

**Krishnapillai**  
**v.**  
**Shanmugarajah and others**

COURT OF APPEAL,  
SOZA, J. AND RODRIGO, J.  
CA (SC) 1184/79—D.C. JAFFNA 153/MISC.  
JULY 14, 1980.

*Interim injunction—Ex parte application made by plaintiff—Appearance by defendant on day such application supported—Counsel for defendant heard before order made—Injunction issued—Whether order made inter-partes—Requirements of section 54 (3) of Judicature Act, No. 2 of 1978, and section 666 of the Civil Procedure Code—Waiver of such requirements.*

**Held**

The provisions for notice contained in section 54 (3) of the Judicature Act, No. 2 of 1978, and in section 666 of the Civil Procedure Code can be waived by the party for whose benefit it has been provided by the legislature. In the present case the defendant-petitioner appeared in Court and was heard through counsel when the application for the interim injunction was being supported, and accordingly the order made by Court issuing an interim injunction was inter-partes. The order of the District Court holding that no further application could be entertained to have the said interim injunction set aside was therefore correct.

**APPLICATION** to revise an order of the District Court, Jaffna.

H. L. de Silva, with P. Nagendra and A. Chinniah, for the petitioner.  
C. Ranganathan, Q.C., with K. Kanag Iswaran, S. Mahenthiran and S. Loheswaran, for the respondents.

July 14, 1980.

**SOZA, J.**

In this application the defendant-petitioner seeks to have the order made by the District Judge of Jaffna on 19.12.79 refusing to vary or set aside the order made by him on 8.1.79, whereby on the application of the plaintiff-respondents in the case he entered and issued interim injunction as prayed for in paragraph (a) of the prayer to the plaint, set aside. When the application for interim injunction was about to be supported on 7.11.78 on the day the plaint was filed, the attorney-at-law for defendant-petitioner appeared in Court and tendered proxy. Despite protest by counsel for plaintiff-respondents the proxy was accepted by Court. Counsel for defendant-petitioner on that occasion told the Court that he was taking notice of the application and moved that his submissions be heard before order was made. The position is that the proxy of the defendant-petitioner had been filed and his counsel was in fact heard. Thereafter, the case was called on 8.11.79. On this day no further objections were taken and the Court then proceeded to

make the order under that date. Subsequently on 9.11.78 an application was made by the defendant-petitioner to increase the security that had been ordered on 8.11.78 from Rs. 10,000 to Rs. 75,000 but this was refused.

Thereafter, on 27.11.78 a petition was filed purporting to be made under section 666 of the Civil Procedure Code, to have the injunction entered in the case set aside. Proceedings were taken by way of summary procedure in respect of this application and the Court made order on 19.2.79 stating that its earlier order issuing the interim injunction was one made inter-partes and, therefore, no further application could be entertained.

It was submitted that the appearance of counsel for the defendant-petitioner on 7.11.78 was only for the limited purpose of convincing Court that no order should be made ex-parte on the ground that delay would defeat the object of the application for an injunction. We cannot agree that the appearance of counsel for the defendant-petitioner on this day must be regarded as being only for this limited purpose.

It is also submitted that in view of the provisions of section 54 (3) of the Judicature Act, No. 2 of 1978, and the provisions of section 666 of the Civil Procedure Code, notice of the objections should have been served on the defendant-petitioner. The mere fact that counsel for the defendant-petitioner appeared in Court cannot render it as an appearance for the purpose of objecting to the application for an injunction. The provisions of section 54 (3) of the Judicature Act, No. 2 of 1978, and section 666 of the Civil Procedure Code make it imperative on the Court to cause the objections to be served on the defendant.

Unless the proceedings are unequivocal that the defendant waived his right to notice of the objections, he cannot be regarded as having waived notice. In regard to this submission we have only to observe that learned counsel for defendant-petitioner unequivocally stated in Court that he was taking notice of the application and moved that he be heard before the order is made. We are of the view that the provisions for notice contained in section 54 (3) of the Judicature Act, No. 2 of 1978, and in section 666 of the Civil Procedure Code can be waived by the party for whose benefit it has been provided by the Legislature. In this case it is our view that the defendant-petitioner has waived notice and taken part in the proceedings. The order made on 8.11.78 was an order made inter-partes. If the defendant-petitioner was dissatisfied with the order he should have sought relief from the Appellate Tribunal. He failed to do so. Instead he moved that the quantum of security be increased and when that was refused he took the next step to have the interim injunction set aside.

We are satisfied that the learned District Judge has followed the correct procedure in this case. We do not propose to enter into the question whether the order of 8.11.78 was correct on the merits. We see no reason to interfere with the order of the District Judge made on 19.2.79 which is the subject matter of the present application. We dismiss the application with costs.

It is brought to our notice that the learned District Judge made order with the consent of parties directing the plaintiff-respondents to deposit every month in Court a sum of Rs. 1,500. It was submitted on behalf of the defendant-petitioner that this order has not been complied with. Learned counsel for plaintiff-respondents states that he has been instructed that the order has been complied with and that some amounts of this money in deposit have been withdrawn by the defendant-petitioner. The District Court has made order that if the sum of Rs. 1,500 is not paid every month, it would make an appropriate order. If the order is not complied with the defendant-petitioner can take the necessary steps to obtain an appropriate order from the District Court. We give no directions as to what order the District Court should make.

We direct that the record in this case be sent back forthwith and that the learned District Judge be directed to take up the trial expeditiously, if possible day to day, in view of the fact that there has already been a considerable delay.

**RODRIGO, J.**—I agree.

*Application dismissed.*

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