

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

**CA No. 507/99(F)**

DC Kurunegala Case No. 5104/L

N.A Thilakarathna Ediriweera  
No: 97,  
Kurunegala Road,  
Godawela,  
Polgahawela.

**Defendent Appellant**

**Vs.**

T.M Nandawathi Thennakoon  
Morahela Beheth Shalawa,  
Kooripotta,  
Pothu Hera.

**Complainant Respondent**

**C.A. No. 507/99(F)**

**D.C. Kurunegala Case No. 5104/L**

**Before** : **A.W.A. Salam, J.**

**Counsel** : P.L. Gunawardane for the Defendant-Appellant.

D.M.G. Dissanayake for the Plaintiff-Respondent.

**Argued &  
Decided on** : 29.01.2013.

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**A.W.A. Salam, J.**

Mr. Dissanayake Counsel for the Plaintiff-Respondent tenders Written Submissions. P.L. Gunawardane states that he has no instructions from the registered Attorney-at-Law to appear in this case.

The judgment in this case has been entered by the learned District Judge against the defendant as prayed for in the plaint after ex-parte hearing. Defendant made no application to purge default but made an application at a later stage after the decree was executed

on 29.10.1997. No resistance had been offered at the execution or an application filed under Section 328. After the writ was executed the Defendant-Judgment-debtor made an application purportedly under Section 839 of the Civil Procedure Code seeking that the judgment entered for default be set aside, he be granted permission to file answer and order be made for restoration of possession. The learned District Judge on this application by order dated 16.03.1999 refused the application inter-alia on the ground that summons had been duly handed over to the defendant and the writ of execution that has been properly executed. The present appeal has been preferred against the said order. The learned Counsel for the Plaintiff-Respondent contends that the impugned order is not one which attracts the provisions of Section 754(1) of the Civil Procedure Code under which an appeal could be preferred as of a statutory right.

In support of his contention he has cited the judgment in *Siriwardane Vs. Air Ceylon* 1984 1 S.L.R. 286. There is already a judgment entered against the Defendant which is appealable

and the defendant has not even sought to set aside the judgment entered for default which also appealable. In the light of argument placed by learned Counsel for the Plaintiff-Respondent, I am in total agreement that the impugned order is not one that is appealable as of right. In the circumstances I uphold the objection and dismiss the appeal without costs.

JUDGE OF THE COURT OF APPEAL

AKN