

1963 Present : L. B. de Silva, J. and Abeyesundere, J.

GRACE PERERA, Petitioner, and LILIAN SILVA,
Respondent

*S. C. 273/63-Application for Revision and/or Restitutio in Integrum in
D. C. Colombo, 847/XL*

Civil Procedure Code-Section 84-Decree nisi-Computation of period of 14 days after which it becomes absolute.

Where, by reason of the non-appearance of a plaintiff, the Court make an order " Enter decree nisi ", the period of fourteen days at the expiration of which the decree nisi becomes absolute under section 84 (1) of the Civil Procedure Code must be reckoned only from the date when the formal decree nisi is entered.

APPPLICATION to revise an order of the District Court, Colombo.

D. E. P. Goonetilleke, for plaintiff-petitioner.

G. Ranganathan, for 1st defendant-respondent.

October 31, 1963. **L. B. DE SILVA, J.-**

This case had been fixed for trial on 4.3.63 but by some inadvertence or mistake, Counsel for the plaintiff had taken down the date of trial as on 5.3.63. When the case came up for trial on 4.3.64, Counsel for the plaintiff informed Court about this mistake and that they had no instructions to appear on that date. Counsel for the 1st defendant moved that decree nisi be entered dismissing plaintiff's action with costs. The Court accordingly made an order "Enter decree nisi ". Thereafter the plaintiff filed petition and affidavit on the following day pointing out the mistake made by Counsel and the plaintiff himself with regard to the date of trial and moved that the order entering decree nisi be set aside and the case be restored to the trial roll. Notice of this application was issued for the 18th March 1963, and on that date there was no return to the notice. The Proctor for the 1st defendant was present and took notice of the application and the matter was fixed for inquiry on 20.5.63. On that day, it was pointed out that as 14 days had elapsed since the order was made for entering the decree nisi dismissing plaintiff's action, the decree had become absolute and that the plaintiff was not entitled to have the decree nisi set aside. The learned District Judge upheld this contention.

It has now been brought to our notice that in fact no formal decree nisi has been entered in the case still. It has been held in two judgments of this Court reported in 46 N. L. R. page 150 and 55 N. L. R. page 47 that it is only after a formal decree nisi dismissing plaintiff's action has been entered that the period of 14 days would run and not from a mere order by Court to enter decree nisi. In view of these decisions which we are prepared to follow, the learned District Judge erred in holding that the decree nisi had become absolute by operation of Section 84 (1) as no

formal decree nisi as required by Section 84 had in fact been entered. Therefore, we set aside the order made by the learned District Judge and send the application of the plaintiff for inquiry by Court in due course.

It is imperative under the provisions of Section 84 for the Court to enter decree nisi in Form 21 of the Schedule or to the like effect dismissing plaintiff's action on the default of the plaintiff. We, therefore, direct the learned District Judge, with notice to the parties, to enter the formal decree nisi as contemplated in Section 84 and to proceed on that same day to inquire into the application of the plaintiff showing cause for his non-appearance on the trial date. If he is satisfied that there was good cause for his non-appearance, the learned District Judge should within the 14 days of the entering of the decree nisi set aside that order as contemplated in Section 84 (2) and fix the case for hearing in due course. If he is not so satisfied with the cause shown by the plaintiff, the decree will become absolute in 14 days from the entering of the decree nisi. We make no order with regard to the costs of this application.

ABEYESUNDERE, J.-I agree.

Order set aside.

- End -