

IN THE COURT OF APPEAL OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA.

C.A. 615/99 F.
D.C. Mount Lavinia 43/93/M

Uva Regional Transport Board,
Hindagoda, Badulla
Defendant-Petitioner-Appellant

Vs

D K P Deveniguru,
43C, Bandarawatta,
Katuwawala,
Borelasgamuwa

Plaintiff-Respondent

BEFORE : A W A SALAM, J

COUNSEL : Arhan Fernando SC for the defendant-
appellant and Chamantha Weerakoon
Unambuwa with Kumudini Keerawella for the
plaintiff-respondent.

ARGUED ON : 10.12.2012

Written-submissions tendered: 28.09.2012 (plaintiff-respondent)

DECIDED ON : 16.01.2013

A.W.A. Salam, J.

This is an appeal from the order of the learned district judge of Mt: Lavinia refusing the application of the 1st defendant-petitioner-appellant to set aside the judgment entered after *ex-parte* trial. When the matter of the application to set aside the judgment came up for inquiry, no evidence was led by either party.

The learned District Judge after perusing the affidavits filed on behalf of the appellant came to the conclusion that the appellant has failed to establish that the 1st defendant had reasonable grounds for its default of appearance on the day the matter was fixed for *ex parte* trial. As a matter of fact counsel for the plaintiff has submitted that had the 1st defendant been present or represented on the day in question the learned District Judge would not have proceeded to fix the matter for *ex parte* trial. The impugned order of the learned District Judge is based on the principle that the lapse on the part of the state counsel cannot be considered as an explanation for the default of appearance of the appellant. I am in total agreement with the basis of the finding of the learned District Judge. Hence, this appeal, in my view merits no favourable consideration. Appeal dismissed without costs.

JUDGE OF THE COURT OF APPEAL.