

1971

Present : Alles, J., and Thamotheram, J.

*D. C. S. WIJETUNGE, Appellant, and
G. A. A. VIOLET PERERA and another, Respondents*

S. C. 21/69 (Inty.)—D. C. Negombo, 1862/M

*Conciliation Board—Civil dispute—Date of cause of action prior to appointment of
Panel of Conciliators—Jurisdiction of established Courts of law—Conciliation
Boards Act, No. 10 of 1938, as amended by Act No. 12 of 1963, ss. 3, 4, 5, 6 (b),
14.*

Where a cause of action in a civil dispute in a Conciliation Board Area arises at a time when a Panel of Conciliators has not yet been appointed, it is open to the plaintiff to institute action in a civil court in the first instance, even if a Panel of Conciliators is appointed prior to the date of the plaint. In such a case the provisions of section 14 of the Conciliation Boards Act as amended by Act No. 12 of 1963 are not applicable.

APPEAL from an order of the District Court, Negombo.

D. A. E. Thevarapperuma, for the defendant-appellant.

Gemunu Seneviratne, for the plaintiff-respondent.

Cur. adv. vult.

February 6, 1971. ALLES, J.—

The only question at issue in this appeal is whether the proceedings should be declared null and void on the ground that the plaintiffs did not comply with the provisions of Section 14 of the Conciliation Boards Act No. 10 of 1933 as amended by Act No. 12 of 1963 and obtain a certificate from the Conciliation Board of Pamunugama. The learned District Judge decided this issue against the defendant and held that he had jurisdiction to hear the case. He thereafter continued to try the case and at the conclusion of the trial delivered judgment in favour of the plaintiffs. The defendant has not appealed from the final order in the case.

The following facts are admitted: The cause of action arose on 10th April 1966 and proceedings were instituted in Court on 4th September 1967 in which the 1st plaintiff through her next friend the 2nd plaintiff claimed damages in a sum of Rs. 10,000 from the defendant for seduction. Pamunugama had been declared a Conciliation Board Area in 1966 but a Panel of Conciliators was only appointed eight months later on 5th January 1967. There was therefore no Conciliation Board in existence when the cause of action arose. It was the submission of Counsel at the trial and also at the hearing before us that the plaintiffs should have obtained a certificate under Section 14 in January 1967 before plaint was filed. We are unable to agree with Counsel's submission. Sections 3, 4 and 5 of the Act make it abundantly clear that a Conciliation Board only exercises jurisdiction after a Panel of Conciliators is nominated, a Chairman appointed and the Chairman selects from the Panel not less than three persons to constitute the Board. All these acts could not be done when the cause of action arose. Under Section 6 (b) a Conciliation Board has jurisdiction to entertain a civil dispute in respect of any matter that may be a cause of action for the purpose of the institution of an action in a civil court, but this is dependent on a Conciliation Board being in existence at the time the dispute arose. At the time the cause of action arose the only relief available to the plaintiffs was recourse to the established Courts of law. We are therefore of the view that the

contention of learned Counsel for the defendant fails and that the District Court had jurisdiction to entertain the plaint. The interlocutory appeal is therefore dismissed with costs.

Since our order on this appeal does not affect the substantive rights of the parties which have already been adjudicated upon by the learned District Judge we affirm the decree of the learned Judge granting damages to the plaintiffs as prayed for in their plaint.

THAMOTHERAM, J.—I agree.

Appeal dismissed.

