

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

C.A. L.A. 255/2000
D.C. Colombo 21819/HR.

Nihal Sri Amerasekera,
187/4, Sri Vipulasena Mawatha,
Colombo 10.

Plaintiff-petitioner

vs.

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

2. Hotel Developers (Lanka) Ltd.,
C/o Colombo Hilton Sports
Complex, Echelon Square,
Lotus Road, Colombo 1.

Defendants-respondents.

BEFORE

Jayasinghe, J. and
Udalgama, J.

COUNSEL

I. Kanna-Ratnayake, B.C. with Dr. Harsha Cabraal and
M.A. Sumanthiran for the Plaintiff-petitioner.

Ramesh de Silva, B.C., with Harsha Amerasekera
and Sugath Galmeera for the 1st defendant-
respondent.

E.D. Wickremanyake with Kushan de Alwis for the
2nd defendant-respondent.

ARGUED ON

13.01.2001

DECIDED ON

02.02.2001

UDALAGAMA, J.

When an application by the plaintiff-petitioner to
set aside the order of the learned District Judge dated 25.08.2000
on the question whether the District Judge should in the first
instance consider the application of the plaintiff-petitioner
relating to interrogatories and the discovery of documents or

whether the learned District Judge should consider the 1st defendant-respondent's preliminary issues. The preliminary issues of the 1st defendant-respondent were filed by way of motion and referred to the non-disclosure of a cause of action and that the action appeared to be prescribed. The 1st defendant-respondent's contention was that the said two preliminary issues warranted a dismissal of the action and that the matter deserved consideration prior to the order on the question of interrogatories and discovery of documents.

The learned District Judge after considering the written submissions tendered by the parties on this question came to a finding that as there was no provision in the Civil Procedure Code to the effect that an application for interrogatories and discovery of documents need be taken up in the first instance before considering the other preliminary issues. Acting in accordance with the provisions of section 100 of the Civil Procedure Code he made order on 25.08.2000 that a decision on the preliminary issue prior to making an order on interrogatories and discovery of documents deemed more "suitable."

The plaintiff-petitioner appeals therefrom.

Learned Counsel for the plaintiff-petitioner, inter alia, contended before this court that as the matters of the plaintiff-petitioner's application made under sections 100 and 102 of the

Civil Procedure Code had on 15.08.99 been fixed for inquiry, that the learned District Judge now had no jurisdiction to set aside that order for inquiry even under the provisions of sections 108 and 146 of the Civil Procedure Code.

I am unable to agree with the learned Counsel for the plaintiff-petitioner on the above submission as this contention is clearly untenable.

Section 108 of the Civil Procedure Code provides a District Judge ample discretion to control ~~the~~ proceedings. Trial Judges should not be fettered by technicalities. In this instance the learned District Judge is clearly empowered by the said provisions in section 108 aforesaid to determine any issue or question prior to deciding upon the right to discovery or inspection if Court is satisfied that such discovery or inspection depends on the determination of any issue or question. In those circumstances it could not be said that the District Judge is bereft of discretion to come to a finding that by deciding preliminary issues, in the first instance, that a determination on discovery and/or inspection may sometimes be even redundant. In the circumstances I see no reason to interfere with the finding of the learned District Judge dated 25.08.2000 to decide the preliminary issues submitted by the 1st defendant-respondent before considering the application of the plaintiff-petitioner for interrogatories and discovery of documents.

This application of the plaintiff-petitioner is dismissed
with taxed costs.

Judge of the Court of Appeal.

Jayasinghe, J.

I agree.

Judge of the Court of Appeal.