

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

*In the matter of an Appeal under
and in terms of section 5(2) and 6
of the High Court of the Provinces
(Special Provisions) Act, No. 10 of
1996 (as amended), read together
with sections 754(2) and 757 of the
Civil Procedure Code.*

SC Appeal No:
139/2024

NTT Data Business Solutions Pvt
Ltd,

SC/HC/LA No:
114/2024

(Formerly known as Intelligence
India Software Solutions Pvt Ltd),
Softsol Tower 2, Third Floor,
B-wing, Software Units Layout,
Infocity, Madhapur,
Hyderabad-500081,
Telangana, India.

HC/Civil Case No:
156/2021/MR

PLAINTIFF

Vs.

Tech Pacific Lanka Pvt Ltd,
No. 04, Castle Lane,
Colombo 04.

DEFENDANT

AND BETWEEN

Tech Pacific Lanka Pvt Ltd,
No. 04, Castle Lane,
Colombo 04.

DEFENDANT-APPELLANT

Vs.

NTT Data Business Solutions Pvt
Ltd,
(Formerly known as Intelligence
India Software Solutions Pvt Ltd),
Softsol Tower 2, Third Floor,
B-wing, Software Units Layout,
Infocity, Madhapur,
Hyderabad-500081,
Telangana, India.

PLAINTIFF-RESPONDENT

Before : Kumudini Wickremasinghe, J.

: Janak De Silva, J.

: Sampath B. Abayakoon, J.

Counsel : Anuruddha Dharmaratne with Oshan Fernando
instructed by Indika Jayaweera for the Defendant-
Appellant.

: Avindra Rodrigo P.C. with Kasuni Jayaweera
instructed by FJ & G de Saram for the Plaintiff-
Respondent.

Argued on : 17-09-2025

Written Submissions : 04-04-2025 (By the Plaintiff-Respondent)

: 02-04-2025 (By the Defendant-Appellant)

Decided on : 06-02-2026

Sampath B. Abayakoon, J.

This is an appeal preferred by the defendant-appellant (hereinafter referred to as the defendant) on being aggrieved of the order dated 12-07-2024 pronounced by the learned Judge of the Commercial High Court of Western Province holden in Colombo.

From the impugned order, the learned Judge of the High Court rejected an objection taken up by the defendant for calling witness No. 01 listed in the list of witnesses and documents filed before the High Court by the plaintiff-respondent (hereinafter referred to as the plaintiff).

The said objection has been raised on the basis that the plaintiff has failed to file its list of witnesses and documents as required by and in terms of section 121(2) of the Civil Procedure Code, and therefore, the plaintiff is not entitled to call witnesses to substantiate its case.

From the impugned order, the learned Judge of the High Court, after having considered the relevant provisions of the law and also plethora of cases decided by our Superior Courts in that regard, has determined that although the said list of witnesses had been filed 7 days prior to the date where the case was fixed for trial for the 1st time, such procedural defect has not caused any prejudice to the defendant.

When this matter was supported for leave to appeal from the impugned order before this Court on 11-11-2024, having considered the submissions of the learned Counsel, this Court allowed leave to appeal on the following question of law.

Has the learned Judge of the High Court erred in law by permitting a witness of the plaintiff to be called in contrary to the section 80, 121(2) and 143 of the Civil Procedure Code.

The Court also stayed the proceedings in the Commercial High Court granting interim relief as sought by the appellant.

When this matter was taken up for argument before this Court on 17-05-2025, the learned Counsel who represented both the parties agreed that the question of law upon which leave to appeal was granted is a pure question of law and the matter can be disposed of by having considered the written submissions by both the parties in that regard, and invited the Court to pronounce the judgment based on the written submissions. Accordingly, the parties were allowed to file reply submissions, if necessary, for the consideration of the Court.

The facts that led to the impugned order by the learned Judge of the High Court can be summarized in the following manner.

The plaintiff company has instituted action before the Commercial High Court of Colombo by its plaint dated 27-04-2021, seeking *inter alia* a judgment against the defendants for a sum of USD 337,359.68/- or its equivalent in Sri Lankan Rupees, together with legal interest and for other incidental reliefs based on an alleged breach of contract between the parties.

The defendant in its answer has denied the claim of the plaintiff and has set up a cross claim against the plaintiff for a sum of USD 400,000/- or its equivalent in Sri Lankan Rupees, together with legal interest among other reliefs. The defendant has also sought the dismissal of the action.

