

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

Dr. Muthukrishna Sarvanadan,
No. 3, Somasundaram Road,
Off Station Road, Wellawatta,
Colombo 6.

PLAINTIFF

SC Appeal No. 38/ 2022

SC/ HCCA/ LA/ 442/ 2019

Vs.

WP/HCCA/COL/102/2018/LA

DC Colombo DSP 52/2016

1. International Center for Ethnic Studies,
No. 2, Kinsey Terrace,
Colombo 8.

2. Mario Gomez,
Executive Director,
International Center for Ethnic Studies,
No. 2, Kinsey Terrace,
Colombo 8.

3. Danishan Cassie Chetty,
Chairman,
International Center for Ethnic Studies,
No. 2, Kinsey Terrace,
Colombo 8.

DEFENDANTS

AND THEN

1. International Center for Ethnic Studies,
No. 2, Kinsey Terrace,
Colombo 8.

2. Mario Gomez,
Executive Director,
International Center for Ethnic Studies,
No. 2, Kinsey Terrace,
Colombo 8.

3. Danishan Cassie Chetty,
Chairman,
International Center for Ethnic Studies,
No. 2, Kinsey Terrace,
Colombo 8.

DEFENDANT- PETITIONERS

Vs.

Dr. Muthukrishna Sarvanadan,
No. 3, Somasundaram Road,
Off Station Road, Wellawatta,
Colombo 6.

PLAINTIFF- RESPONDENT

AND NOW BETWEEN

1. International Center for Ethnic Studies,
No. 2, Kinsey Terrace,
Colombo 8.

2. Mario Gomez,
Executive Director,
International Center for Ethnic Studies,

No. 2, Kinsey Terrace,
Colombo 8.

3. Danishan Cassie Chetty,
Chairman,
International Center for Ethnic Studies,
No. 2, Kinsey Terrace,
Colombo 8.

**DEFENDANTS- PETITIONERS-
APPELLANTS**

Vs.

Dr. Muthukrishna Sarvanadan,
No. 3, Somasundaram Road,
Off Station Road, Wellawatta,
Colombo 6.

**PLAINTIFF- RESPONDENT-
RESPONDENT**

Before: Janak De Silva J.

Mahinda Samayawardhena J.

Sobhitha Rajakaruna J.

Counsel: Aruna Samarajeewa for the Defendants- Petitioners- Appellants.

Pubudu de Silva for the Plaintiff- Respondent- Respondent.

Written Submissions: Defendants- Petitioners- Appellants - 21.06.2022

Plaintiff- Respondent- Respondent - 05.09.2022

Argued on: 25.06.2025

Decided on: 04.09.2025

Sobhitha Rajakaruna J.

The Plaintiff- Respondent- Respondent ('Plaintiff') filed an action against the Defendants- Petitioners- Appellants ('Defendants') by way of a Plaint dated 05.05.2016 seeking a declaration stating that the Defendants have violated the oral and written agreements entered into in September 2014, between the Plaintiff and the Defendants. Additionally, the Plaintiff sought a decree to be entered against the Defendants in a sum of Rs.10,600,000/-. The Defendants filed separate Answers on 18.01.2017, raising multiple preliminary objections specifically on Sections 14, 15, 36(1), 40(d), 43, 46(2), and 50 of the Civil Procedure Code ('CPC'). In their Answers, the Defendants not only prayed for the dismissal of the case but also sought an order from the Court to reject or return the Plaint.

The first date of trial fixed by the Court was 26.04.2017, but it was again postponed without taking up for trial. The Plaintiff filed his list of witnesses and documents on 07.04.2017, whereas the Defendants filed their list of witnesses and documents on 09.04.2017. Meanwhile, a motion was filed by the Plaintiff on 18.07.2017 seeking permission to amend the Plaint. The matter was once again postponed on the second scheduled date of trial, i.e. 25.07.2017, when the Amended Plaint was filed, subject to the objections of the Defendants. Once again, the Plaintiff filed a second Amended Draft of the Plaint on 14.09.2017. After considering the Defendants' objections, the District Court issued an Order on 11.07.2018 accepting the Amended Plaint dated 14.09.2017.

