

**VILMA DISSANAYAKE AND OTHERS**

v

**LESLIE DHARMARATNE**

SUPREME COURT.  
S.N. SILVA, C.J.  
JAYASINGHE, J.  
RAJA FERNANDO, J.  
SC 3/2007  
SC SPL. LA 114/2006  
CALA 304/2004  
DC COLOMBO 16858/L  
JANUARY 24, 2007

*Judicature Act No. 2 of 1978 – amended by Act No. 27 of 1999 – Section 48 – Continuing proceedings before succeeding Judge – Necessity? Discretion of Court?*

**Held:**

- (1) It is necessary for a succeeding Judge to continue proceedings since there are change of Judges holding office in a particular Court due to transfers, promotions and the like.  
It is in these circumstances that Section 48 was amended giving discretion to a Judge to continue with the proceedings.
- (2) The exercise of such discretion should not be disturbed unless there are serious issues with regard to the demeanour of any witnesses recorded by the Judge who previously heard the case.

**APPEAL** from the judgment of the Court of Appeal.

*Gemini Marapana PC with Kushan de Alwis and Navin Marapana for petitioner.*

*Bimal Rajapakse with Ravindra Anawaratne for 2nd defendant-respondent.*

January 24, 2007

**S.N. SILVA, C.J.**

This is an application for leave to appeal from the judgment of the Court of Appeal dated 17.3.2006. By that judgment the Court of Appeal set aside the order of the Additional District Judge whereby the Additional District Judge decided to continue with the proceedings and to enter judgment on the basis of evidence already recorded. The Additional District Judge acted on the basis of Section 48 of the Judicature Act No. 2 of 1978 as amended by Act No. 27 of 1999. The Court of Appeal held that since the Judge has not observed the demeanour of the witnesses there is an unreasonable exercise of the discretion vested in the Judge in terms of Section 48 as amended. Both Counsel agreed that special leave to appeal could be granted. We accordingly grant special leave to appeal, since the evidence had been recorded by a Judge who is yet in the judicial service as a Judge of the High Court and there is a possibility of the judgment being written by that Judge. Both parties agreed that no further evidence need be adduced. With consent of Counsel took up the matter for hearing.

It is necessary for a succeeding Judge to continue proceedings since there are changes of Judges holding office in a particular Court due to transfers, promotions and the like. It is in these circumstances that Section 48 was amended giving a discretion to a Judge to continue with the proceedings. Hence the exercise of such discretion should not be disturbed unless there are serious issues with regard to the demeanour of any witness recorded by the Judge who previously heard the case. It is common ground that there are no such issues as to demeanour when evidence was adduced by the 1st defendant.

Both Counsel, on the basis of the instructions received agreed that the judgment could be written by Mrs. Malini Gunaratne, presently a Judge of the High Court being the judge who heard the matter and before whom all the evidence was recorded.

Accordingly we allow this appeal and set aside the judgment dated 17.03.2006 of the Court of Appeal.

Registrar is directed to send this judgment to the Court of Appeal for the Court Appeal to forward the original record together with this judgment to the District Court of Colombo.

The Registrar, District Court of Colombo will seek an order from the

Judicial Service Commission for the appointment of Mrs. Malini Gunaratne presently High Court Judge to conclude case No. D.C. Colombo 16858/L, on the basis of the evidence that has been recorded. Early action to be taken by the Registrar, Supreme Court, Registrar, Court of Appeal and the Registrar, District Court considering the long delay in concluding this matter. The appeal is allowed. No costs.

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

**RAJA FERNANDO** - I agree.

*Appeal allowed.*