

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST  
REPUBLIC OF SRI LANKA**

In the matter of an Application for leave  
to Appeal against the order dated  
17.08.2006 in case No: 6055/L in the  
District Court of Negombo.

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**CA/LA/Application No: 346/2006**

**DC/Negombo No: 6055/L**

**And Now Between**

1. Costa Patabendige Alex Ratne  
Deepal Fernando, No:138, Gammeda  
Road, Dandugama,Ja-Ela.

**1<sup>st</sup> Defendant – Petitioner**

**Vs.**

AmithaSandaseeliKellambi, No: 465,  
Lady Margaret Road, South hall,  
Middlesex, UB1-2QD, United Kingdom.

Appearing by her Power of Attorney,  
KurugamgeRohanaPerera, No: 50/A,  
National Houses, Ketawalamulla,

Dematagoda, Colombo – 9.

Plaintiff – Respondent

2. Bank of Ceylon, Head Office, Sir

Chithampalam A Gardener Mawatha,

Colombo.

**Defendant Respondent**

**BEFORE**

: P.W.D.C. JAYATHILAKE, J

**COUNSEL**

: Geeshan Rodrigo for the 1<sup>st</sup>

Defendant – Petitioner.

Kushan De Alwis P.C. with

Ayendra Wickramasekara for the

2<sup>nd</sup> Defendant Respondent.

P.Nanayakkara with T. Alahakoon

for the Plaintiff – Respondent.

**ARGUED ON**

: 08.07.2014

**DECIDED ON**

: 27.11.2014

**P.W.D.C. Jayathilake, J**

Learned District Judge has made several orders in respect of the matter of calling the Plaintiff to give evidence, subsequent to the leading of evidence of the Power of Attorney Holder of the Plaintiff. The first order made in that regard is the one dated 17.08.2006. In that order she has allows calling the Plaintiff for her evidence to be led for a limited purpose as agreed by the parties in the course of the trial. But after calling the Plaintiff to give evidence, it appears that the counsel for the Plaintiff ignoring the order of the court has led evidence of the Plaintiff without any limitation. It seems that not only the learned Counsel, but also the learned District Judge had deviated from her own order and had made subsequent orders allowing the Plaintiff to give evidence in contrast to the agreement reached by the parties.

The learned District Judge has taken a much wider view by giving liberal interpretation to law of evidence and civil Procedure in making those subsequent orders. The learned District Judge has observed that in exploring

justice and in finding out the truth, the plaintiff is the right person and she is now present in court in place of the power of attorney holder, so it is proper to allow her to give evidence. She has gone to the extent that even the passport of the plaintiff should be allowed to be marked even though it had not been included in the list of documents. But this court observes that if the court allows every kind of informal applications on that basis, provisions of law of evidence and the civil procedure may come to a standstill.

Therefore this court is of the view that the plaintiff's evidence shall be allowed only in accordance with the above mentioned first order of the learned District Judge and learned District Judge has erroneously made subsequent orders.

As such, the court sets aside all orders made subsequent to the order dated 17.08.2006 and also orders to expunge the evidence of the Plaintiff led in the trial.

*Trial Proceedings Revised.*

**JUDGE OF THE COURT OF APPEAL**