

**ASSOCIATED NEWSPAPERS OF CEYLON LIMITED**

**v.**

**PRINS GUNASEKERA**

COURT OF APPEAL

EDUSSURIYA, J.

JAYASINGHE, J.

CA. 174/94 (F)

D. C. COLOMBO 3583/Spl.

26<sup>TH</sup> FEBRUARY, 1999.

19<sup>TH</sup> MARCH, 1999.

22<sup>ND</sup> MARCH, 1999.

*Defamation - Article containing words defamatory - Reciprocal Enforcement of Judgments Ordinance 41 of 1921 - Ingredients necessary - Carrying on business - Resident abroad.*

The Petitioner-Respondent instituted action in the District Court of Colombo under the provisions of the Reciprocal Enforcement of Judgments Ordinance for the registration of the Judgment of the High Court of Justice of England and Wales - Queens Bench Division.

The Respondent-Appellant filed objections denying specifically that they were carrying on any business in the U. K. or ordinarily resident within the jurisdiction of the High Court of Justice of England & Wales, Q. B. Division. It was also averred that the Defendant was not amenable to summons from the said Court and was not subject to the jurisdiction of the said Court and that it did not appear or submit to the jurisdiction of the said Court, and further stated that it is not just and convenient that the Judgment should be enforced. In order to register the said Judgment in Sri Lanka, the Respondent must establish either (i) that the Appellant was carrying on business (2) was ordinarily resident in the U. K.

It was conceded that the Appellant was not resident in the U. K. The Plaintiff-Respondent must thus satisfy court that the Defendant Appellant was carrying on business in U. K. The lynch pin of the Plaintiffs case was that, the Defendant carried on business through Samco Agencies, which was in fact the 1<sup>st</sup> Respondent.

**Held :**

- (i) For the purpose of registration of the Judgment the nexus between Associated Newspapers of Ceylon and the Samco was

necessary. It is not enough that the Defendant was carrying on some business in the U. K. The Plaintiff was required to satisfy Court that the Defendant was carrying on a business which the Plaintiff alleged.

- (ii) The question whether the Defendant was carrying on business was a question of fact. Affidavit evidence shows that it is an importer and distributor of newspapers from Ceylon and that it has no connection with the Daily News and neither imports and distributes nor stocks the said publication.
- (iii) The Plaintiff has not been able to place before Court conclusive and uncontradicted evidence that the Defendant has been carrying on business in the United Kingdom. When this fails, the entire case of the Plaintiff fails.

Appeal from the Judgment of the District Court of Colombo.

**Cases referred to :**

1. *U. G. de Silva vs. Associated Newspapers Ltd.*, - 1983 Vol. I Part III BASL. L. R.
2. *Okura & Co. Ltd., vs. Forsbacka Jern verks Aktiebolag* - 1914 1 KB 715.
3. *Jabbour vs. Custodian of Absentee's Property of State of Israel* - 1954 1 AQ ER 145.
4. *Adams vs. Cape Industries plc* - 1991 1 AER 929 (1990 Ch).
5. *Sfeir & Co. vs. National Insurance Co. of New Zealand* - 1964 1 QB 330.
6. *Vogel vs. R. & A. Kohnstram Ltd.*, - 1971 2 AGER 1428.

*Faiz Musthapa P. C. with S. C. Crosette - Thambiah and Ms. T. Machado* for defendant appellants.

*E. D. Wickramanayake with F. Wijewickrema and Ms. Anandi Cooray* for plaintiff - respondent.

*Cur. adv. vult.*

December 08, 1999.

**JAYASINGHE, J.**

The Petitioner-Respondent obtained in the High Court of England & Wales, Queens Bench Division a Judgment ex-parte against the Appellant in a sum of Sterling Pounds 150,000 on 04/11/1991 for an alleged defamatory statement published in the Daily News of 17/05/1990 under the caption "Tarbrush Campaign against Sri Lanka in London" along with a picture of the Petitioner-Respondent. In the statement of claim the Petitioner-Respondent stated that he is a lawyer by profession and a former Member of Parliament and that he has been closely identified with the Human Rights Movement in Sri Lanka; that he has been living in London since leaving Sri Lanka in September 1989 after threats on his life and the violent deaths of four of his colleagues.

