

**KARUNARATNE AND ANOTHER
v
LINGAM AND OTHERS**

COURT OF APPEAL
ABDUL SALAM, J.
CA 830/2003 (F)
DC WELIMADA 115/L
FEBRUARY 10, 2004

Civil Procedure Code - Case laid by – Subsequently case restored to the trial roll – Appeal? Is it a final order? Restoring to Trial roll – Duties on Court?

Held:

- (1) The impugned order cannot be identified with a single characteristic of a final order.
- (2) In the event of a case being laid by ,the duty of restoring it to the trial roll is cast on the District Judge and not on the parties.

APPEAL from an order of the District Court of Welimada.

Cases referred to:

- (1) *Samsudeen v Eagle Insurance Co. Ltd.* 64 NLR 372.
- (2) *Sinwardena v Air Ceylon Ltd.* 1984 1SLR 286

Sanath Jayatileke for defendant-appellants.
Hemasiri Withanachchi for plaintiff-respondent.

November 12, 2007

ABDUL SALAM, J.

The plaintiff-respondents instituted action in the District Court of Welimada against the 1st and 2nd defendant-appellants praying *inter alia* for a declaration of ownership to the subject matter and for the ejection of the defendant-appellants.

When the case was taken up for hearing on 29.1.1987 learned Counsel for the plaintiffs-respondents moved to have the case

laid by as the 1st and 2nd plaintiff-respondents were away in Jaffna and the 2nd defendant-appellants was unable to travel from Jaffna due to ill health. Accordingly, the learned District Judge made order to lay-by the case.

The plaintiff-respondents on 3-1-2003 applied to Court to have the case restored to the trial roll and to have the same fixed for further trial. The defendant-appellant appeared upon notice and opposed the application on the ground that litigation has come to an end after the order made to lay-by the case. The defendants-appellants further took up the position that in any event they have acquired a prescriptive title to the subject matter in question during the period in which the case had been laid-by. The learned District Judge by his order dated 28.8.2003 allowed the application of the plaintiffs-respondents and restored the case to the trial roll. The present appeal has been preferred against the said order dated 28.8.2003.

In arriving at this conclusion the learned District Judge had followed the guideline laid down in *Samsudeen v Eagle Star Insurance Co. Ltd.*⁽¹⁾ In that case it was laid down that in the events of a case being laid-by, the duty of restoring it to the trial roll is cast on the District Judge and not on the parties.

The question that arises for consideration is whether the impugned order satisfies the requirements of a final order to render it appealable. In the case of *Siriwardena v Air Ceylon Ltd.*⁽²⁾ the principles laid down to ascertain the nature of an order as to its finality have been correctly applied by the learned District Judge.

Upon a careful consideration of the impugned order it is quite obvious that it cannot be identified with a single characteristic of a final order as has been explained in a series of judgments.

For the above reasons even if it is to be assumed that the order concerned is appealable, yet there is no reason to conclude that the order of the learned District Judge to restore the case to the trial roll is illegal or contrary to law.

In any event, since the order dated 28.8.2003 is necessarily an interim order, in my opinion the defendants-appellants have

no right of appeal. For the above reasons I affirm the order of the learned District Judge dated 28.8.2003 and dismiss the appeal with costs.

Appeal dismissed.