

1967      *Present : Manicavasagar, J., and Samerawickrame, J.*

CEYLON INSURANCE CO. LTD., Petitioner, and  
R. M. SUDU BANDA, Respondent

*S. C. 350/67—Application in Revision in D. C. Colombo, 66288/M*

*Interrogatories—Omission to answer them—Procedure thereafter—Civil Procedure Code, ss. 94, 98, 100, 109.*

A party who omits to answer interrogatories served on him is entitled to be heard before the Court makes an order requiring him to answer under section 100 of the Civil Procedure Code. The party sought to be interrogated should therefore have notice of the application under section 100, so that he may show cause, if any, against an adverse order being made against him.

<sup>1</sup> (1941) 42 N. L. R. 487, at 493.

**A**PPPLICATION to revise an order of the District Court, Colombo.

*E. B. Wikramanayake, Q.C.* with *N. R. M. Daluwatte*, for the defendant-petitioner.

*Nimal Senanayake* with *Bala Nadarajah*, for the plaintiff-respondent.

*Cur. adv. vult.*

November 28, 1967. MANICAVASAGAR, J.—

The plaintiff, who is the respondent to this application, obtained leave of the original Court under Section 94 of the Civil Procedure Code to deliver interrogatories for answer by the defendant-petitioner. The latter did not answer, and the plaintiff applied to the Court under Section 100 of the Civil Procedure Code and obtained an ex-parte order requiring him to answer within 4 days. The defendant did not comply with this order, and the Court on the application of the plaintiff under Section 109 struck out the defence.

The question which we have to determine is whether a party, who omits to answer interrogatories served on him, is entitled to be heard before the Court makes an order requiring him to answer under Section 100 of the Code.

The learned Judge answered this question in the negative, and held that no notice of the application under Section 100 was necessary in the case of a party who omits to answer, or refuses to answer giving no reason for his refusal, but such notice is necessary where he answers insufficiently or gives reasons for his refusal.

We are of the view that the learned Judge is wrong, and the distinction drawn by him is not warranted by the terms of Section 100: on the contrary, the proviso to Section 100 requires the Court to decide, before it orders a party to answer, whether in its opinion the latter need not have answered under Section 98. It is obvious that the opinion of the Court should be after hearing both sides: the party sought to be interrogated should therefore have notice of the application under Section 100 in order to enable him to show cause, if any, against an adverse order being made against him. This is an essential step, and an omission to take this step renders an order made under Section 109 nugatory, for the reason that the Court must see that all steps and orders prior to an order under Section 109 have been regularly and properly made.

The order striking off the defence is set aside, and the case will go back for trial in due course. The Court will take the steps indicated by this order if the plaintiff desires to pursue his application under Section 100. The defendant will have the costs of this appeal, and the costs of the inquiry in the Court below.

SAMERAWICKRAME, J.—I agree.

*Appeal allowed.*