

WALKER & SONS CO. LTD

v

MASOOD

SUPREME COURT
AMERASINGHE, J.
GUNAWARDENANE, J.
WEERASEKERA, J.
SC 50/98
CALA 159/96
DC COLOMBO 16006/MR
MARCH 15, 1999

*Civil Procedure Code Section 121 (2) – Section 175 – List of documents not filed
fifteen days prior to the date of trial – Is it mandatory? – Element of surprise?*

The list of documents relied upon by the plaintiff was not filed fifteen days prior to the date of trial in terms of section 121. On an objection taken in the District Court the District Judge rejected a document in the list of documents. The Court of Appeal set aside the said order.

Held:

- (1) The document has been referred to in the plaint and in the answer this document has been referred to by way of reply to the plaint.
- (2) The defence taken out that the production of this document took the defendant-appellant by surprise cannot be sustained.

Per Weerasekera, J.

“The Civil Procedure Code tested by time breathes live and practical and rules of law with a view to speedy justice.”

- (3) Court is permitted in appropriate circumstances to permit the production of documents though not listed - Section 175(2).

APPEAL from the judgment of the Court of Appeal

Ajantha Cooray with Mr. Medahinna for defendant-respondent-petitioner.

E.D. Wickremanayake with A.P. Niles for plaintiff-petitioner-respondent.

Cur.adv.vult.

March 15, 1999

WEERASEKERA. J.

Special leave to appeal was granted on 04.06.98 on the following questions:-

- (1) Are the provisions of section 121(2) of the Civil Procedure Code mandatory?
- (2) In any event can the discretion conferred by section 175 of the Civil Procedure Code be utilized in a case where provisions of section 121 applies?

These questions arose with regard to a document dated 31st July 1989 that had not been listed in terms of section 121(2) of the Civil Procedure Code.

The learned District Judge disallowed the application to produce this document. The order of the learned District Judge was set aside by the Court of Appeal on 27th January, 1998. The

application for special leave was from the order of the Court of Appeal by the defendant-respondent-petitioner.

We have considered very carefully the submissions made on behalf of the appellant. The contention of Counsel for the appellant was that there was no listing of this document in terms of section 121 (2) of the Civil Procedure Code and that it being mandatory to do so the production of the document sprung a surprise to the defendant-respondent.

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We find that this document has been referred in the plaint and that in any event the document had in fact been listed 13 days before the trial. Counsel for the appellant conceded that the document sought to be produced was referred to in the plaint and that in his answer this document had been referred to by way of a reply to the plaint.

In those circumstances the defence taken up that the production of the document took the defendant-appellant by surprise, cannot be sustained. Counsel for the appellant then urged that though the objection to the non listing in terms of section 121(2) was technical yet it was mandatory. We regret we are unable to agree with Counsel for the appellant.

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We are of the view that as Chief Justice Abraham stated "this is a Court of justice and not an academy of law" and that the Civil Procedure Code tested by time breathes live, and practical and rules of law with a view to speedy justice.

This view is confirmed by section 175 of the Civil Procedure Code by which the Court is permitted in appropriate circumstances to permit the production of documents though not listed.

In those circumstances, the appeal is dismissed with costs fixed at Rs.1000/=. The judgment of the Court of Appeal dated 27.01.98 is affirmed.

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We direct the District Judge to give this case priority.

AMERASINGHE, J. - I agree.

GUNAWARDENA, J. - I agree.

Appeal dismissed.