

**DALAM MAHKAMAH TINGGI D1 KUALA LUMPUR  
DALAM WILAYAH PERSEKUTUAN, MALAYSIA  
(BAHAGIAN SIVIL)**

**GUAMAN SIVIL NO: S3-22-193-2007**

**ANTARA**

**SHANMUGAM A/L SINNASAMY**

**.....PLAINTIF**

**DAN**

**PATWANT SINGH A/L NIRANJAN SINGH**

**.....DEFENDAN**

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**GROUND OF JUDGMENT**

This is an application by the Plaintiff to reinstate the Writ and Statement of Claim which had been struck off on 13.8.2008. I had dismissed the application by the Plaintiff and the Plaintiff appealed against the said decision. Below are my reasons for dismissing the said application.

On 13.8.2008 when the case was called up before the learned judge for the hearing of enclosure 10, i.e. an appeal by the defendant to the Judge in Chambers against the decision of the learned Senior Assistant registrar which allowed the application by the Plaintiff for further and better particulars, both counsel for the Plaintiff and the defendant were not present in court. There was another counsel who mentioned on their behalf. As a result the hearing did not go on and the writ and statement of claim was struck off by the learned Judge on the said date.

Subsequently, the Plaintiff filed for an application for reinstatement of the writ and Statement of Claim in enclosure 15 which was fixed for hearing on 30 10.2008. On the said date the Plaintiff's counsel was again not present in court. The defence counsel was present in court and she had no instruction to mention for the Plaintiff's counsel. The courts records showed that enclosure 15 was struck out at 10.55 a.m.

Again the Plaintiff vide Enclosure 18 filed an application to reinstate the Writ and Statement of Claim which was fixed for hearing before me. The affidavit in support states that the absence of the Plaintiff's counsel on 13.8.2008 was due to the fact that he has to attend to another case in Klang Sessions Court. As for his absence on the 30.10.2008 when enclosure 15 was struck out, was due to the fact that the said date was not entered in his diary.

It is to be noted that the case was struck out twice and both occasions, the reasons advanced by the counsel for the Plaintiff are not good reasons which can be accepted by the court. Reason such as not entering the date in the diary shows negligence on the part of the counsel which is not a valid excuse that can be accepted. Therefore for the reasons stated I dismissed the application of the Plaintiff to reinstate the Writ and Statement of Claim with costs.

t.t. Datin Zabariah Mohd Yusof

Tarikh : 28.5.2009

Bagi pihak Plaintiff : Encik P. Rajendren  
Tetuan Tam & Faizal

Bagi Defendan-Defendan : Cik Intan Azlina bt Mazlan  
Tetuan Kumar Partnership