

**IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC
OF SRI LANKA**

In the matter of an application for Leave to Appeal to the Supreme Court in terms of Section 5C of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended by the High Court of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006 read with Articles 127 and 128 of the Constitution.

ORIGINALLY

Balangoda Plantations PLC,
110 Norris Canal Road
Colombo 10.

Plaintiff

SC Appeal No. 157/2018
SC/HCCA/LA/397/2017
WP/HCCA/Col/89/2014(F)
DC Colombo Case No.
171/2008 DSP

vs.

1. Land Reform Commission, C82, Gregory Mawatha, Colombo 7
2. The National Gem and Jewellery Authority, No.25 Galle Face Terrace, Colombo 3
3. Janatha Estates Development Board, 55/75, Vauxhall Lane, Colombo 2.

Defendants

And in an application under 86(2) of Civil Procedure Code.

1. Land Reform Commission, C82,
Gregory Mawatha, Colombo 7

1st Defendant-Petitioner

Vs.

Balangoda Plantations PLC,
110 Norris Canal Road
Colombo 10.

Plaintiff-Respondent

2. The National Gem and Jewellery Authority,
No.25 Galle Face Terrace,
Colombo 3
3. Janatha Estates Development Board,
55/75, Vauxhall Lane, Colombo 2.

2nd and 3rd Defendants-Respondents

Later in an Appeal in the Provincial High Court of Western Province

Land Reform Commission,
C82, Gregory Mawatha, Colombo 7

Defendant-Petitioner-Appellant

Vs.

Balangoda Plantations PLC,
110 Norris Canal Road
Colombo 10.

Plaintiff-Respondent-Respondent

1. The National Gem and Jewellery Authority,
No.25 Galle Face Terrace,
Colombo 3
2. Janatha Estates Development Board,
55/75, Vauxhall Lane, Colombo 2.

2nd and 3rd Defendants-Respondents- Respondents

AND NOW

Balangoda Plantations PLC,
110 Norris Canal Road
Colombo 10.

Plaintiff-Respondent- Respondent-Appellant

Vs.

1. Land Reform Commission,
C82, Gregory Mawatha, Colombo 7

Defendant-Petitioner- Appellant – Respondent

2. The National Gem and Jewellery Authority,
No.25 Galle Face Terrace,
Colombo 3.

3. Janatha Estates Development
Board,
55/75, Vauxhall Lane, Colombo 2.

2nd and 3rd Defendants-Respondents-
Respondents-Respondents

Before : S. Thurairaja, PC, J.
Kumudini Wickremasinghe, J.
Menaka Wijesundera, J.

Counsel : Maithri Wickramasinghe with Rakitha Jayathunga
instructed by K. U. Gunasekara for the Plaintiff-
Respondent-Respondent-Appellant.
Dr. Sunil Coorey with Sudarshani Coorey for the 1st
Defendant-Petitioner-Appellant-Respondent.

Written

Submissions : Written submissions on behalf of the 1st Defendant-
petitioner-appellant-respondent on 19th June, 2019.
Written submissions on behalf of the Plaintiff-
Respondent-Respondent-Appellant on 29th November,
2018.
Further written submissions on behalf of the Plaintiff-
Respondent-Respondent-Appellant on 12th June,
2025.

Argued on : 08.05.2025

Decided on : 21.07.2025

MENAKA WIJESUNDERA J.

The instant appeal has been filed to set aside the judgment dated 20.07.2017 of the Civil Appellate High Court of Colombo.

The petitioner claims that he is the lawful lessee of the 3rd respondent of the Agratenna division of the Ury estate for nearly a period of 53 years.

The 1st respondent is the Land Reforms Commission who according to the petitioner is trying to hand over his portion of the Ury estate to the 2nd respondent for gemming purposes.

The 2nd respondent is the National Gem and Jewellery Authority and the 3rd respondent is the Janatha Estate development board, who had leased out the Agratenna portion of the Ury estate to the petitioner.

