

**NIHAL SRI AMERASEKERA**

**v.**

**GAMINI LAKSHMAN PEIRIS**

COURT OF APPEAL  
JAYASINGHE, J. AND  
UDALAGAMA, J.  
CALA NO. 255/2000  
DC COLOMBO NO. 21519/MR  
19<sup>TH</sup> JANUARY, 2001

*Civil Procedure Code - Sections 100, 102 and 108 of the Civil Procedure Code - Interrogatories - Discovery of documents - Preliminary objection - Non disclosure of a cause of action and prescription.*

The District Court held that the preliminary issues could be taken up before making an order on interrogatories and discovery of documents.

On leave been sought -

**Held :**

1. Section 108 of the Civil Procedure Code provides a District Judge ample discretion to control proceedings.

*Per Udalagama, J.*

“Trial Judges should not be fettered by technicalities”

2. The District Judge was clearly empowered by section 108 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.

**LEAVE TO APPEAL** from the Order of the District Court of Colombo.

*K. Kanag - Iswaran, P.C., with Dr. Harsha Cabral and M.A. Sumanthiran* for plaintiff - petitioner.

*Romesh de Silva. P.C.*, with *Harsha Amerasekera* and *Sugath Caldera* for 1<sup>st</sup> defendant.

*E.D. Wickremanayake* with *Kushan de Alwis* for 2<sup>nd</sup> defendant-respondent.

*Cur. adv. vult.*

February 8, 2001.

**UDALAGAMA, J.**

This is 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 1<sup>st</sup> defendant-respondent's preliminary issues. The preliminary issues of the 1<sup>st</sup> 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 1<sup>st</sup> 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 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 108 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. 06. 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 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 circumstance 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 1<sup>st</sup> 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.

**JAYASINGHE, J.** - I agree.

*Application dismissed.*