

**THE CEYLON BREWERY LIMITED**

**v.**

**JAX FERNANDO, PROPRIETOR, MARADANA WINE STORES**

SUPREME COURT  
FERNANDO, J.  
WIJETUNGA, J. AND  
WEERASEKERA, J.  
SC APPEAL NO. 21/98  
CA REVISION NO. 659/97  
DC COLOMBO NO. 17168/MR  
18<sup>TH</sup> OCTOBER, 1999

*Civil Procedure Code - Application to vacate a default decree against the defendant - Section 86(2) of the Civil Procedure Code - Whether the period prescribed by section 86(2) is directory or mandatory.*

**Held :**

Section 86(2) of the Civil Procedure Code confers jurisdiction on the District Court to set aside a default decree. Hence the period of 14 days provided by that section to make an application to set aside a default decree is mandatory.

*Per Fernando, J.*

"It is settled law that provisions which go to jurisdiction must be strictly complied with"

**Case referred to :**

1. *Sri Lanka General Workers Union v. Samaranayake* (1996)2 Sri L R 265 at 273-274

**APPEAL** from the judgement of the Court of Appeal reported in (1999) 2 Sri L R 61

*S.L. Gunasekera with Kushan de Alwis* for plaintiff - respondent - appellants

*Sanjeewa Jayawardena* for defendant - petitioner - respondent

*Cur. adv. vult.*

October 10, 1999.

**FERNANDO, J.**

The only question of law which arises in this appeal is whether the period of 14 days provided in section 86(2) of the Civil Procedure Code for an application to set aside a default decree is mandatory or directory.

The plaintiff obtained a default decree. The defendant filed his application to set aside that decree on the 15<sup>th</sup> day.

The Court of Appeal held that section 86(2) was directory, and that accordingly the application made on the 15<sup>th</sup> day should be entertained.

We are of the view that Section 86(2) of the Civil Procedure Code is the provision which confers jurisdiction on the District Court to set aside a default decree. That jurisdiction depends on two conditions being satisfied. One condition is that the application should be made within 14 days of the service of the default decree on the defendant.

It is settled law that provisions which go to jurisdiction must be strictly complied with. See *Sri Lanka General Workers Union vs. Samaranayake*,<sup>(1)</sup>

I therefore set aside the judgment of the Court of Appeal on that point.

However, the learned District Judge entertained the application to set aside the default decree after the period of 14 days had expired, on the ground that intervening holidays had to be excluded. The Court of Appeal held, correctly, that the learned District Judge was in error, because intervening holidays cannot be excluded in computing a period exceeding six days.

Accordingly, the order of the District Court dated 4.7.97 is set aside, and the *ex-parte* decree previously entered is affirmed.

There will be no costs.

**WIJETUNGA, J.** - I agree.

**WEERASEKERA, J.** - I agree.

*Appeal allowed; ex parte decree affirmed.*