
ABBAS
VS
ABBAS AND OTHERS

COURT OF APPEAL
IMAM, J.
C.A.L.A. 436/2003
D.C. GAMPAHA 42449/MN
FEBRUARY, 24, 2004

Civil Procedure Code - Sections 75(d), 146(1), 184 Admissions - Provisions of Section 75 - are they imperative ? Should Defendant admit or deny averments in Plaintiff ?-Defendant putting the plaintiff to strict Proof to Averments Resulting Position ?

Before the commencement of the trial the Plaintiff petitioner took up the position that as the Defendant Respondent had not denied the averments in paragraphs 5-24 of the plaint that the Defendant Respondent must be deemed to have admitted the averments and moved that judgment be entered in plaintiff-petitioners favour. The Trial Court disallowed the application, to record these averments as admissions on leave being sought :

Held :

- i) Section 146(2) of the Civil Procedure Code states that if the parties are at variance the Court shall record the Issues, An Admission is recorded when both sides agree to do so. In this case the recording of Admissions and Issues have still not begun, the trial proper had not commenced. The defendants have put the Plaintiff/Petitioner to prove the averments in paragraphs 5-24 of the Plaint. It is manifest that the Defendants do not admit the averments."

APPLICATION for Leave to Appeal from an Order of the District Court of Gampaha.

Cases referred to :

1. *Fernando vs Samarasekera* - 49 NLR 285
2. *Uvais vs Panyawathie* - 1993 2 Sri LR 46
3. *Hassan vs Iqbal* - 2001 - 2 Sri LR at 147

Plaintiff Petitioner in Person.

M.F. Miskin for 1-5th Defendant Respondents

cur. adv. vult.

June 28, 2004

Imam, J.

This is an application for leave to Appeal against the order of the District Judge of Gampaha dated 04.11.2003. The Plaintiff-Petitioner filed action against the Defendant - Respondents on 15.10.1998 for a sum of Rupees One Million Five Hundred Thousand (Rs. 1,500,000) in the District Court of Gampaha by way of damages seeking compensation from the Respondents for the damages caused to his married life, amongst other reliefs claimed in the prayer to the plaint.

At the District Court of Gampaha the Respondents filed answer on 18.01.1999, and the case was fixed for trial on 22.08.2003. When the case was taken up for trial and issues had to be framed, the Petitioner took up the position that as the Respondents had not denied the averments contained in paragraphs 5 to 24 of the plaint, that the Respondents had admitted the aforesaid averments in those paragraphs. The Petitioner sought to record those averments as Admissions, relying on the provisions of Section 75(d) of the Civil Procedure Code. The Petitioner in paragraph (d) of the Written Submissions filed by him in this Court dated 08.03.2004 states that in the District Court ***"It was then agreed that a ruling by the District Court on the said matter be made upon the tendering of Written Submission by both parties."*** The Respondents in their answer dated 18.01.1999 filed at the District Court of Gampaha state that they urge the Petitioner to prove the said averments. The Respondents thus put the burden on the Plaintiff - Petitioner to prove the said averments.

Section 75(d) of the Civil Procedure Code reads thus :-

"A statement admitting or denying the several averments of the plaint, and setting out in detail plainly and concisely the matters of fact and law, and the circumstances of the case upon which the Dependent means to rely for his defence, this statement shall be drawn in duly numbered paragraphs, referring by number, where necessary, to the paragraphs of the plaint."

Apparently the Respondents in the said answer have not denied the averments in those paragraphs, but have placed the burden of proving them on the plaintiff Petitioner.

The learned District Judge by her order dated 04.11.2003 based on the written submissions filed by both parties held that the averments contained, in paragraph 6 of the answer of the Defendants do not constitute an Admission of the said averments of the plaintiff; thereby disallowed the application of the Plaintiff, and fixed the case for trial for 03.03.2004.

