FERNANDO
V.
HEMACHANDRA

COURT OF APPEAL
BANDARANAYAKE, J. &
WIJETUNGA, J.
C. A. APPLICATION NO. 237/87
D. C. PANADURA NO. 13458
APRIL 29, 30 AND MAY 5 AND 6, 1987

Execution — Stay of execution of writ — Substitution of assignee of plaintiff decree holder — Non-compliance with section 339 C.P.C. — Jurisdiction — Execution pending appeal.

The plaintiff had sued the defendant as a trespasser for ejectment from a part of premises No. 220/5 Galle Road. Judgment was entered on 12.12.74 for plaintiff. The defendant appealed but died when the appeal was pending. The appeal was rejected on 28.3.78 as no substitution has been effected. Plaintiff applied to have the writ executed and this was allowed on 17.1.83. An application for stay of writ was refused. Thereafter the petitioner was noticed to appear in court on 26.11.84 to answer a charge of contempt for allegedly resisting the Fiscal. Plaintiff however did not pursue this but applied for execution of writ on 20.8.85. Plaintiff then assigned the decree and the application was withdrawn to be renewed after substitution. The present respondent applied to have himself substituted on the basis of being an assignee of the decree. On 19.02.87 the application for substitution of the respondent in the room of the plaintiff was allowed. This order was being sought to be revised. A stay order was also entered to be effective till 19.02.87. The respondent filed objections and on 31.3.87 the Court fixed inquiry for 29.04.87 and extended the stay order up to 30.04.87. The immediate question was this extension which stood extended until 15.06.87.

The order was attacked on 3 grounds:

(1) No proper proof of assignment of decree

(2) Non-compliance with S. 339 C.P.C.

(3) On 12.12.74 the District Court had no jurisdiction as the case stood transferred to the Magistrate's Court by operation of the Administration of Justice Law.

Held

(1) The deed of assignment was admitted in evidence without objection at the District Court. No objection that it has not been duly proved can be entertained in appeal.

(2) The original plaintiff had not been made a party respondent as is required by S. 339 C.P.C. In the application dated 20.05.86 which is the application relevant to the impugned order the original plaintiff had been made a respondent and he was present in Court and did not object. This was sufficient compliance will S. 339 C.P.C.

(3) The action had been valued at Rs. 5000/- and no objection had been taken to this valuation. The valuation of the subject matter as given in the plaint prima facie determines the jurisdiction of the Court. An objection to jurisdiction must be taken at the earliest opportunity. There was no need to transfer the case to the Magistrate's Court. The action was within the general and local jurisdiction of the District Court. Hence its decision will stand until it is set aside.

(4) There is a specific finding by the trial judge that the defendant was not a tenant and was in forcible occupation of the premises. The defendant had placed no material before Court on the question of substantial loss. The material on which the stay order has been obtained was quite unsatisfactory and it should not be extended.

Cases referred to:

1. *Siyadoris v. Danoris* 42 NLR 311
2. *Andrishamy v. Balahamy* 1909 Matara Case, 49
3. *Andri v. Siriya et al.* 27 NLR 70
4. *Jalaldeen v. Rajaratnam* [1986] 2 Sri LR 201
5. *Perera v. The Commissioner of National Housing* 77 NLR 361, 366
6. *Sokkal Ram Sait v. Nadar et al.* 41 NLR 89
7. *Charlotte Perera v. S. Thambiah and another* [1983] 1 Sri LR 352.
8. *Billimoria v. Minister of Lands* [1978 - 79] 1 Sri LR 10

APPLICATION seeking revision of District Judge's order

F. Mustapha with *K. Abeypala* for Petitioner

N. R. M. Daluwatte P.C. with *Mrs. Ramani de Saram* and *Miss S. Nandadasa* for Respondent.

Cur. adv. vult

June 12, 1987
WIJETUNGA, J.

