at-Law for the 1st Defendant

Settled by

Mr. Harsha Amarasekera
Attorney-at-Law

Mr. Romesh de Silva
President's Counsel

Mr. H.L de Silva
President's Counsel