The Defendants filed a Leave to Appeal Application in the Provincial High Court, exercising civil jurisdiction holden in Colombo ('High Court'), challenging the said Order dated 11.07.2018 of the District Court. The learned Judge of the High Court observed that under Section 93(2) of the CPC, laches is the sole factor to consider whether any injustice is caused to the opposite party when an application for amendment of pleadings is made. The learned High Court Judge found no evidence of laches and, on that basis, sanctioned the amendment of the Plaintiff's Plaint through an Order issued on 11.10.2019.

Being aggrieved by the said Order of the High Court, the Defendants instituted these proceedings seeking to get both the Orders of the High Court and District Court set aside. This Court granted Leave to Appeal on the following questions set out in Paragraphs (a), (b) and (f) of the Petition dated 21.11.2018:

(a) Has the Civil Appellate High Court erred in law by misapplying Section 93(2) of the Civil Procedure Code?

(b) Has the Civil Appellate High Court erred in law and/ or in fact by failing to consider that the Respondent has not pleaded and/ or submitted any ground which could satisfy that the refusal of the proposed amendment would cause a 'grave and irremediable injustice' to the Respondent?

(f) Has the Civil Appellate High Court erred in law in concluding that the Respondent is not guilty of laches?

The Defendants argue that the District Court Order dated 11.07.2018 is contrary to the provisions of Section 93(2) of the CPC and relevant judicial precedents. The contention of the Defendants is that the Plaintiff failed to demonstrate that rejecting the amendment would cause grave and irremediable injustice and that it provides no justification for the significant delay in seeking to amend the Plaint. The Defendants assert that the Plaintiff is guilty of laches, as the facts relating to the proposed amendments were known to the Plaintiff when the action was filed and do not relate to any new events or facts that emerged later.

The Defendant brings to the attention of this Court that the High Court has correctly identified that the application to amend the Plaint falls within the scope of Section 93(2) of the CPC and has correctly acknowledged that laches could prevent the Plaintiff from amending the Plaint. Anyhow, the learned Judge of the High Court concluded there was no laches. The Defendants complain that although the High Court correctly applied Section 93(2) of the CPC and acknowledged the relevance of laches, its final decision contradicts the District Court's factual finding that the Plaintiff was guilty of laches. The Defendant contends that the District Court, despite such findings, has erroneously allowed the amendment on a flawed basis.

The stand taken by the Plaintiff is that the District Court must identify the cause of action together with the real dispute between the parties, granting its authority to allow necessary amendments even following the amendments to Section 93(2) of the CPC. The Plaintiff contends that the Amended Plaint did not introduce a new cause of action but merely elaborated on the original one. The Plaintiff asserts that although Section 93 of the CPC was amended by Act No. 9 of 1991 with the introduction of Section 93(2) regarding the amendment of pleadings, other relevant sections, namely Sections 18, 21, 146, 148, and 149 of the CPC, remain unchanged. Therefore, he contends that in addition to evaluating amendments under Section 93, courts can also consider the implications of these sections when a party applies to amend pleadings.

I must now explore the evolution of Section 93 of the CPC and its applicability. Section 93 was repealed and replaced by a new provision under the Civil Procedure Code (Amendment) Act No. 9 of 1991. Subsequently, the Civil Procedure Code (Amendment) Act No. 8 of 2017 replaced the words “first fixed for trial” in subsections (1) and (2) with the words “first fixed for Pre-Trial.” Subsequently, the Civil Procedure Code (Amendment) Act No. 29 of 2023 further amended subsections (1) and (2) by substituting the words “first fixed for Pre-Trial of the action” with the words “first fixed for Pre-Trial conference of the action.”