The substituted-defendant-respondent-petitioner (hereinafter referred to as the petitioner) seeks to revise the order of the District Judge dated 19.2.87, allowing the application of the substituted-plaintiff-petitioner-respondent (hereinafter referred to as the respondent) for execution of the decree entered in this case. The immediate matter before us concerns the order of this court staying the execution of writ pending the determination of this application.

In this action, the plaintiff sought to eject the defendant from a part of premises bearing assessment No. 220/5, Galle Road, Panadura on the ground that the defendant was a trespasser on the said premises. Judgment was entered against the defendant on 12.12.74. The defendant appealed against the said judgment but the appeal was rejected on 28.3.78 as substitution had not been effected in place of the appellant who died pending the appeal. Thereafter, the plaintiff made an application to execute the said decree and the District Court made order on 17.1.83 allowing the application for execution. The petitioner alleges that the plaintiff did not take any steps to effect execution. The petitioner however made an application to the District Court to stay writ of execution but the Court made order on 29.8.83 refusing her application and on 15.11.83 it also ordered the issue of writ of possession. The petitioner was thereafter noticed to appear in Court on 26.11.84 for allegedly resisting the Fiscal in executing the writ and proceedings were instituted by the plaintiff against her for contempt of Court. But, without pursuing this matter, the plaintiff once again made an application on 20.8.85 for execution of writ, which application he withdrew on 12.11.85 stating that it would be pursued later after effecting substitution of the plaintiff. Thereafter the present respondent made an application on 16.4.86 to substitute himself in place of the plaintiff and for the execution of the said decree, on the basis that the rights in the decree had been assigned to him by the plaintiff. By his order dated 19.2.87, the learned District Judge allowed the said application of the respondent, which order is sought to be revised in these proceedings.

The present application had been filed in this Court on 25.2.87 and been supported by counsel for the petitioner on 27.2.87.

The Court had made order to issue notice on the respondent returnable on 30.03.87 and also to issue a stay order in terms of para (c) of the prayer to the petition, to be effective till 31.3.87. By this order the execution of writ in pursuance of the order of the District Judge dated 19.2.87 was stayed.

On 27.3.87 the objections of the respondent had been filed and on 31.3.87 this Court made order that the matter of the extension of the stay order be taken up for inquiry on 29.4.87. The stay order was extended up to 30.4.87. The immediate matter before us is the question of extension of the stay order, which has been objected to by the respondent and which now stands extended until 15.6.87.

Learned counsel for the petitioner submitted that the stay order should be extended, as prima facie there were substantial matters which merited examination by this Court. He attacked the order complained of on three grounds, viz.—

(i) There was no proper proof of assignment of the decree.

(ii) There was non-compliance with Section 339 of the Civil Procedure Code in that the original plaintiff had not been made a respondent to the application for execution.

and (iii) On the date of judgment, i.e. 12.12.74, the District Court had no jurisdiction over this matter as the case stood transferred to the Magistrate's Court by operation of the provisions of the Administration of Justice Law.

In regard to the first submission, Mr. Mustapha referred us to para 10 of the petition dated 25.2.87 filed in this Court. It was his contention that deed No. 194 attested by P. H. Alankarage, Notary Public on 13th February, 1986 (P.2), by which it is claimed that the original plaintiff M. Kanagalingam assigned the decree of this case to the petitioner, is a document which is open to grave suspicion and doubt. He pointed out that the attestation shows that the Notary did not know M. Kanagalingam and further submitted that the deed itself had not been duly proved in terms of Section 68 of the Evidence Ordinance. He stated that the

alleged transfer of the premises in suit by the plaintiff to the respondent on 5.10.83 on deed No. 2400 attested by D.C. de Silva, Notary Public too had not been duly proved as the original plaintiff M. Kanagalingam had signed as the Attorney of the vendors P. Balachandran and M. P. Balachandran, but no power of attorney had been produced.