The Respondent alleged that the Appellant is the publisher of the "Daily News" which has a substantial circulation and readership among the members of the Sri Lankan community and the British Press and media. It was alleged that the article under the Headline "Tarbrush Campaign against Sri Lanka in London" allegedly signed by a "True Patriot" contained words defamatory of the Plaintiff in that "two organisations in the U. K. in this Campaign of Villification are . . . and the Campaign for Democracy and Human Rights in Sri Lanka led by Prince Gunasekera and Clem Perera . . . Another motive is to use this activity to fool Sri Lankans in the U. K. and philanthropist organisations to donate funds which these scheming individuals pocket for themselves". The Petitioner-Respondent alleged that the natural and ordinary meaning meant and was understood to mean that the Plaintiff has been dishonestly pocketing money donated to the Campaign for Democracy and Human Rights in Sri Lanka.

The Petitioner-Respondent averred that he has been gravely defamed and seriously injured in his credit and reputation and feelings. The Plaintiff claimed damages for libel.

On 24/08/1992, the Petitioner-Respondent instituted action in the District Court of Colombo under the provisions of the Reciprocal Enforcement of Judgments Ordinance No. 41 of 1921 for the registration of the Judgment in terms of the said Ordinance. Associated News Papers of Ceylon Limited filed objections in which they specifically denied that the Defendants were carrying on any business in the United Kingdom. Answering further the Defendants stated that it was neither carrying on business or ordinarily resident in the United Kingdom at any time in the year 1990 or there-after and was hence neither carrying on business nor ordinarily resident within the jurisdiction of the High Court of Justice of England & Wales Queens Bench Division when the Petitioner allegedly instituted the said action in the said Court; that it did not appear or otherwise submit or agree to submit to the jurisdiction of the said High Court; that the Defendant was not amenable to a summons from the said Court and was not subject to the jurisdiction of the said Court that the said summons had no force or effect in law and that the Defendant disregarded the said summons and took no steps pursuant thereto; that the District Court of Colombo assumed jurisdiction under the Reciprocal Enforcement of Judgments Ordinance registered the said Judgment of the High Court of Justice of England & Wales, Queens Bench and/or that it is not just and convenient that the said Judgment should be enforced in Sri Lanka and moved for dismissal of the Petitioners application.

Charles Emmanuel Tissera the Circulation Manager of Associated Newspapers of Ceylon Limited in his affidavit stated that the averment in the statement of claim of the

petitioner that Samco Agencies Ltd., named as the 1<sup>st</sup> Defendant distributes in the United Kingdom within the jurisdiction of the said High Court the Daily News published by Associated Newspapers of Ceylon Limited is false and that the Daily News of 17/05/1990 has not been distributed in the United Kingdom either by Samco Agencies Ltd., or any one else. He denied that Associated Newspapers of Ceylon Limited is carrying on business in the United Kingdom. He further stated that Samco Agencies Ltd., purchases from Associated Newspapers of Ceylon Limited a certain quantity of its weekly publications the Sunday Observer, the Silumina etc. and that the said purchases are made by the local representative of Samco Agencies Ltd., one *J. C. de Silva* under a written contract entered into by Associated Newspapers of Ceylon Limited with one *D. S. Chandradasa* of Samco Agencies. The said agreement was marked and produced "X2"; that the purchase price for the said newspapers was paid in Sri Lanka and delivery thereof is made to the said *J. C. de Silva* at Mahabage; that the newspapers were sold and delivered to Samco Agencies for the purpose of their re-sale by Samco Agencies in London, subject to "X2"; that the Daily News of 17/05/1990 was not sold to Samco Agencies; that the said paper was sold in Sri Lanka to four persons resident in the United Kingdom. The said *J. C. de Silva* also filed affidavit and stated that he was employed by Samco Agencies, London and functioned as its representative in Sri Lanka; that the said Samco Agencies carrying on business in the United Kingdom among other things sold, certain newspapers printed and published in Sri Lanka by Associated Newspapers of Ceylon Limited; that he obtained the goods in Sri Lanka with monies provided by Samco Agencies and the goods are despatched to the United Kingdom for their re-sale by Samco Agencies; that these newspapers are purchased in terms of "X2" and that the Daily News is not purchased by Samco Agencies; and that it has never been sold or distributed in the United Kingdom by

