

TRANSLATION

BEFORE M.T.R. THABREW ESQUIRE, ADDITIONAL DISTRICT JUDGE, COLOMBO

Recorded by: G.M. Senaratne

DISTRICT COURT CASE NO. 21819/MR

25.08.2000

ORDER

In this Case the Court is to make an Order, as to whether on the Application of the 1st Defendant the Issues in this Case should be taken up first or whether on the Plaintiff's Application the matter relating to Interrogatories and the Disclosure of Documents should be considered first.

Before this Case was fixed for Trial, whilst the 1st Defendant filing Motion dated 16.02.99 made Application to dismiss the Plaint because the Plaint had not disclosed a cause of action and for the reason that the Plaintiff's Case was prescribed, and before Court making an Order on that Application, the Plaintiff made Application for Interrogatories and Disclosure of Documents.

Thereafter, after Notice had been issued on the Defendants in respect of the Application for Interrogatories and Disclosure of Documents and before Court made an Order about that matter, the Court has made Order on 17.05.99 in respect of the Application made by the 1st Defendant by his Motion dated 16.02.99 and on that date the Trial was fixed for 09.06.1999. Thereafter on 26.05.1999, whilst the Defendant has filed Objections to the Plaintiff's Application for Interrogatories, on 03.06.99 the 1st Defendant has filed his Written Issues. Thereafter by Order made by Court on 15.06.99 whilst Court has directed that further steps be taken in respect of the Plaintiff's Applications for Interrogatories and Disclosure of Documents, the Trial has been postponed for 13.09.1999. On 13.09.1999 the Counsel for the Defendant making Application that the Trial in this Case be started and that thereafter after taking up for Trial the Legal Issues to be submitted as Preliminary Issues and making Order thereon, the Plaintiff's Application for Interrogatories and Disclosure of Documents be inquired into, Court has directed that both parties to file Written Submissions in that regard. Accordingly both parties have filed Written Submissions.

Prior to the Plaintiff's Application in this Case for Interrogatories and Disclosure of Documents, after the 1st Defendant by Motion dated 16.02.1999 made Application for the dismissal of the Plaintiff's Case on the facts stated in the said Motion, according to the Order given in that regard by Court on 17.05.99, rejecting the Application made by the 1st Defendant's Motion, what was stated was that facts mentioned therein would be considered after the commencement of the Trial.

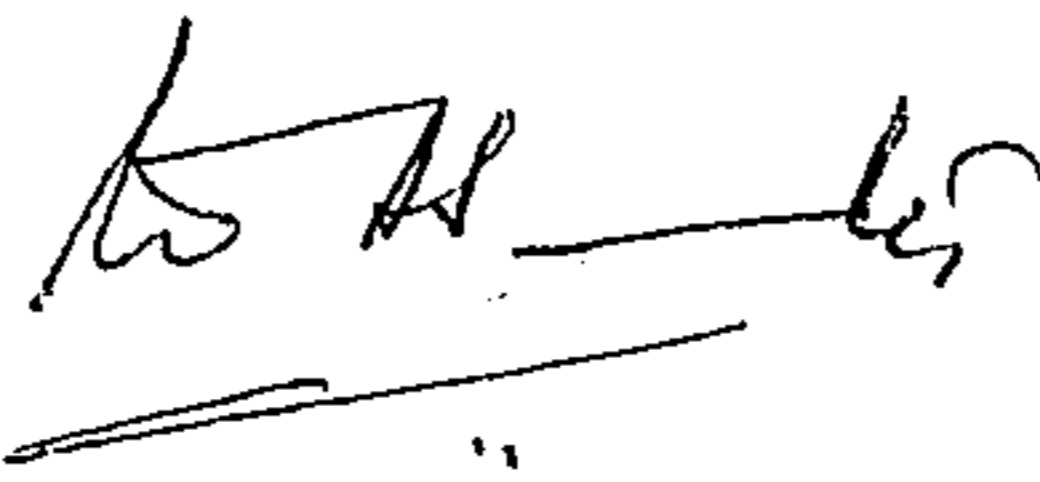
Whilst there is no provision in the Civil Procedure Code that Application for Interrogatories and Disclosure of Documents should be considered before the consideration of issues in a Case, according to provisions of Section 108 of the Civil Procedure Code, if the party from whom discovery of any kind or inspection is sought objects to the same or any part thereof, and if the Court is satisfied that the right of such discovery or inspection depends on the determination of any issues or question in dispute in the action, or that for any other reason it is desirable that any such issue or question should be determined before deciding upon the right to discovery or inspection, the Court may order that the issue or question be determined first, and reserve the question as to the discovery or inspection.

In terms of the provisions of the said Section, before making a decision in respect of a question regarding Interrogatories or Disclosure of Documents, under the given circumstances, Preliminary Issues submitted in the Case could be decided upon first. In this Case, specially since the Legal Issues mentioned in the 1st Defendant's Motion dated 16.02.1999 have been submitted as Preliminary Issues by way of his Written Issues, and based upon the same the Case might end, before considering the Application made by the Plaintiff for Interrogatories and Disclosure of Documents, I decide that it is suitable to make Order on the Preliminary Issues after the submission by both parties of the issues.

Sgd./ M.T.R. Thabrew
Addl. District Judge, Colombo

25.8.2000

Translation certified correct



W. A. SAMARATUNGA
Sworn Translator of the Govt. of Sri Lanka
Legal Draftsman's Department
COLOMBO-12- SRI LANKA