

IN THE DISTRICT COURT OF COLOMBO

**IN THE MATTER OF AN APPLICATION
UNDER SECTION 100 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

Colombo, this 11th day of March 1998

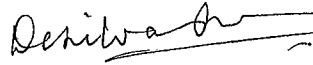
The Petition of the Plaintiff, appearing by J.W.D. Perera, practising under the name and style of DE SILVA & PERERA, his Attorneys-at-law, states as follows:

1. The Plaintiff obtained leave of Court and delivered to the Defendant Interrogatories in writing on 24.02.1998 in terms of Section 94 of the Civil Procedure Code. Court granted permission as aforesaid upon the Motion of the Plaintiff, and ordered the Defendant to answer the said Interrogatories within 10 days of receipt thereof.
2. The record shows that on or about 6th March 1998, the Attorneys-at-law for the Defendant have filed a Motion and a purported Statement of Objections and moved that the said Statement of Objections be filed of record. Court has ordered that the matter be mentioned on 9th March 1998 in open Court.
3. When the matter came up in open Court on 9th March 1998, the Defendant was absent and unrepresented. Court intimated to Counsel for the Plaintiff that the Defendant had refused to Answer the Interrogatories. The Counsel for the Plaintiff then informed Court that under the law an Affidavit has to be filed by the Defendant and that no papers, whatsoever, had been served on the Plaintiff or his instructing Attorneys in respect of this matter. Court thereupon made Order directing the Attorneys-at-law for the Defendant to serve the papers on the Plaintiff. As at date none have been served.
4. Thereafter the same day, i.e. 9th March 1998 the Plaintiff caused an examination of the record to be made and found that the Defendant
 - a) had filed a Motion dated 6th March 1998,
 - b) moving that the Statement of Objections tendered be filed of record and
 - c) has neither supported the same, nor
 - d) served notice of same on the Plaintiff, nor
 - e) filed Affidavit in terms of Section 99 of the Civil Procedure Codeand by Motion dated 9th March 1998, the Plaintiff therefore moved that the papers filed by the Defendant be rejected as being contrary to law. A true copy of the Motion dated 9th March 1998 with notice to the Defendant is annexed hereto marked "X"
5. The Plaintiff respectfully states that the non-compliance of the Defendant with the requirement of Section 99 of the Civil Procedure Code tantamounts to a wilful omission on his part to answer the said Interrogatories and a non-compliance with the Order of Court.

6. In the circumstances the Plaintiff is entitled to apply under Section 100 of the Civil Procedure Code for an Order of Court requiring the Defendant to answer the said Interrogatories by *viva voce* examination or by Affidavit in terms thereof.
7. An Affidavit of the Plaintiff is appended hereto in support of the averments contained herein.

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

- a) Issue notice of this petition on the Defendant,
- b) Make Order requiring the Defendant to answer the said Interrogatories by *viva voce* examination or by Affidavit;
- c) Order Costs, and
- d) Such other and further Relief as to Your Honour's Court shall seem meet.



Attorneys-at-law for Plaintiff

IN THE DISTRICT COURT OF COLOMBO

''X''

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

WHEREAS pursuant to proceedings in Court today, when Court intimated to the Plaintiff, that the Defendant has refused to answer the Interrogatories

AND WHEREAS the Plaintiff carried an examination of the record in the matter and noted that the Defendant:

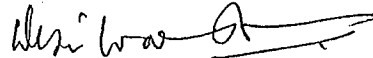
- a) had filed a Motion dated 6th March 1998,
- b) moving that the Statement of Objections tendered be filed of record and
- c) has neither supported the same, nor
- d) served notice of same on the Plaintiff, nor
- e) filed Affidavit in terms of Section 99 of the Civil Procedure Code

WE MOVE that the said Motion and Statement of Objections be rejected as contrary to law

AND WHEREAS this constitutes wilful and contumacious conduct on the part of the Defendant in omitting to duly answer the Interrogatories, as required by law, the Plaintiff will in due course take steps to apply to Court to make an Order requiring the Defendant to answer the Interrogatories as mandated by law

WE FURTHER MOVE that this matter be mentioned in open Court on 13th March 1998 to enable the Counsel for Plaintiff to support the same.

Colombo, this 9th day of March 1998



Attorneys-at-law for Plaintiff

A copy of this Motion having
been sent by Registered post to
the Attorneys-at-law for the
Defendant, the Registered Postal
Article Receipt in proof thereof
is attached hereto



Attorneys-at-law for Plaintiff

TRUE COPY