Samco Agencies. *B. A. Jinadasa* the Secretary of Associated Newspapers of Ceylon Limited also filed affidavit in which he re-stated the averments contained in the objections filed by the other affirmants. After inquiry the District Judge of Colombo made order for the registration of the Judgment of the Queens Bench of 04/11/1991. This appeal is from the Judgment of the learned District Judge of Colombo.

Section 3(1) of the Reciprocal Enforcement of Judgments Ordinance No. 41 of 1921 provides for the registration in Sri Lanka of a Judgment obtained in a Superior Court in the United Kingdom within 12 months of such Judgment. According to Section 3(2) (b) such a Judgment shall not be registered if the Judgment-Debtor was neither carrying on business nor ordinarily resident within the jurisdiction of the Original Court, nor voluntarily appear/submit to the jurisdiction of that Court. Therefore, in order to register the said Judgment in Sri Lanka, the Respondent must establish *either* that the Appellant was carrying on business or was ordinarily resident in the United Kingdom. It is agreed by both parties that the Appellant was not resident in the United Kingdom and therefore, the only question that arises for consideration here is whether the Appellant was carrying on business in the United Kingdom at the relevant time, for the Judgment of the High Court of Justice Queens Bench, to be registered here. The Petitioner claimed that the Respondent was carrying on business in the United Kingdom and relied on the following reasons that would support his assertion in that the Appellant was carrying on a business in the United Kingdom.

- (i) The Appellant had employed *Reggie Fernando* as its foreign correspondent in London.
- (ii) The Appellant had nominated *Reggie Fernando* as its representative to the Commonwealth Press Union.

- (iii) *Reggie Fernando* in his own weekly newspaper published in London identified himself as the Appellant's London correspondent.
- (iv) *Reggie Fernando* distributed his own newspaper free along with the Appellant's newspapers in London.
- (v) The Appellant had contracted with independent agents/agencies/trading companies dealing in Sri Lankan products, such as Samco Agencies Ltd., for the sale of its publications in London.
- (vi) The Appellant was selling the foreign edition of its weekly news digest directly to its readers in London and elsewhere who in turn pay their subscriptions directly to the Appellant's Circulation Manager in Sri Lanka who in turn communicates with them with regard to renewal of subscriptions, supply and delivery.
- (vii) The Appellant had nominated / appointed *Reggie Fernando* as the sole agent for Lake House Newspapers in the U. K. after the former agent Samco Agencies Ltd., ceased to trade in newspapers after 1992.
- (viii) The Articles and Memorandum of Association of the Appellant gives it the power to carry on a wide range of activities, including the business of newspaper proprietors, publishers, press correspondents, news agents etc. in the U. K. and in any other part of the world.