The Petitioner in his written, submissions tendered to this Court cited *Fernando Vs. Samarasekera*¹⁷ where Basnayake, J held that under Section 75(d) of the Civil Procedure Code when a Defendant does not deny an averment in the Plaintiff, he must be deemed to have admitted that averment. In that case it was further held that :

“The provisions of Section 75 are imperative and are designed to compel a Defendant to admit or deny the several allegations in the plaint. So that the questions of fact to be decided between the parties may be ascertained by the Court on the day fixed for hearing of the action. A Defendant who disregards the imperative requirements of this Section cannot be allowed to take advantage of his own disobedience of the statute. To permit such a course of conduct would result in a nullification of the scheme of our Code of Civil Procedure.”

It was also urged on behalf of the Petitioner that in *Uvais Vs. Puniyathie*² that :

“Section 75 not only requires a Defendant to admit as deny the several averments of the plaint, but also to set out in detail, plainly and concisely the matters of fact and law, and the circumstances of the case upon which he means to rely for his defence.”

The Petitioner further submits in paragraph (p) of his Written Submissions tendered to this Court that **Section 184** of the Civil Procedure Code states that Court should give judgment upon the **Admissions** or **upon the Evidence** etc. The Petitioner further contends that as the aforesaid paragraphs have been admitted by the Defendants, that judgment must be entered in the Petitioner's favour under Section 184, on the basis of the said "Admissions." Counsel for the Respondents in his Written Submissions filed in this Court referred to the judgement of Justice Weerasuriya and Justice Udalagama in *Hassan vs. Iqba*¹⁸ where their Lordships held that:-

“Though in the English Courts allegations of fact not denied specifically or by necessary implication are taken to be admitted, in the Code there is no such provision and the non denial of an allegation is not taken as an Admission of it.”

This related to a case under the Rent Act, and the question in issue was whether the condition of the premises had deteriorated due to the default and neglect of the Defendant - Respondent (Tenant) within the meaning of Section 22(1) (d). Under Section 184 of the Civil Procedure Code court should give judgments upon the Evidence or upon Admissions **And** after the parties have been heard either in person or by their respective Counsel or registered Attorneys. The District Judge of Gampaha made order dated 04.11.2003 only on the preliminary issue, and fixed the case for trial on 03.03.2004. Hence no **Evidence** has been led in this case so far. The answer of the Defendants (P2) commences with a general denial of the averments in the plaint, save and except those specifically accepted. Paragraph 6 of the answer states that the Defendants challenge the Plaintiff to strictly prove the averments mentioned in paragraphs 5 to 24 of the plaint. Authorities cited on behalf of the Plaintiff - Petitioner held that under Section 75(2) of the Civil Procedure Code, the Defendant should admit or deny the averments in the plaint. The Petitioner in his Written Submissions tendered to this Court referred to C.E. Odgers on **“Pleadings and practice”** 20th Edition (1971) (Indian Reprint 2000) at pages 134 and 138 and indicated that denial by a Defendant must be specific, and not general. Although the denial by the Defendants are general in paragraph 1 of the answer, the District Judge has not referred to this aspect in her order. However as the Defendants have put the Plaintiff to strictly prove the averments contained in paragraph 5-24 of the plaint, it is manifest that the Defendants do not admit these averments.

In accordance with Section 146(1) of the Civil Procedure Code, the **Court** shall proceed to determine the issues. The section states that :-

“On the day fixed for the hearing of the action, or on any other day to which the hearing is adjourned, if the parties are agreed as to the question of fact or of law to be decided between them, they may state the same in the form of an issue, and the Court shall proceed to determine the same.”

Section 146(2) of the Civil Procedure Code further states that ***“if the parties are at variance, the Court shall record the issues.”*** An

Admission is recorded when both sides agree to do so. In this case the District Judge has fixed trial for 03.03.2004. Moreover as the recording of Admissions and issues have still not begun before the District judge trial proper has still not commenced. I confirm the order of the learned District Judge of Gampaha dated 04.11.2003, and direct the District Judge to proceed with the trial.

For the aforesaid reasons Leave to Appeal to the Plaintiff Petitioner is refused. Costs is fixed at Rs. 5,000.

Application dismissed.