As noted earlier, the Plaintiff filed the original Plaint on 05.05.2016. The first Amended Plaint was filed on 25.07.2017, followed by the second Amended Plaint on 14.09.2017. On 01.06.2018, the District Court reserved its Order, concerning the Defendants’ objections to the second Amended Plaint, until 11.07.2018. Consequently, it is necessary to determine whether the provisions of Section 93, as amended by Act No. 8 of 2017, apply to this case. The Civil Procedure Code (Amendment) Act No. 08 of 2017 was certified on 07.06.2017. Section 17 of this Amendment Act, which addresses pending actions subject to the Act, states as follows:

“All actions and matters which have been filed in the District Court but in respect of which no date has been fixed for trial shall also be subject to the provisions of as on the date of coming into operation of this Act.”

In light of the above chronology of events, I take the view that the questions concerning the said Section 93 in the instant case should be resolved based on the provisions that

existed immediately before the said Amendment Act No. 8 of 2017. However, such amendments are not crucial to the Plaintiff's applications as the cardinal requirements for seeking an amendment to pleadings, including the need to demonstrate grave and irreparable injustice and the absence of laches, remain consistent in both the old and new provisions. The said Section 93 (before the amendment in 2017) reads:

“93(1) Upon application made to it before the day first fixed for trial of the action, in the presence of, or after reasonable notice to all the parties to the action, the Court shall have full power of amending in its discretion, all pleadings in the action, by way of addition, or alteration, or of omission.

(2) On or after the day first fixed for the trial of the action and before final judgment, no application for the amendment of any pleadings shall be allowed unless the Court is satisfied, for reasons to be recorded by the Court, that grave and irreparable injustice will be caused if such amendment is not permitted, and on no other ground, and that the party so applying has not been guilty of laches.

(3) Any application for amendment of pleadings which may be allowed by the Court under subsection (1) or (2) shall be upon such terms as to costs and postponement or otherwise as the Court may think fit.

(4) The additions or alterations or omissions shall be clearly made on the face of the pleading affected by the order; or if this cannot conveniently be done, a fair copy of the pleading as altered shall, be appended in the record of the action to the pleading amended. Every such addition or alteration or omission shall be signed by the Judge.”

The Supreme Court in *Rajapaksha Appuhamilage Lionel Ranjith v. Suraweera Arachchige Dona Leelawathi and Others (SC Appeal 100/2020 SC Minutes of 14.05.2025)* extensively considered the scope of Section 93 of the CPC, as amended, and effectively settled the law regarding amendments to pleadings under the said section. His Lordship Justice Mahinda Samayawardhena, in the said case took the view that “the previously accepted view that all amendments necessary for the proper ventilation of the dispute and the determination of the real controversy between the parties should be permitted at any stage from the commencement of trial to final judgment, so long as any resulting prejudice or injustice

could be cured by costs, can no longer be regarded as good law.” His Lordship, whilst recognizing that litigants must be afforded a fair hearing, noted that the Court cannot afford an unlimited hearing and stated as follows:

“Whether in superior Courts or original Courts, there is no doubt that litigants must be afforded a fair hearing, but the Court cannot afford, in my view, an unlimited hearing. We must understand that the demands and exigencies of contemporary justice are fundamentally different from those that prevailed decades ago. Litigants are not entitled to unfettered use of judicial time, as other litigants await their turn. This shift reflects the current trend across all major jurisdictions, which I will discuss further under the subheading ‘Global Trends’”.

