

1971 Present : H. N. G. Fernando, C.J., and Samerawickrame, J.

P. M. KURERA, Petitioner, and R. C. FERNANDO, Respondent

S. C. 644/68—*Application in Revision in D. C. Kurunegala, 2885/M*

*Conciliation Boards Act—Section 14 (1) (a)—Absence of a certificate required by it—
Whether it can render null and void a consent decree already entered.*

Where a consent decree has been entered in an action, the defendant is not entitled to have it set aside subsequently on the ground that the actor and the proceedings were null and void by reason of the absence of a certificate required by section 14 (1) (a) of the Conciliation Boards Act.

APPPLICATION to revise an order of the District Court, Kurunegala.

O. Ranganathan, Q.C., with *Paul Perera*, for the defendant-petitioner.

Lakshman Kadirgamar, for the plaintiff-respondent.

December 30, 1971. SAMERAWICKRAME, J.—

Cur. adv. vult.

The defendant-petitioner has made this application to have a consent decree directing him to pay a sum of Rs. 7,000 set aside on the ground that the action and the proceedings were null and void by reason of Section 14 (1) (a) of the Conciliation Boards Act. The plaintiff-respondent filed this action claiming a sum of Rs. 7,934.42. The defendant-petitioner filed answer contesting the claim but did not plead that there had not been compliance with the provisions of the Conciliation Boards Act. On 2nd November, 1968, a decree was entered by consent of parties. The defendant-petitioner thereafter made the present application.

In *Nonahamy v. Halgrat Silva*¹—73 N. L. R. 217—a Divisional Bench held that non-compliance with the requirement to file a certificate as provided for in s. 14 (1) (a) of the Conciliation Boards Act deprived the Court of jurisdiction to entertain the action and to make an adjudication. In that action the plaintiff had filed his plaint and applied for an interim injunction. On service of notice of the plaintiff's application the defendant appeared and pleaded the failure to file the requisite certificate. It will be seen that the objection that the Court lacked jurisdiction was taken and the want of jurisdiction was apparent at a very early stage. Where want of jurisdiction appears from the pleadings or on the face of the proceedings there is a patent want of jurisdiction and it is the duty of the Court to stay its hand. In such cases the objection to jurisdiction may be taken at any stage. The position appears to be different where the want of jurisdiction depends on the existence of facts which are not brought to the notice of Court. If a defendant fails to plead or prove such facts upon which the want of jurisdiction depends and permits the Court to proceed to hear the action then he may be precluded by his conduct from seeking to rely on those facts at a later stage. Section 14 (1) (a) applies where there is a dispute in respect of a matter that may be a cause of action in a civil court and that dispute has arisen in a Conciliation Board area and at the time the dispute arose a Panel of Conciliators had been appointed. The defendant-petitioner had at no stage of the proceedings placed before the trial Court the circumstances that made s. 14 (1) (a) applicable to the case. In the petition filed in this Court he has set out facts in sub-paragraphs A, B, C and D of paragraph 5 as follows :—

“ A. The plaintiff-respondent's place of Business and accordingly the place where the alleged contract sought to be enforced was entered into and the plaintiff-respondent's alleged cause of action arose at Wilattawa which lies within the limits of Dummalasuriya

¹ (1970) 73 N. L. R. 217.

Village Area in accordance with the certificate issued by the Chairman, Village Committee, Dummalasuriya, dated 18.11.1968, which is annexed hereto marked P2 with its translation marked P2A.

- B. The said Dummalasuriya Village Area is a Conciliation Board Area since 12.3.1958, and a Panel of Conciliators was constituted for the aforesaid Conciliation Board Area by orders published in Gazette No. 13,394 of 16.11.1962 and No. 14,694 of 6.5.1966, and at all times material the said Conciliation Board was functioning in the said Village area.
- C. By reason of the aforesaid premises it is submitted that the plaintiff-respondent failed to comply with the provisions of Section 14 of the Conciliation Board Act when instituting the plaint and it is further submitted that the District Judge, Kurunegala, had no jurisdiction to receive the said plaint and further to hear and make orders in the said case No. 2885/M.
- D. It is respectfully submitted that by an error of Law the Learned Counsel for the defendant-petitioner agreed to a settlement as suggested by the Learned District Judge of Kurunegala and further that the defendant-petitioner by similar error did sign the record, and it is further submitted that all orders made in this case are of no force or avail in Law. "

This Court has taken the view that a defendant who fails to take an objection to jurisdiction on the ground of the absence of a certificate required by s. 14 (1) (a) till a late stage of the proceedings or till after decree is entered against him will not be permitted to raise the objection thereafter, and has waived it—vide *Robison Fernando v. Henrietta Fernando*¹, 74 N. L. R. 57, *S. K. Gunawardena v. Mrs. M. N. Jayawardena*², 74 N. L. R. 248 and *Adiris Fernando v. Rosalin*³ 81 C. L. W. 13.

As G. P. A. Silva, S.P.J., has pointed out in *Gunawardena v. Jayawardena* (supra) this view accepts the decision of the Divisional Bench in *Nonohamy v. Silva* (supra) but is based on a different principle which was not applicable on the facts to the case decided by the Divisional Bench.

On the authority of the decisions to which I have referred, I hold that the defendant-petitioner had waived the objection to jurisdiction and was not entitled to raise it in this application. There is one further matter. The purpose of having a dispute referred to a Conciliation Board is to effect a settlement. The parties have in fact effected a settlement in Court. In the circumstances the objection that the dispute had not first been referred to the Conciliation Board for settlement is, in any view of the matter, technical. The application fails and is dismissed with costs.

H. N. G. FERNANDO, C.J.—I agree.

Application dismissed.

¹ (1971) 74 N. L. R. 57.

² (1971) 74 N. L. R. 248.

³ (1971) 81 C. L. W. 13; 74 N. L. R. 563.