As regards non-compliance with Section 339 of the Civil Procedure Code, he contended that the Section requires that all the parties to the action or their representatives should be made respondents to such an application by the assignee, but as is evidenced by P.3, the original plaintiff had not been made a party to that application. When learned counsel for the respondent referred him to the petition dated 20.5.86 (R.9), he argued that merely mentioning the original plaintiff M. Kanagalingam in the caption as plaintiff-respondent was not sufficient compliance with Section 339, notice had not been issued on him and the presence of the original plaintiff in Court on 14.7.86 was highly improbable.

The third ground on which he relied was that on 12.12.74 when judgment was delivered in this case, the District Court of Panadura had no jurisdiction in respect of this matter as the case stood transferred to the Magistrate's Court under the provisions of the Administration of Justice Law. The basis of this submission was that this being a possessory action and the damages claimed by the plaintiff being Rs. 75/- p.m. it was the Magistrate's Court which had exclusive jurisdiction in the matter, as it was within the pecuniary limit of Rs. 1500/-.

When the hearing of this matter was resumed on 30.4.87, Mr. Daluwatte for the respondent stated that Mrs. Ramani de Saram, Attorney-at-Law, Panadura wished to make a statement from the Bar as she had been present in the District Court of Panadura on 14.7.86 when the original plaintiff M. Kanagalingam appeared in Court.

Mrs. de Saram then stated as follows:— "I was in the District Court on that date with Mr. Kanagalingam who came to Court to consent to Mr. Ridley Hemachandra de Silva being substituted as

the plaintiff in District Court Case No. 13458/RE. My father was the instructing attorney in these proceedings and I attended to the District Court work. I know Mr. Kanagalingam personally and he has been a client of my father Mr. de Silva for a long time. In fact Mr. Kanagalingam was known to half the town of Panadura. This was on a Monday and it took the whole day for their submissions. On the identity which was important to prove, there was no objection whatsoever as to the identity of Mr. Kanagalingam and there was a lawyer present for the other side and there were no objections from that side."

Mr. Daluwatte also sought the permission of Court to file an affidavit by Mrs. de Saram in this connection.

Mr. Mustapha for the petitioner submitted that the Court should not take cognizance of either the statement of the Attorney-at-Law or the contents of the affidavit in considering the present application. It was his contention that the statement as well as the affidavit seek to contradict the record.

Mrs. de Saram also informed the Court of the circumstances under which the original plaintiff Kanagalingam came to appear in Court on 14.7.86. She stated that the Attorneys for the substituted plaintiff informed Kanagalingam's brother who was living in Mutuwal regarding the next date on which the case was to be called. Mr. Mustapha objected to that statement on the ground of hearsay.

When hearing was resumed on 5.5.87, Mr. Mustapha further submitted that the affidavit of Mrs. de Saram does not advert to the fact of the appearance of Kanagalingam on a message given by his brother and there was no material to show how he came to Court. Further, the affidavit does not say that he entered an appearance and the question whether he did in fact come to Court on that day was still in doubt. He invited the Court to go by the Journal Entries of the case and not be influenced by the affidavit or the statement of Mrs. de Saram, Attorney-at-Law. In any event, he contended that the affidavit was of minimal evidenciary value as regards the facts.

Mr. Daluwatte for the respondent submitted that there was proper proof of assignment of the decree and that the learned District Judge had considered this aspect of the matter in his order of 19.2.87.

On the question of non-compliance with Section 339, he pointed out that the original plaintiff Kanagalingam had in fact been made a party to that application and according to Journal Entry No. 90 of 14.7.86 (R.8) he had been present in Court and had indicated that he had no objection to the application. It was his submission that the substitution of the present respondent in place of the decree-holder was thus in conformity with Section 339.

In regard to jurisdiction, it was Mr. Daluwatte's submission that the action having been valued at Rs. 5000/- and no objection having been taken in the trial Court to the said valuation at any stage, it was competent for the District Court to continue with the proceedings even after the coming into operation of the Administration of Justice Law.