Mr. Wickremanayake submitted that *Reggie Fernando* in the United Kingdom is a foreign correspondent of the Appellant and that the Sunday Observer printed and published by the Appellant refers to *Reggie Fernando* as our correspondent in London "and that the said *Reggie Fernando* is also referred to as "Lord *Reggie* from London". He submitted that a foreign

correspondent is an employee and not an independent contractor. In *U. G. de Silva vs. The Associate Newspapers*<sup>(1)</sup> the group correspondent for Kandy of ANCL was held to be an employee of ANCL and not an Independent Contractor. *Sharvananda J.* (as he then was) held that as the company was publishing several newspapers, it was essential for the efficient operation of its business that it should have events of news value reported. Hence, it was imperative for the conduct and operation of its business that the company should have in its regular service a cadre of reporters or correspondents to cover incidents and events occurring in the several parts of Sri Lanka. A correspondent is part and parcel of a newspaper organisation, a cog in its' wheel. This work is part of the regular business of the company. He is a regular unit in the complex organisation of the company's business and is an integral part of the company and not a casual or temporary person engaged only for the purpose of completing a specific task which is necessary to the main business". He held further that "the work done by the Appellant as a Group or district correspondent was done as an integral part of the company's business. It was done for the company's business and was integrated into it. The Applicant did not on his own have an independent business of news-reporting. He was, in fact, engaged in the business of reporting news not on his account but on account of the company". *Mr. Wickremanayake* submitted on the basis of the reasoning of *Sharvananda J.* that a correspondent whether District group or foreign is part and parcel of a newspaper organisation and is an integral part of its business. He also submitted that *Reggie Fernando* therefore is an essential part of the business of Associated Newspapers of Ceylon Limited and is therefore a cog in its wheel.

It is convenient at this point to consider the provisions of "X2" for the determination that ANCL is carrying on business

in the U. K. through Samco. "X2" is an agreement entered into between ANCL and Samco Agencies Limited. "X2" is referred to as an agreement with Samco Agencies Ltd., the News Agent of ANCL in the U. K. According to Clause (3) of the agreement the prices of Newspapers are predetermined, in that the News Agent shall not sell or permit to be sold, the paper over and above the prices stipulated therein. Clause 4(c) stipulates that the company may stop supplies of paper without notice to the News Agent. Clause 4(d) states that ANCL may restrain the News Agent from selling the papers in any particular area and also ANCL reserves the right to reduce supplies, terminate the agency and even stop unauthorised sales. Clause 4(e) ANCL reserves the right to appoint additional agents. There are certain conditions imposed on the News Agents suggestive of an agency relationship. Clause 3(b) of the Memorandum of Association empowers ANCL to carry on in Great Britain . . . and in any other part of the world any of the following business; Newspaper proprietors, publishers, press correspondence, news agents, journalists, reporters etc. "X2" therefore could be pursuant to what is provided in the Memorandum of Association of ANCL.

*Mr. Musthapha*, PC contended very vigorously that ANCL was not carrying on business in the U. K., he submitted that the wording of Section 9(2) (b) of the Administration of Justice Act 1920 of the U. K. is identical to that of the relevant section i. e. Section 3(2) (b) of the Reciprocal Enforcement of Judgments Ordinance. He sought to explain in the light of the case law available the involvement of *Reggie Fernando* and that the existence of the application of "X2" fell outside the scope of carrying on business" within the meaning of Section 3(2) (b).

*Mr. Wickremanayake* conceded that Section 9(2) (b) is similar to 3(2) (b) of the Reciprocal Enforcement of Foreign Judgments Act.

*Mr. Musthapha* referred Court to a number of cases. That one of the strongest factors that militate against a corporation being held to be carrying on business in a foreign country is the inability of the corporation's agent in that country to enter into contracts on behalf of the corporation. He argued that *Samco Agencies Pvt. Ltd.*, was clearly without authority to contractually bind the Appellant ANCL with no fixed place of business. *Mr. Musthapha* sought to import into Section 3(2) (b) of the Reciprocal Enforcement of Foreign Judgments Ordinance, the element of residence.

In *Okura & Co. Ltd., vs. Forsbacka Jernverks Aktiebolag*<sup>(2)</sup> the Defendants were manufacturers in Sweden. They had their sole agents in U. K. The Agent carried on business as general agents and they also acted as agents for other Swedish firms engaged in the steel trade. They also bought and sold steel on their own account as principals.

