

**WARNAKULA**  
**v.**  
**RAMANI JAYAWARDENA**

COURT OF APPEAL.

A. S. WIJETUNAGA, J. AND H. W. SENANAYAKE, J.

C. A. No. 463/87 (F) – D. C. KALUTARA 1912/D.

NOVEMBER 20, 1989.

*Divorce – Judgment – Failure to give reasons – Evaluation of evidence – Civil Procedure Code, s. 187.*

Bare answers to issues without reasons are not in compliance with the requirements of s. 187 of the Civil Procedure Code. The evidence germane to each issue must be reviewed or examined. The judge must evaluate and consider the totality of the evidence. Giving a short summary of the evidence of the parties and witnesses and stating that he prefers to accept the evidence of one party without giving reasons are insufficient.

**Case referred to:**

*Dona Lucihamy v. Ciciliyanahamy* 59 NLR 214

APPEAL from judgment of the District Judge of Kalutara.

*Faiz Mustapha P.C.* with *H. Withanachi* and *F. P. Surasena* for plaintiff–appellant

*S. C. B. Walgampaya* for defendant–respondent.

*Cur. adv. vult.*

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March 9, 1990.

**SENANAYAKE, J.**

The plaintiff-appellant instituted this action against the defendant-respondent seeking a divorce on the ground of malicious desertion.

It was common ground that parties married on 18.6.1960 and the matrimonial home was at Payagala in the plaintiff-appellant's parental house.

It was alleged that on 16.11.1980 after both parties returned from church, the plaintiff-appellant had proceeded to buy the weekly provisions. The defendant-respondent had left the matrimonial home on 16.11.1980.

The defendant-respondent's position was that after an argument regarding money wanted by the plaintiff-appellant's sister, the plaintiff-appellant took her and left her at the parental house.

The learned District Judge after trial dismissed the plaintiff-appellant's action with costs.

The learned counsel for the plaintiff-appellant submitted to court that the learned District Judge had failed to consider and analyse the evidence. He further submitted that the learned District Judge had failed to give reasons for the findings and he had totally failed to consider the complaints and the documentary evidence produced in this case.

There is force in the submission of counsel. The learned District Judge had failed to evaluate and consider the totality of the evidence. His judgment was not in compliance of section 187 of the Civil Procedure Code. He has given a very short summary of the evidence of the parties and witnesses and without giving reasons he had stated that he prefers to accept the evidence of the defendant-respondent as it was satisfactory and thereafter proceeded to answer the issues.

The learned District Judge had failed to give his mind that within a week from the disputed date 16.11.1980, the defendant-respondent's complaint to the police was subsequent to the complaint made by the plaintiff-appellant on the same day. In her complaint she stated that she, accompanied by her brother had returned to the matrimonial home, but

her mother-in-law had abused them. On that day she had returned bridal jewellery and the plaintiff-appellant too had returned the jewellery that he had received. Her intention therefore was not to return to the matrimonial home, *sine animo revertendi*. This aspect had not been considered by the learned District Judge.

The learned District Judge had failed to consider the evidence of witness Dharmaratne whose evidence establishes that the defendant-respondent left the matrimonial house at about 8.30 a.m. and while going she was abusive. He had failed to consider the defendant-respondent's refusal to live with the plaintiff-appellant even after he had obtained a separate house. He had failed to consider that the defendant-respondent's unhappiness was due to the marital weakness on the part of the plaintiff-appellant. This aspect of the evidence came from the plaintiff-appellant's mother and his aunt who were informed about the nature of impotency by the defendant-respondent. This aspect had not been considered by the learned Judge nor the unwillingness on the part of the defendant-respondent to live with the plaintiff-appellant after P2 indicating that a separate house had been procured.

Though the defendant-respondent indicated that on 16.11.1980 the plaintiff-appellant requested her brother and mother to come to the matrimonial house and they complied with his request which resulted in the plaintiff-appellant's mother's intention to seek a divorce and put an end to the matrimonial bond, none of the witnesses were called to support her position.

It must be stated that bare answers without reasons to issues are not in compliance with the requirements of section 187 of the Civil Procedure Code. I respectfully agree with the observations of A/Justice L. W. de Silva in *Dona Lucihamy v. Ciciliyanahamy* (1). In the result, the evidence germane to each issue has not been reviewed or discussed. No reasons precede or follow the answers which are mostly yes or no or does not arise. Bare answers to issues or points of contest - whatever may be the names given to them, are insufficient unless all matters which arise for decision under each head are examined.

I find the learned District Judge has failed to consider the totality of the evidence led on behalf of the plaintiff-appellant. He misdirected himself

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on the facts when he concluded that the evidence of the defendant-respondent was satisfactory.

In the circumstances I set aside the judgment and decree. The issues in the case should be answered in the following manner :

- (1) Yes.
- (2) Yes.
- (3) No.
- (4) No.
- (5) Yes.

The plaintiff-appellant will be entitled to a divorce on the grounds of malicious desertion on the part of the defendant-respondent and I direct a *decree nisi* be entered accordingly.

I allow the appeal with costs.

WIJETUNGA, J.- I agree.

*Appeal allowed.*

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