This matter had been supported for leave before this Court and leave has been granted on the questions of law (a) and (b) in paragraph 15 of the petition but at the argument the Counsel for the petitioner only canvassed the 1st question of law which is (a) of paragraph 15 of the petitioner which reads as follows,

- 1) Did the High Court in the circumstances of the evidence make a substantial error of law in setting aside the order made on the basis of default and permitting the 1st defendant to proceed with its defence.

On or about the 6th of October, 2008, the petitioner had been informed that the 1st respondent intended to hand over the portion leased out to the petitioner to the 2nd respondent for the purpose of gemming.

As such, the petitioner had sought relief in the District Court against the respondents and the Court had issued an enjoining order to the petitioner and notice of interim injunction.

On 21.10.2008, when it was for notice returnable the 1st and the 3rd Respondents had been absent from Court but the 1st respondent had paid stamp fees the previous day in order to file the proxy. However, the legal officer of the 1st respondent had gone to the District Court number 1 and had checked the notice board but the case number had not been there, hence, she had gone and inquired from the registry and, according to her, she had been told to go to Court number 8.

However, her case had not been called in Court number 8 and she had been told by a clerk that the case had been fixed ex parte for nonappearance in Court number 1. Thereafter, she had taken steps to file an application under section 86 (2) of the Civil Procedure Code.

The learned Counsel for the petitioner argued very strenuously that the summons indicated very clearly that the case will be called in Court number 1 but the 1st respondent did not adhere to the same, whereas the 2nd respondent, who had received the same summons, had followed the instructions in the summons. As such, the Counsel for the petitioner invited this Court to disbelieve the version of the 1st respondent stating that it was a clear abuse of negligence and process.

The learned High Court judge had considered Section 86(2) of the Civil Procedure Code and had concluded that the petitioner had to establish a reasonable ground for default.

He had observed that the 1st respondent had paid the stamp fees the previous day and he had concluded that it displays his intention to file proxy the following day to participate in the Court proceedings.

Upon perusal of the evidence of the legal officer of the 1st respondent, her position is that she went to Court number 1 and as the notice board had not displayed the number, she had, on instructions of a Court clerk, gone to Court number 8.

However, her clerk gives a clearer picture as to what happened and has given a different reason for going to Court number 8. The reason outlined was because the case number is 00171/08, they had thought that the digit “8” was for Court number 8 and they had gone to Court number 8, instead of Court number 1.

Therefore, the evidence of the 1st respondent, containing her explanation for sitting in the wrong Court house is contrary to her own Court clerk, and furthermore, as pointed out by the Counsel for the petitioner, it has to be noted that it is the duty of the respondent to place before the Court a reasonable explanation for the default and instead, when she contradicts herself with her own clerk, it only displays her negligence and not her bona-fide mistake.

Furthermore, she had said that she had been misled because of a Court clerk who had told her that the case was not being called in Court number 1. However, she had not taken any step to call the said officer as a witness and substantiate her position.

In the case of **David Appuhamy vs Yassassi Thero (1987) 1 SLR 253**, it has been held that,

“an exparte order made in default of appearance of a party will not be vacated if the affected party fails to give a valid excuse for his default.”

In the instant case, the summons has been served but the 1st respondent had failed to take note of what has been stated in the summons, which clearly shows the negligent attitude of the 1st respondent, who had been a practicing attorney for over a decade.

Therefore, it is my opinion that the explanation of the 1st respondent is an abuse of process, which should not be tolerated and encouraged and as such, I am of the opinion that the learned High Court Judge had applied the meaning of section 86(2) of the Civil Procedure Code too liberally, which would only lead to abuse of process.

As such, the instant appeal is allowed and the order of the High Court is hereby set aside and the order of the learned District Judge is hereby affirmed and I answer the question of law raised in the affirmative.

JUDGE OF THE SUPREME COURT

S. Thurairaja, PC, J

I agree.

JUDGE OF THE SUPREME COURT

Kumudini Wickremasinghe, J.

I agree.

JUDGE OF THE SUPREME COURT