The above case considered the question whether the corporation was carrying on business in the U. K. for the purpose of service of process upon it. Buckley, J. observed.

"The point to be considered is, do the facts show that this corporation is carrying on its business in this country? In determining that question three matters have to be considered. *First*, the acts relied on as showing that the corporation is carrying on business in this country must have continued for a sufficiently substantial period of time . . . *Next* it is essential that these acts should have been done at some fixed place of business . . . The *third* essential, and one which it is always more difficult to satisfy, is that the corporation must be 'here' by a person who carries on business for the corporation in this country. It is not enough to show that the corporation has an agent here; he must be an agent who does the corporation's business for the corporation in this country.

The issue for determination here is whether the Defendants were carrying on business in the U. K. so as to be resident for the purpose of service of process upon it. Buckley L. J. held that “. . . the question whether a foreign corporation can be served with a writ in this country depends on whether it is resident within the jurisdiction and that again depends whether the corporation carries on business here . . .”.

Mr. Wickremanayake submitted that Okura's case has no application in that for the purpose of carrying on business one has to be resident. Thus the two factors 'residence' and 'carrying on business' are not independent of one another and has no separate existence. He submitted that under Section 3(2) (b) the two requirements stand independent and if either residence or carrying on business is established a foreign judgment is qualified for registration.

Okura's Case was a common law situation where the application of Section 9(2) (b), of the Administration of Justice Law was not considered.

In the Case of *Jabbour vs. Custodian of Absentee's Property of State of Israel*<sup>(3)</sup> it was held that;

“A corporation resides in a country if it carries on business there at a fixed place of business, and, in the case of an agency, the principal test to be applied in determining whether the corporation is carrying on business is to ascertain whether the agent has authority to enter into contracts on behalf of the corporation without submitting them to the corporation for approval.”

In this case too, the Court went into the question of residence for the purpose of determining whether the

corporation was carrying on business. Here again the residence is coupled with carrying on of business. A common law situation as opposed to the Administration of Justice Act 1920.

In *Adams vs. Cape Industries plc*<sup>(4)</sup> The Defendants were two associated United Kingdom Companies, which dealt with mining of asbestos. The asbestos was marketed in the U. S. through a Unites States Company. The Plaintiffs brought an action against the Defendants in the U. S. claiming damages on the basis that the Defendants have been supplying asbestos without giving proper warning of the dangers thereof. The Tyler Court awarded damages to the Plaintiffs. The Plaintiffs then brought an action against the Defendants in England in order to enforce the Judgment of the Tyler Court, *under the common law*. The English Court dismissed the Plaintiff's claim. The Appeal, was dismissed on the ground that, the Defendants *were not resident in the United Kingdom*. It was held that it is the *residence* that gives rise to the jurisdiction of the Court. This case too falls into the 1<sup>st</sup> category of cases, under the common law which requires *residence* to be proved.

The cases cited above has no application to the present case, in that the Administration of Justice Act 1920 was not considered and the liability of parties were determined under the Common Law requirements.

In *Sfeir & Co., vs. National Insurance Co, of New Zealand*,<sup>(5)</sup> at 330 the phrase carrying on business within the meaning of Section 9(2) (b) of the Administration of Justice Act 1920 came up for interpretation.