As regards the stay order that had been obtained, he submitted that the petitioner had succeeded in doing so by the deliberate supression of facts and thus misleading the Court. He pointed out that the averment in para 4 of the petition filed in this Court wherein it is stated that though the District Court made order on 17.1.83 allowing the application for execution of decree, the plaintiff did not take any steps to carry out such execution, is false. He referred to para 6 of the petition which proves the falsity of para 4. He further pointed out that the affidavit (P. 5) dated 20.5.86 had no relevance to the application dated 16.4.86 (P.3). (P.5) was a document filed in respect of another application and related to the petition (R.9) dated 20.5.86. He also submitted that para 12(B) of the petition where it is averred that the respondent had failed to comply with the mandatory provisions of Section 339(1) of the Civil Procedure Code and accordingly the said application should have been dismissed in limine, was a deliberate attempt to mislead the Court. (P.3) was some other application made to the District Court by the present respondent, which had been abandoned. The correct application

on which the Court had made the present order complained of is (R.9) dated 20.5.86. where the original plaintiff had in fact been made a party respondent. in compliance with the provisions of Section 339.

He submitted that the averments in para 12(F) too were incorrect.

The stay order having been obtained on such material, it was contended that it should in any event be dissolved.

After the conclusion of oral submissions. the Attorney-at-Law for the respondent tendered written submissions on 28.5.87. together with certified copies of the caption and Journal Entry No. 1 dated 20/22.6.73 of the District Court Case marked 'X' and the Record of Stamp Duty marked 'Y'. In 'X' the value of the action has been given as Rs. 5000/- plus Rs. 75/-. In 'Y' too the value of the action is given as Rs. 5075/-.

On 8.6.87. the Attorney-at-Law for the petitioner too tendered written submissions summarising his position.

I would now examine the matters referred to by counsel in the light of these submissions and the material available to this Court.

In regard to the submission that there was no proper proof of assignment of the decree, one has to consider Deed No. 194 attested by P. H. Alankarage. Notary Public on 13.2.86 (P.2) which has been produced in the proceedings before the District Judge and which he had considered in making his order. It was the contention of learned counsel for the petitioner that there had been non-compliance with Section 68 of the Evidence Ordinance and (P.2) had not been duly proved. This is an objection which the petitioner should have taken in the original Court when it was sought to admit the document in evidence. It may be noted that Mrs. de Saram, in her affidavit referred to above, has stated that the deed of assignment was neither objected to nor was the substituted plaintiff called upon to prove the same

In *Siyadoris v. Danoris,* (1) it has been held that where a deed has been admitted in evidence without objection at the trial, no objection that it has not been duly proved could be entertained in appeal. In so deciding, Keunman J. with Howard C.J. agreeing, followed the decision in *Andrishamy v. Balahamy,* (2) which too was a decision of two judges. I am in respectful agreement with this view and would hold that the petitioner is not entitled to take this objection at this stage.

The second ground on which the petitioner relied was that there had been non-compliance with Section 339 of the Civil Procedure Code. The petitioner has filed a certified copy of the petition and affidavit dated 16.4.86 (P.3), together with a copy of the order dated 19.2.87 (P.4), conveying the impression that the order (P.4) relates to (P.3). The original plaintiff had not been made a party respondent in (P.3), as is required by Section 339. The respondent however has tendered (R.9) dated 20.5.86 which is the application that is relevant to this order. In that petition, the original plaintiff M. Kanagalingam has been named as the plaintiff-respondent. Journal Entry No. 90 dated 14.7.86 (R.8) shows that he had been present in Court on that date and had indicated that he had no objection to this application. Although learned counsel for the petitioner sought to cast doubts as regards the presence of Kanagalingam in Court, learned counsel for the respondent refuted this contention through the statement made from the Bar by Mrs. Ramani de Saram, Attorney-at-Law on 30.4.87 and the affidavit of the same date submitted by her. Mr. Mustapha objected to the admission of this statement and document on the ground that it had the effect of contradicting the record. But Mrs. de Saram's statement and affidavit in fact support the record, as the Journal Entry of 14.7.86 states that the original plaintiff Kanagalingam was present in Court and had no objection to this application. In para 7 of her affidavit Mrs. de Saram states that "the said Mr. M. Kanagalingam was present in Court and consented to the substitution of the said Ridley de Silva. I myself was present in court when the said Kanagalingam expressed his consent to Court."

