

---

**WIJEMANNE  
VS  
BENJAMIN PERERA AND ANOTHER**

COURT OF APPEAL  
AMARATUNGA, J AND  
WIMALACHANDRA, J  
CALA 294/2003  
DC. COLOMBO 14185/MR  
SEPTEMBER 14 AND  
OCTOBER 6, 2004

*Civil Procedure Code, sections 284 and 754 (5) - Order made under section 214- Is it a final order or and interlocutory order?*

**HELD**

On an application made in terms of section 284 of the Code, the order that will finally be delivered by court is not an interlocutory order as there is nothing more to be decided by court in the ordinary way in the same application. Direct appeal lies against such order.

**APPLICATION** by way of leave to appeal from an order made by the District Court of Colombo.

**Cases referred to :**

1. *Siriwardena vs Air Ceylon Ltd.* (1984) 1 Sri LR 286
2. *Peter Singho vs Wydeman - Sri Skantha Law Reports* - Vol. I page 88 ; (1983) 2 Sri LR 238 (SC)
3. *Brooke Bond (Ceylon) Ltd., vs Stassen Exports Ltd., and another* (1990) 1 Sri LR 61 overruled by (1990) 2 Sri LR 63(SC)

*I. S. de Silva* for intervenient plaintiff-respondent-respondent  
*P. S. Gunawardena* with *M. C. Wijesinghe* for petitioner - respondent.

*Cur. adv. vult.*

November 19, 2004

**WIMALACHANDRA, J.**

This is an application for leave to appeal arising from the order of the learned District Judge dated 23.07.2003. When this application was taken

up for inquiry the learned counsel for the intervenient -plaintiff - respondent - petitioner (hereinafter referred to as the petitioner) brought to the notice of Court that the petitioner has already filed an appeal against the said order. At the commencement of the inquiry a preliminary question was raised by the petitioner - respondent (hereinafter referred to as the respondent) in that whether the impugned order is a final order or an interim order.

Briefly, the facts as set out in the petition are as follows :-

The petitioner instituted action against the House and Property Trades Limited (defendant - respondent) for the recovery of a sum of Rs. 2,400,000 together with interest thereon at 20% per annum from 01.10.1999 until payment in full. After the trial the judgement was entered against the defendant - respondent as prayed for in the plaint. Thereafter the District Court on an application made by the petitioner issued a writ and the land described in the plaint was sold by public auction in execution of the decree. The sale took place on 24.04.1999 and the respondent purchased certain allotments of land at the fiscal sale.

The total consideration was Rs.3,600,000. Thereafter, a fiscal conveyance was executed in favour of the respondent. When the respondent sought to develop the said land, it was found that it was possessed by a third party, namely, R. A. L. Ranjith de Alwis. The respondent had done a search in the Land Registry, Colombo and it was revealed that the defendant - respondent, the said, House and Property Trades Limited had sold the said allotment of land by deed No. 1909 dated 28.08.1998 for a sum of Rs. 500,000 before the fiscal sale. Thereafter, the respondent made an application to Court in terms of Section 284 of the Civil Procedure Code and sought a money decree against the petitioner. The petitioner filed objection. The Court directed the parties to file written submissions. Thereafter, the Court made order on 23.07.2003 and directed the petitioner to pay a sum of Rs.450,000 to the respondent. It is against this order that the petitioner has filed this application for leave to appeal.

The question before Court is whether the order complained of amounts to a final judgment within the meaning of Section 754(5) of the Civil Procedure Code.

---

In the case of *Siriwardena Vs. Air Ceylon Ltd.*<sup>(1)</sup> Sharvananda, J. (as he was then) after analyzing several English authorities, laid down the following tests to be applied to determine whether an order has the effect of a final judgment and so qualifies as a judgement under Section 754(5) of the Civil Procedure Code :

- (i) It must be an order finally disposing of the rights of the parties.
- (ii) The order cannot be treated as a final order, if the suit or the action is still left alive for the purpose of determining the rights of the parties in the ordinary way.
- (iii) The finality of the order must be determined in relation to the suit.
- (iv) The mere fact that the cardinal point in the suit has been decided or even a vital and important issue determined in the case, is not enough to make an order, a final order.

It was held in the case of *Peter Singho vs. Wydeman*<sup>(2)</sup> that an order made by the District Court in dismissing an application made under Section 86(2) of the Civil Procedure Code is a final order and direct appeal lies against such an order.

Accordingly, in the instant case the test to be applied to determine whether an order has the effect of a final judgment, shall be decided by examining whether the impugned order has the character of a final judgment in relation to the suit. It is to be observed that, on an application made in terms of Section 284, the order that will finally be delivered by Court is not an interlocutory order as there is nothing more to be decided by the Court in the ordinary way in the same application.

It was held in the case of *Brooke Bond (Ceylon) Ltd. Vs. Stassen Export Ltd. and another*<sup>(3)</sup> that interlocutory appeals are appeals from interlocutory orders. In law an interlocutory order is one which is made or given during the progress of an action, but which does not dispose of the rights of the parties. It is incidental to the principal object of the action, namely the judgement.

In the instant case it seems to me that the order delivered by the learned Judge on 23.07.2003 is not an incidental order nor is it an order made on a cardinal point in the suit. As far as the parties are concerned, after the

delivery of the said order, all proceedings in respect of that application has come to an end. That is, the said order for the purpose of this application is final and it stands finally disposing of the matter in dispute.

Therefore, I hold that the order made by the learned Judge is a final order which has the effect of a final judgement. Accordingly, the reliefs sought by the petitioner in this application should be by way of a final appeal. Since, the petitioner has already filed an appeal in respect of the said order, I make order that this application be taken up along with the final appeal.

**AMARATUNGA, J. – I agree.**

*Leave to appeal application to be taken up with the final appeal.*

---