Sfeir & Co., (& two others) made a claim for a loss under an Insurance Policy directly to the head office of the

Defendants in Dunedin New Zealand. This claim however was returned by Glyndova (Ghana) Ltd., the Defendant's agents in Ghana. The Plaintiffs then filed action against the Defendants in Ghana and obtained Judgment and writ against the Defendants for the loss. The order for service out of the jurisdiction was made upon the Defendants at their branch office in London. The Plaintiffs then made an application to have the said Judgment registered under the Administration of Justice Act 1920. Justice Mocatta stated that the first question to be determined was whether the Defendants at any material time carried on business in Ghana, if they did so, it can only have been through Glyndova Ltd. There was evidence defining the duties and authority of Glyndova Ltd. Mocatta J. went on to enumerate the authority of Glyndova Ltd. It was limited in their functions to claim Settling Agents. They were also qualified to use the wording claim Settling Agents for companies of London underwriter on their letter heading. However Glyndova had no authority from the Defendants to receive proposal forms or negotiate insurance or to issue . . . on behalf of the Defendants and never did so. The main business of the company was to sell Insurance Policies. Glyndova however was not empowered to perform this duty. Sfeir's case differed from the cases referred to on behalf of the Appellant Associated Newspapers of Ceylon Limited in that it considered the words "carrying on business" in Section 9(2) (b) of the Administration of Justice Act 1920. Mocatta J. held that "the limited authority possessed by Glyndova to bind the Defendants by settlement of claims arising in Ghana under the Defendants policies issued elsewhere, did not amount to carrying on of business by the Defendants in Ghana.

In *Vogel vs. R & A Kohnstram Ltd*<sup>(6)</sup> it was held that Kohnstram Ltd was carrying on business residentially

within the jurisdiction but that Kohnstram Ltd was not an agent. Therefore, it is not mere carrying on business that was necessary but residence of Defendants through Kohnstram Ltd, in Israel which the Plaintiff failed to prove.

Section 3(1) of the Reciprocal Enforcement of Judgments Ordinance provides, *inter alia*, that the Court may only order a foreign judgment to be registered "if in all the circumstances of the case they think it is just and convenient that the judgment should be enforced in Ceylon".

*Mr. Musthapha* argued that it has been held that a foreign Judgment would not be enforced in the United Kingdom if it offends against English views of substantial Justice. In *Adams vs. Cape Industries (Supra)* it was held that the United States Judgment did offend against the English Courts view of substantial Justice, in that there was no proper or fair assesment of damages. He submitted that it is not just and convenient to enforce the United Kingdom Judgment in Sri Lanka. He went on to submit that upon the principals enunciated above the United Kingdom Judgment offends against our views of justice. The damages are not quantified in the claim unlike in a defamation action in Sri Lanka. He submits that the sum awarded by the Jury of Sterling Pounds 150,000 is excessive and has no rational basis. However according to the certificate issued by the Associate of 4/11/1991 this action has been tried before the Hon. Mr. Justice Otton with a Jury in London on 4/11/1991 and occupied the time of Court for a total duration from 11.00 a.m. to 12.55 and 2.15 to 3.40 p.m. and that the damages were assessed and consequently the Jury has awarded the Plaintiff a sum of Sterling Pounds 150,000. Therefore, it is seen that is not open for Mr. Musthapha to allege that the Judgment of the Queens Bench Division is not just and convenient.

The Respondent instituted action in England against Associated Newspapers of Ceylon Limited and succeeded. The Respondent could have enforced the decree against Associated Newspapers of Ceylon Limited in England if, the Associated Newspapers of Ceylon Limited was ordinarily resident in United Kingdom if there was a finding that Associated Newspapers of Ceylon Limited was carrying on business within the jurisdiction of that Court or if Associated Newspapers of Ceylon Limited agreed to submit to the jurisdiction. Since there is no such finding by the awarding Court on any of these matters the Plaintiff had to come under Section 3(2) (b) for registration in Sri Lanka for enforcement. For this purpose he has to satisfy Court that the Defendant was carrying on business in the United Kingdom. The Plaintiff in order to establish that the Defendant was carrying on business in the United Kingdom relied on two grounds. That Reggie Fernando was a Correspondent of Associated Newspapers of Ceylon Limited in London and "X2" an agreement Associated Newspapers of Ceylon Limited entered into with Samco Agencies. The lynch pin of the Plaintiff's case was that the Defendant carried on business through Samco Agencies which was in fact the 1<sup>st</sup> Respondent. One Dissanayake Samuel Chandradasa, a Director of Samco who was cited as the 1<sup>st</sup> Defendant averred in an affidavit filed before the High Court of Justice, Queens Bench Division that he became aware of the existence of proceedings against Samco the 1<sup>st</sup> Defendant on or about 27.03.1991 when a letter addressed to the 1<sup>st</sup> Defendant's Registered Office was brought to his attention. He averred that the writ was issued on 14.12.1990 and posted to the Registered Office of the 1<sup>st</sup> Defendant on or about 18.12.1990 and that no notice of intention to defend having been given by the 1<sup>st</sup> Defendant and that judgment was entered on 21.03.1991. He averred that notice of intention to defend was not given by the 1<sup>st</sup> Defendant