Mrs. de Saram's statement from the Bar further explains how Kanagalingam came to be in Court. She states that the Attorneys for the substituted-plaintiff informed Kanagalingam's brother who was living in Mutuwal regarding the next date when the case was to be called. Counsel for the petitioner objected to this statement on the ground that it was hearsay. What Mrs. de Saram states is that the relevant information was conveyed to Kanagalingam's brother, in consequence of which probably Kanagalingam appeared in Court on the due date. I see no inadmissible hearsay material in this statement.

The position of learned counsel for the petitioner being that notice not having been served on Kanagalingam, it was highly improbable that he could have appeared in Court, the respondent has now given a plausible explanation as to how Kanagalingam may have come to be present in Court. This, in my view, is the answer to the second matter raised by counsel for the petitioner.

The third ground urged by the petitioner is that on 12.12.74 when the District Court delivered judgment in this case, it had no jurisdiction as the case stood transferred to the Magistrate's Court by operation of the provisions of the Administration of Justice Law. This submission is on the basis that the case being a possessory action and damages having been claimed at Rs. 75/- p.m., the monetary jurisdiction of the Court is determined on the relief claimed by the plaintiff and not by the value of the premises in suit. In the instant case, in para 13 of the plaint it is averred that the value of that portion of the building which is the subject matter of this action is Rs. 5000/-. The relief sought in the prayer is:—

(1) that the defendant and all others holding under him be ejected from that portion of premises No. 220/5, Galle Road, Panadura described in the Second Schedule to the plaint and the plaintiff be placed in undisturbed possession of the same

and (2) that the defendant be ordered to pay a sum of Rs. 75/- p.m. as damages from May, 1973 until he is so ejected.

The document 'X' tendered by the respondent shows that the action has been valued at Rs. 5000/- plus Rs. 75/-. So also, in the document 'Y', which is the Record of Stamp Duty, the action is valued at Rs. 5075/-. Thus, in valuing the action, prayer (1) as well as prayer (2) have been taken into account. To confine one's self only to the damages claimed by the plaintiff in prayer (2), in determining the value of the action, would be to ignore altogether the relief claimed in prayer (1), which is the fundamental relief. Surely, the ejectment of the defendant from the premises in suit and being placed in undisturbed possession of the same would have a monetary value to the plaintiff far in excess of the damages that he would incidentally recover from the defendant. In my view, when the plaintiff values the subject matter of the action at Rs. 5000/-, it is this particular interest in claim that has found expression.

The value of the action is very relevant for the purposes of Section 214 of the Civil Procedure Code which deals with taxation of costs, as is evidenced by the Second Schedule to the Code. So also is it important for the purposes of Section 2 of the Stamps Ordinance (vide Part II of Schedule A), as stamp duty is chargeable on legal proceedings according to the class of action, as determined by monetary value.

In any event, no objection had been taken by the defendant at any stage of the proceedings in the trial Court as regards the value of the action. It is only in the counter-affidavit dated 27.4.87 filed in this Court that the petitioner for the first time averred a want of jurisdiction. It is relevant to note that this action commenced in the District Court on 20th June, 1973 and judgment was entered on 12th December, 1974. Various other steps had been taken in the matter between then and now, spanning a period of about 13 years. But the question of jurisdiction had never been raised. This is not to say that the petitioner cannot raise this question at this stage, if there was a patent or total want of jurisdiction. But, the action having been valued at Rs. 5075/-, prima facie the Court had the necessary jurisdiction. The case continued in the District Court even after the Administration of Justice Law. On the basis of the value of the action as appearing in the caption to Journal Entry No. 1 and

in the Record of Stamp Duty, there was no necessity to transfer the action to any other court.