After the pre-trial conference, the matter has been fixed for the trial to be taken up on 07-07-2023. The defendant has filed its list of witnesses and documents on 21-06-2023 in terms of section 121(2) of the Civil Procedure Code, 15 days prior to the date fixed for the trial. Admittedly, the plaintiff has filed its list of witnesses and documents on 30-06-2023, which amounts to filing the said list 7 days before the date set for the commencement of the trial.

Once the defendant received the list, the registered Attorney-at-Law for the defendant has filed a motion dated 07-07-2023 before the Court informing that the plaintiff's list of witnesses and documents was not in accordance with the requirements of section 121(2) of the Civil Procedure Code, giving notice of objection regarding the admissibility of the list of witnesses and documents on the basis that it has been filed out of time.

Although the trial has been originally fixed for 07-07-2023, for various reasons, it has not commenced on that day but has finally commenced on 27-02-2024. In the meantime, the plaintiff has tendered an affidavit by the 1st witness named in the list of witnesses filed by the plaintiff together with its annexures with a copy to the defendant, requiring it to be treated as his evidence in chief.

When the learned Counsel for the plaintiff moved to call the said witness No. 01 listed in the list on the date of the trial, the defendant has objected to the witness being called on the basis that the plaintiff has failed to submit its list of witnesses in terms of section 121(2) of the Civil Procedure Code, and therefore, the plaintiff is not entitled to move for the said witness to be called under and in terms of section 175 of the Civil Procedure Code.

Since the objection amounts to a purely legal question, the parties have agreed to file written submissions in that regard allowing the learned Judge of the High Court to make a determination.

It is the said determination that is now challenged before this Court.

Since this Court has granted leave to appeal on a specific question of law with reference to 3 sections of the Civil Procedure Code, I find it relevant to reproduce the said sections in full for the better understanding of this judgment.

Section 80 as well as section 121 of the Civil Procedure Code have undergone drastic changes as a result of Civil Procedure Code (Amendment) Act No. 29 of 2023, which was certified by the Speaker of the Parliament and came into effect on 17-11-2023.

However, since the objection as to the list of witnesses has been raised on 04-07-2023, the law applicable at that time should be considered in determining this appeal. I find that the learned Judge of the High Court too has gone on the same basis though the relevant objection has been considered in detail and the impugned order has been pronounced after the above-mentioned amendment came into effect.

The relevant sections as they stood at the relevant time read as follows,

80. On the date fixed for the case to be called to fix the date of trial of the action in the trial court, the court shall appoint a date for the trial of the action and shall give notice thereof in writing by registered post to all parties who have furnished a registered address and tendered the cost of service of such notice as provided by subsection (2) of section 55. (As amended by Amendment Act No. 08 of 2017).

121. (2) Every party to an action shall, not less than fifteen days before the date fixed for the trial of an action, file or cause to be filed in Court after notice to the opposite party –

**(a) a list of witnesses to be called by such party at the trial,
and**

(b) a list of the documents relied upon by such party and to be produced at the trial.

143. (1) The Court may, if sufficient cause be shown at any stage of the action, grant time to the parties or to any of them, and may from time to time adjourn the hearing of the action.

Provided however, that no adjournment in excess of Six weeks may be granted except in exceptional circumstances, and for reasons to be recorded.

(2) In all such cases the Court shall fix a day for the further hearing of the action, and may make such order as it thinks fit with respect to the costs occasioned by the adjournment:

Provided that, when the hearing of evidence has once begun, the hearing of the action shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the hearing to be necessary for reasons to be recorded and signed by the Judge.

Even though this Court granted leave to appeal based on the above 3 sections, I find that what is relevant for the purposes of determining this appeal is only the applicability of section 121(2) as it stood then, and also the provisions of section 175(1) of the Civil Procedure Code as it stood before the Amendment Act No. 29 of 2023.

The relevant section 175(1) of the Civil Procedure Code reads as follows-

175. (1) No witness shall be called on behalf of any party unless such witness shall have been included in the list of witnesses previously filed in court by such party as provided by section 121:

Provided however, that the court may in its discretion, if special circumstances appear to it to render such a course available in the

interest of justice, permit a witness to be examined although such witness may not have been included in such list aforesaid;

Provided also that any party to an action may be called as a witness without his name having been included in any such list.

It is quite apparent from the order of the learned trial Judge that he was well possessed of the law that should be considered in determining the objection raised by the defendant.