Under Section 93(2), on or after the day first fixed for pre-trial conference of the action and before final judgment, no application for amendment of any pleadings shall be allowed: (a) unless the Court is satisfied, (b) for reasons to be recorded by the Court, (c) that grave and irremediable injustice will be caused if such amendment is not permitted, (d) and on no other ground, (e) and that the party so applying has not been guilty of laches. Dealing with the aspect of laches, the Supreme Court in the said case emphasized that mere delay, however prolonged, does not per se amount to laches and in other words, laches cannot be determined solely by reference to the length of time taken to make the application. The Court further observed as follows: “the relevant question is not how many months or years have elapsed since the application ought to have been made—for instance, in this case, how much time has passed since the case was first fixed for pre-trial conference to move for an amendment of the answer—but whether the delay is unreasonable and unjustifiable in the context of the particular case”.

His Lordship Justice Samayawardhena in the said case unambiguously held that the law is now settled and that the provisions of Section 93(2) of the CPC are intended to address amendments to pleadings after the day first fixed for pre-trial conference of the action, arising from unforeseen circumstances. His Lordship further states:

“The purported ‘conflict of interest’ and ‘grave injustice’ were foreseeable at the time the 1st and 2nd defendants chose to file a joint answer, joint admissions and issues, and a joint list of witnesses and documents, at three separate occasions after deliberations. In any event, if they had really intended to amend the joint answer and file separate answers, they ought to

have made the application for amendment of pleadings before the date the case was first fixed for the pre-trial, not on the date the case was taken up for pre-trial”.

Accordingly, the said case of **Rajapaksha Appuhamilage Lionel Ranjith** clarifies the application of Section 93 of the CPC as amended by Acts No. 9 of 1991, No. 8 of 2017, and No. 29 of 2023. The court emphasized that amendments to pleadings after the first pre-trial conference are strictly limited to prevent grave and irremediable injustice, provided the applicant has not been guilty of laches. Mere delay does not constitute laches; the delay must be unreasonable and unjustifiable in context. The earlier liberal approach to allowing amendments at any stage is no longer valid, reflecting modern judicial demands for efficiency and fairness. The application of the defendants in the said case, to amend their joint answer was rejected, as the alleged conflict of interest was foreseeable, and the application was untimely, made on the pre-trial date. Thus, I hold the view that the latest jurisprudence laid down in the said judgment of the Supreme Court on the discretion vested under the said Section 93 should be adopted in resolving the questions of the instant case.

It is observed that the Plaintiff has failed to satisfy the stringent requirements outlined in Section 93(2) of the CPC for amending pleadings after the initial trial date. Specifically, under Section 93(2), the Plaintiff has not provided sufficient evidence or reasoning for the District Court to be satisfied that denying the amendment would result in grave and irremediable injustice, nor has the Court recorded such reasons to justify the amendment. Furthermore, as required by Section 93(2), the Plaintiff has not demonstrated that such a grave injustice would occur if the amendment is not permitted, and no other valid grounds have been presented to support his application. Additionally, the Plaintiff is guilty of laches, having delayed the filing of the first Amended Plaintiff until 25.07.2017, and the second Amended Plaintiff until 14.09.2017, despite the original Plaintiff being filed on 05.05.2016. The Plaintiff has offered no reasonable/sufficient explanation for this inordinate delay, and the proposed amendments pertain to facts that were within the Plaintiff's knowledge at the time the action was instituted, further indicating laches.

On careful consideration of the circumstances of the whole matter, I hold that the Plaintiff's application for the amendment of his Plaintiff fails to meet the mandatory criteria outlined in Section 93(2) of the CPC, rendering the requested amendments impermissible. I take the view that this is not a fit and proper case for the trial judge to use his discretion

under Section 93 to allow the application for amendments to the Plaint or to employ the concepts of fairness. Taking into account the entirety of the circumstances, I answer the questions of law on which leave to appeal was granted in the affirmative. The Judgements of the High Court (dated 11.10.2019) and the District Court (dated 11.07.2018) are hereby set aside, and the instant Appeal is allowed without costs.

Judge of the Supreme Court

Janak De Silva J.

I agree.

Judge of the Supreme Court

Mahinda Samayawardhena J.

I agree.

Judge of the Supreme Court