In practical terms, the transfer of the case was an administrative act to be performed by the relevant officer of the Court. There was no material before him to indicate that the case should be transferred to the Magistrate's Court. On the contrary, for all purposes it appeared to be a case which should continue in the District Court. So, if the petitioner was of the view that the case should properly be transferred to the Magistrate's Court under the Administration of Justice Law, she should have made an appropriate application to the District Court for such transfer. This she has failed to do. If she had made such an application, it would have been open to the plaintiff to raise any objections to such transfer and there would have been a judicial determination of the question of monetary jurisdiction. Section 43(1) of the Administration of Justice Law itself contemplates such objection being taken by a party concerned at the earliest opportunity.

As early as 1924, it has been held in *Andris v. Siriya et al,* (3) that "it is a fundamental rule governing the question of jurisdiction that the valuation of the subject matter as given in the plaint prima facie determines the jurisdiction of the Court and the value thus placed having given the Court jurisdiction, the jurisdiction itself continues whatever the result of the suit, unless a different principle comes into operation to prevent such a result or to make the proceedings from the first abortive."

In *Jalaldeen v. Rajaratnam,* (4) this Court has held that an objection to jurisdiction must be taken at the earliest opportunity. Further, issues relating to the fundamental jurisdiction of the Court cannot be raised in an oblique or veiled manner and must be expressly set out. The action was within the general and local jurisdiction of the District Court. Hence its decision will stand until the wronged party has matters set right by taking the course prescribed by law.

The question of patent or total want of jurisdiction as opposed to latent or contingent want of jurisdiction has been succinctly dealt with by Tennakoon C.J. in *Perera v. The Commissioner of*

National Housing, (5) where he stated as follows:— "Lack of competence in a Court is a circumstance that results in a judgment or order that is void. A Court may lack jurisdiction over the cause or matter or over the parties, it may also lack competence because of failure to comply with such procedural requirements as are necessary for the exercise of power by the Court. Both are jurisdictional defects; the first mentioned of these is commonly known in law as a 'patent' or 'total' want of jurisdiction or a *defectus jurisdictionis* and the second a 'latent' or 'contingent' want of jurisdiction or *defectus trialionis.* Both classes of jurisdictional defect result in judgments or orders which are void. But an important difference must also be noted. In that class of case where the want of jurisdiction is patent, no waiver of objection or acquiescence can cure the want of jurisdiction . . . . the proceedings in cases within this category are *non coram judice* and the want of jurisdiction is incurable. In the other class of case, where the want of jurisdiction is contingent only, the judgment or order of the Court will be void only against the party on whom it operates but acquiescence, waiver or inaction on the part of such person may estop him from making or attempting to establish by evidence, any averment to the effect that the Court was lacking in contingent jurisdiction."

In this judgment His Lordship quotes a passage from Spencer Bower on Estoppel by representation, 1966, (2nd Edition) at page 308 which is as follows:— "So too, when a party litigant, being in a position to object that the matter in difference is outside the local, pecuniary or other limits of jurisdiction of the tribunal to which his adversary has resorted, deliberately elects to waive the objection and to proceed to the end as if no such objection existed, in the expectation of obtaining a decision in his favour, he cannot be allowed, when this expectation is not realized, to set up that the tribunal had no jurisdiction over the cause or parties, except in that class of case, already noticed, where the allowance of the estoppel would result in a totally new jurisdiction being created."

In the instant case, this precisely is the conduct of the petitioner.