and that the writ never reached the 1<sup>st</sup> Defendant. He further averred that the 1<sup>st</sup> Defendant is an importer and distributor of newspapers from Ceylon, but has no connection whatsoever with the Daily News and neither imports nor distributes nor stocks nor sells the said publication. Consequently, Geffery Bindmen, a Solicitor for the Plaintiff filed affidavit before the same Queens Bench Division wherein he averred that the sealed copy of the writ was served by ordinary post on the Secretary of the 1<sup>st</sup> Defendant by letter dated 18.12.1990. That no appearance was filed and accordingly judgment was entered against the 1<sup>st</sup> Defendant on 01.03.1991; that on 09.04.1991 the 1<sup>st</sup> Defendant issued an application to set aside the judgment on the ground that writ was never received by the 1<sup>st</sup> Defendant and that the 1<sup>st</sup> Defendant had a good defence to the action. He averred that the basis of the defence was that the 1<sup>st</sup> Defendant had no connection with the Daily News and neither imported nor distributed nor stocked nor sold the said publication. That he advised the Plaintiff that on the face of this defence it might be difficult to prove that the Defendant had published the libel in the United Kingdom and that notice of discontinuance was served on the 1<sup>st</sup> Defendant and the action came to an end in so far as the 1<sup>st</sup> Defendant was concerned.

Accordingly the liability of Samco came to an end. When Samco was discharged from the proceedings there was left a vacuum in that the vital ingredient that was necessary to satisfy Court that Associated Newspapers of Ceylon Limited was carrying on business in England could not be established. As stated before the Plaintiff could have enforced the judgment against the Defendant in England provided they submitted to jurisdiction. However for the purpose of Registration of the judgment the nexus between Associated Newspapers of Ceylon Limited and Samco was necessary. It is not enough that the

Defendant was carrying on some business in the United Kingdom. The Plaintiff was required to satisfy Court that the Defendant was carrying on a business which the Plaintiff alleged. In this instance it was the sale of the Daily News. Reggie Fernando being a part of Associated Newspapers of Ceylon Limited does not arise. The question whether the Defendant was carrying on business was a question of fact. The Defendant all along denied that it did. The affidavit of Dissanayake Sammuel Chandradasa is that it is an importer and distributor of newspapers from Ceylon and that it has no connection with the Daily News and neither imports and distributes nor stocks the said publication. The Defendants in their answer before the District Court also denied that it carried on business in the U. K. In the light of the denial, the Plaintiff ought to have led evidence to satisfy Court that the Defendant in fact did carry on business in the United Kingdom. The parties instead of leading evidence sought to file written submissions. The resultant position was that the Court was left with two conflicting positions on affidavit. The Plaintiff therefore has not been able to place before Court conclusive and uncontradicted evidence that the Defendant has been carrying on business in the United Kingdom. When this fails the entire case of the Plaintiff also fails. For the foregoing reasons, I set aside the order of the learned District Judge for the registration of the Judgment obtained in England and allow the appeal with costs fixed at Rs. 10,500/-.

**EDUSSURIYA, J. (P/CA)** - I agree

*Appeal allowed.*