IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA.

C.A.L.A.254/2000
D.C.COLOMBO NO.19849/MR.

Nihal Sri Amerasekera,
167/4 Sri Vipulasena Mawatha,
Colombo 10.
Plaintiff-petitioner

vs.

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

BEFORE : Jayasinghe J., and
Udalagama, J.

COUNSEL : k.kanag-Iswaran, P.C. with Dr.Harsha Cabral, M.A.Sumanthiran and Nigel Bartholemeusz for the plaintiff-petitioner.

Romesh de Silva, P.C. with Harsha Amarasekera for the defendant-respondent.

ARGUED ON : 24.10.2000 and 15.11.2000.

DECIDED ON : 31.01.2001.

UDALAGAMA, J.

The facts of this case briefly appear to be as follows:- The plaintiff-petitioner instituted the above action on 21.07.1997 against the defendant-respondent seeking judgment in a sum of Rupees 300,000,000.00 on the ground of defamation. It is apparent that the defendant-respondent promptly filed answer and that the case was fixed for trial on 16.03.1998. It is also seen that shortly before trial, i.e. on 23.02.1998 the plaintiff-petitioner filed an application under Chapter XVI, section 94, requiring the defendant-respondent to answer interrogatories to which application the defendant-respondent objected to on the basis that the said

Application was mala fide and was a ruse to postpone the trial-

-which was already fixed. The learned District Judge upheld the objection of the defendant-respondent.

It is also apparent from the record that on 06.03.1998 another application was made by the plaintiff-petitioner by way of motion and supported ex parte under Chapter XVI, section 108, requiring the defendant-respondent to produce certain documents said to be in the possession of the latter to which application the defendant-respondent also objected to on the basis that the said documents were not in the possession of the defendant-respondent and that in any event the said documents were privileged and further that notice requiring discovery of documents is vague in scope. At the inquiry pertaining to the objections, the learned District Judge by order dated 30th July 1998 came to a finding that pursuant to the non compliance of the provisions of section 102 of the Civil Procedure Code that the answer already filed by the defendant-respondent be struck out and proceeded to fix the trial ex parte and additionally in the same order also dismissed the plaintiff-petitioner's application for interrogatories.

It is important to note that the learned District Judge on 30th July 1998 in fact made two orders as stated above. The defendant-respondent moved in revision in case No.C.A.775/98 in which case Justice Weerasuriya with Justice Asoka de Silva agreeing dealt with the order of the learned District Judge dated 30th July 1998 and on 11.02.1999 allowed the defendant-respondent's

application to set aside the learned District Judge's order referred to above. The plaintiff-respondent subsequently moved Supreme Court for leave to appeal against the aforesaid order of the Court of Appeal but, however, subsequently withdrew the said application.

It is now contended by the plaintiff-petitioner that since both findings of the learned District Judge pronounced in his order dated 30.07.98 were set aside in appeal, that the finding of the learned District Judge on interrogatories, namely, that the defendant is not bound to answer the said interrogatories had also been set aside and that thereby the defendant-respondent is bound to answer the said interrogatories in terms of the provisions of the Civil Procedure Code.

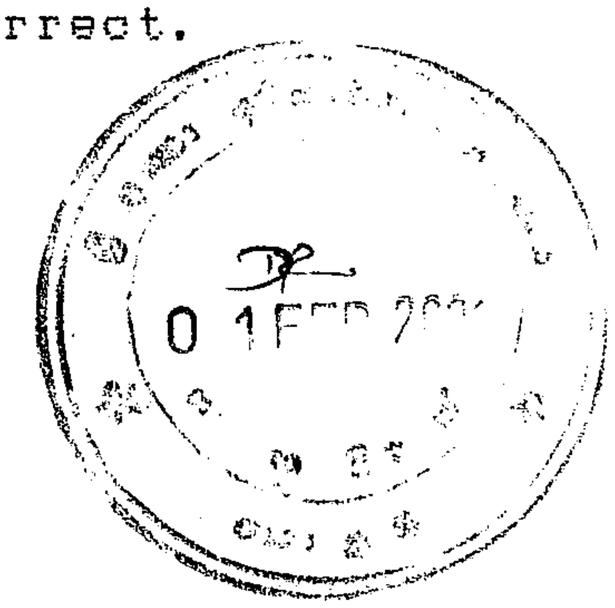
Thus the moot point would be whether in fact both findings of the learned District Judge had effectively been set aside as contended by the plaintiff-petitioner.

As held by Weerasuriya J. in C.A.Revision Application No.775/98 . . .. " on 07.05.98 the plaintiff-respondent made an application in terms of section 109(1) of the Civil Procedure Code to strike out the defence of the defendant-petitioner on the basis that he had failed to comply with the order made under section 102 of the Civil Procedure Code and the District Judge by his order dated 30.07.98 struck out the answer of the defendant-petitioner

and fixed the case for trial. It is from the aforesaid order of the learned District Judge that this application for Revision had been filed". On that basis alone Weerasuriya J. proceeded to deal with the application in revision. Beyond doubt the matter that was decided by Weerasuriya J. was the non-compliance of the order of the learned District Judge under section 102 of the Civil Procedure Code and nothing more. The matter of interrogatories under section 94 of the Civil Procedure Code was not even considered as there was no application to vary the District Judge's order accepting the objections of the defendant-respondent to comply with section 94 aforesaid.

In view of the above, I see no reason to disagree with the learned District Judge when he stated in his order dated 22.06.2000 (which order is canvassed before this court now) that "though the order made by the Court of Appeal on 11.02.99 states that the order of the District Court dated 30.07.98 is being set aside, it appears that the Court of Appeal has made the aforesaid order dated 11.02.99 only on the application made by the defendant (respondent) for revision of the order against the defendant (respondent) in relation to the discovery of documents".

From the reading of the order of the Court of Appeal dated 11.02.99, this finding appears to be correct.



Although Weerasuriya J. in his order dated 11.02.99 relevant to the Court of Appeal Revision Application 775/98 set aside the order of the learned District Judge dated 30.07.98 it is significant that the word 'order' is in the singular even though there appears to be two orders of the learned District Judge and what has been set aside is one of the two orders. Perusing the judgment of the Court of Appeal I am convinced that only the matter arising from the revision application has as stated above pertaining to discovery that has been set aside and not the order of the learned District Judge pertaining to interrogatories. This matter in fact has not even been considered.

In the circumstances we see no reason to interfere with the order of the learned District Judge dated 22.08.2000 and accordingly dismiss this application with taxed costs.

Sgd.

Judge of the Court of Appeal.

Jayasinghe J.

I agree.

Sgd.

Judge of the Court of Appeal.

I do hereby certify that the foregoing is a true copy of the Judgment dated 31.01.2001 filed of record in C.A. L.A. No. 254/2000.

Typed by :
Compared with :

Chief Clerk - Court of Appeal

Chief Clerk of the Court of Appeal

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