The petitioner having failed to establish that there was a patent or total want of jurisdiction, cannot, in my view, now attack the jurisdiction of the trial Court, as she has by acquiescence, waiver or inaction estopped herself from taking an objection to the effect that the Court was lacking in contingent jurisdiction.

I shall now refer to the principles applicable to execution of writ pending appeal. It has been held in *Sokkal Ram Sait v. Nadar et al,* (6) that stay of execution pending appeal is granted only when the proceedings would cause irreparable injury to the appellant and where the damages suffered by the appellant by execution would be substantial.

In *Charlotte Perera v. S. Thambiah and another,* (7) Samarakoon C.J., with three other judges agreeing, has held that the judgment-debtor should satisfy the Court that substantial loss may result unless an order for stay of writ is made.

Dealing with the question of substantial loss vis a vis a judgment-debtor who is ejected from the premises in suit pending appeal, where the appellate Court reverses the decree entered in favour of the judgment-creditor, His Lordship observes that "the law is not powerless to act in such cases. If the Supreme Court reverses the decree entered in favour of the judgment-creditor, then the judgment-debtor is entitled in law to a restoration of the status quo. There is no longer a valid decree under which the judgment-creditor or anyone claiming under him could continue to occupy the premises. Where the process of Court has been utilised to deprive a judgment-debtor of his occupation of premises pending appeal and subsequently the decree upon which that process was issued is invalidated by the order of the Supreme Court, justice requires that the judgment-debtor be restored to occupation by the removal of all those in occupation, irrespective of the means by which, or the rights upon which they entered into occupation. It is the duty of the Courts of Law to provide such relief to the displaced judgment-debtor. Section 777 of the Civil Procedure Code is ample provision for such procedure."

In the instant case, there is a specific finding by the trial judge that the defendant was not a tenant and was in forcible occupation of the premises in suit from 22.12.73.

It is evident from the order dated 19.2.87 that the defendant did not endeavour to prove substantial loss at the inquiry held in the District Court. Except for the bare averment in para 14 of the petition filed in this Court that "the petitioner is exposed to the grave risk of being driven to the roads with her dependent children." No material has been placed by the petitioner before this Court too on the question of substantial loss. Both in this Court as well as in the Court below, she was content to rely on the various legal issues raised in this connection. In this context, it is also relevant to note that the District Court had already refused her earlier application for stay of writ of execution on 29th August, 1983.

This brings me to the immediate matter before us viz. the question of extension of the stay order. As has been discussed earlier in the course of this order, there are several incorrect averments in the petition filed in this Court. The documents (p.3) and (p.5) filed therewith are also misleading. I do not wish to make any observations at this stage as to whether there had been a deliberate suppression of facts. Suffice it to say that the material on which the stay order was obtained has now been demonstrated to be quite unsatisfactory.

It has been urged on behalf of the petitioner that this issue should be approached in the manner set out in *Billimoria v. Minister of Lands,* (8) where it has been held by the Supreme Court that a stay order is an interim order and not one which finally decides the case. This must be born in mind when applying the principles of the *per incuriam* rule. It would not be correct to judge such orders in the same strict manner as a final order.

Samarakoon C. J.'s observations in that case were in the context of a stay order which had been granted by one division of this Court, which had subsequently been quashed by another Bench on the ground that the order had been made *per*

incuriam. I do not think that His Lordship Intended thereby to convey that the granting of stay orders should be treated lightly or that the parties need not strictly adhere to the principles governing applications made to Court.

I have already adverted to the fact that the petitioner is not without a remedy in the event of a reversal of the decree entered in this case. She would then be entitled in law to a restoration of the status *quo ante*, if she has already been ejected.

Counsel on both sides have cited several other authorities during the argument, but I do not find it necessary to refer to each of them for the purposes of this order.

In all the circumstances of this case, I see no justification for the continuance of the stay order. Accordingly, I would vacate and dissolve the said stay order.

BANDARANAYAKE, J. — I agree.

Stay Order vacated