Although the word used in section 121(2) is ‘shall’, our Courts have consistently held that when it comes to interpreting the requirements of section 121(2), what needs is a liberal interpretation in the interests of justice.

In the instant action, it is not a case of the plaintiff having failed to file the list of witnesses before the 1st date fixed for the trial, but failing to file the same not less than 15 days before the date fixed for the trial. However, it is clear that the defendant was put on notice not less than 7 days from the date 1st fixed for the trial as to the plaintiff’s witnesses and list of documents that the plaintiff will rely on at the trial.

As I have stated earlier, though the case was 1st fixed for trial on 07-07-2023, the trial has finally commenced more than 6 months after the said date. When the trial commenced, the defendant also had the benefit of knowing the listed witness PW-01’s evidence-in-chief, as the said witness has filed an affidavit in that regard.

In my view, it is in that context that the trial Judge was required to look at the objection raised in order to find out whether any prejudice has been caused to the defendant or whether there was any element of surprise as a result of not filing the list of witnesses not less than 15 days before the date 1st fixed for trial. The trial Judge also should consider the interests of justice in relation to all parties to the litigation as well, given the facts and the circumstances unique to each case.

The case of **Walkers and Sons Co. Ltd Vs. Masood (2004) 3 SLR 195** was a case where similar objection was raised as to the list of witnesses and documents not filed within 15 days prior to the date of the trial.

Per Weerasekara, J.,

"We find that this document has been referred in the plaint and that in any event the document had in fact been listed 13 days before the trial. Counsel for the appellant conceded that the documents sought to be produced was referred to in the plaint and that in his answer this document had been referred to by way of a reply to the plaint."

In those circumstances the defense taken up that the production of the document took the defendant-appellant by surprise, cannot be sustained. Counsel for the appellant then urged that though the objection to the non-listing in terms of section 121(2) was technical yet it was mandatory. We regret we are unable to agree with Counsel for the appellant.

We are of the view that as Chief Justice Abraham stated "this is a Court of justice and not an academy of law" and that the Civil Procedure Code tested by time breathes live, and practical and rules of law with a view of speedy justice.

This view is confirmed by section 175 of the Civil Procedure Code by which the Court is permitted in appropriate circumstances to permit the production of documents though not listed." (emphasis added).

In the case of **Sri Lanka Savings Bank Ltd Vs. Global Tea Lanka (Pvt) and Others 2021/2022 BLR 20 at 28, Preethi Padman Surasena, J. (as he was then)** observed the following,

"Section 121(1) is a provision made available to enable the parties to obtain summonses to persons whose attendance is required either to give evidence or to produce documents at the hearing. If a list of witnesses or a list of documents were not filed in Court then no party will be able to invoke the provision in section 121(1). Hence, it is necessary to specify a

time limit for filing any list of witnesses or any list of documents in Court.
That is what section 121(2) of the Civil Procedure Code has done.

Thus, the sole purpose of this section is to provide for a framework upon which the Court will be able to commence the trial on the previously fixed date without any hinderance. Therefore, if the Court is in a position to proceed with the trial without any hinderance when it takes up the case for the trial on ‘the date fixed for the trial of the action’ with the list of witnesses or a list of documents being filed in Court fifteen days before the said ‘date fixed for the trial of the action’ then the purpose of section 121(2) is achieved.” (emphasis added)

In **S.C. Appeal 1/2025 decided on 10-02-2025, Samayawardhena, J.** having considered the relevant law on the question of filing the list of witnesses and documents, observed the following,

“Let me emphasize a very important point. As repeatedly highlighted by the Superior Courts, the underlined principle behind the requirement of filing the list of witnesses and documents 15 days before the trial is to ensure that each party is fully aware of the witnesses and the documents the opposing party intends to rely upon in establishing his case at the trial, thereby preventing any party from being taken by surprise and eliminating the prejudice caused thereby.”

For the reasons as considered above, I am of the view that the learned Judge of the High Court has correctly exercised his discretion in deciding to accept the list of witnesses and documents filed by the plaintiff in the interests of justice, in a situation where no prejudice whatsoever has been caused to the defendant.

Accordingly, I answer the question of law considered in the negative.

The appeal is dismissed. The defendant shall pay Rs. 50,000/- as costs of this appeal to the plaintiff.

Judge of the Supreme Court

Kumudini Wickremasinghe, J.

I agree.

Judge of the Supreme Court

Janak De Silva, J.

I agree.

Judge of the Supreme Court