

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

In the matter of an Appeal

Tropical Island Commodities (Private) Limited of
First Floor, State Bank of India Building, Fort,
Colombo-01.

Plaintiff-Appellant.

SC Appeal 137/2015
LA No: SC/HC/LA/02/2015
High Court (Civil) No: HC (Civil) 204/2014/MR

Vs-

Mediterranean Shipping Company S.A. 12-14,
Chemin Rieu, CH 1208, Geneva,
Switzerland.

Carrying on business through its office of Sri Lanka,
Dr. Danister de Silva Mawatha,
Colombo-08.

Defendant-Respondent

Before: Sisira J. de Abrew, J

Vijith Malalgoda, PC, J &

Murdu Fernando, PC, J

Counsel: Dr. Harsha Cabral PC with Thishya Weragoda and Sachira
Arsakularathne for the Plaintiff-Appellant.
Manoj Bandara with Thidas Herath for the Defendant-Respondent
instructed by Sudath Perera Associates

Argued on : 02.05.2018

Decided on: 03.12.2018

Sisira J. de Abrew, J

The Plaintiff-Appellant filed action against the Defendant Company seeking a judgment against the Defendant Company in a sum of Rs.40 Million.

The Defendant Company which is a foreign company based in Switzerland and carrying on business through its office in Sri Lanka filed proxy. The Plaintiff-Appellant objected to the proxy on the basis that it was a defective proxy and move for an ex-parte judgment against the Defendant Company. The learned High Court Judge by his order dated 18.12.2014 overruled the objection. Being aggrieved by the said order of the learned High Court Judge, the Plaintiff-Appellant has appealed to this court. This court by its order dated 3.8.2015, granted leave to appeal on questions of law set out in paragraphs 15(a) and 15(c) of the petition of Appeal dated 5.1.2015 which are stated below.

1. Has the learned High Court Judge erred in law in concluding that there was a valid proxy filed of record albeit defective as of 28th August 2014 and therefore rectifiable?
2. Has High Court Judge erred in law in failing to conclude that,
 - (i) Mr.Jan Christian Severin was not a lawfully appointed Agent/Attorney of the Respondent as of 19th August 2014 and

therefore not a Recognized Agent within the meaning of Section 24 of the Civil Procedure Code?

- (ii) The purported proxy tendered to court on 28th August 2014 signed by Mr. Jan Christian Severin as the Attorney of the Respondent was null and void ab initio?
- (iii) As of 28th August 2014 (i.e. the Summons Returnable date), there was no appearance in court by the Respondent or any recognized agent or an Attorney-at-Law within the meaning of Section 24 or 27 of the Civil Procedure Code?

Mr. Glanluigi Aponte President of the Defendant Company by document dated 8.11.2013 (page 228 of the brief) appointed Mr. Jan Christian Severin as Defendant Company's lawful 'Attorney of fact'. Mr. Jan Christian Severin on 19.8.2014 signed the proxy on behalf of the Defendant Company. The seal of the company has been placed on the proxy. This proxy was filed in the high Court on 28.8.2014. On 14.10.2014 the Plaintiff-Petitioner objected to the proxy on the basis that it was a defective proxy.

Learned counsel for the Plaintiff-Petitioner contended that Mr. Glanluigi Aponte has no authority to sign the letter appointing Mr. Jan Christian Severin as 'Attorney of fact'; that Mr. Jan Christian Severin has no authority to sign the proxy on behalf of the Defendant Company; and that therefore the proxy filed on behalf of the Defendant Company is not a valid proxy. I now advert to this contention. Although learned President's Counsel for the Plaintiff-Petitioner contended so, Geneva trade Register (page 57) states that Mr. Glanluigi Aponte has been empowered to sign on behalf of the company. Therefore the document (at 228 of the brief) appointing

Mr. Jan Christian Severin as company's 'Attorney of fact' is a valid document. Therefore Mr. Jan Christian Severin has the authority to sign a proxy on behalf of the Defendant Company.

Who can sign a proxy on behalf of a company? To answer this question it is necessary to consider Section 59(5) of the Civil Procedure Code which reads as follows.

“ Where a defendant is represented by a registered attorney, the attorney shall in the proxy tendered on behalf of the defendant, state the number of the identity card or the passport, as the case may be, of the defendant and shall also make an endorsement thereon certifying the identity of such defendant, where a proxy is tendered on behalf of a company or a body corporate it shall be tendered under the seal of such company or the body corporate, as the case may be.”

But when Sinhalese version of the above section is considered it appears that after the words 'such a defendant' there should be a full-stop instead of a coma. Article 23(1) of the Constitution reads as follows:

“23. (1) All laws and subordinate legislation shall be enacted or made and published in Sinhala and Tamil, together with a translation thereof in English ;

Provided that Parliament shall, at the stage of enactment of any law determine which text shall prevail in the event of any inconsistency between texts ;

Provided further that in respect of all other written laws the text in which such written laws were enacted or adopted or made, shall prevail in the event of any inconsistency between such texts.”

Section 16 of Civil Procedure Code (Amendment) Act No.14 of 1997 reads as follows:

“In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.”

According to this section, in the event of an inconsistency the Sinhala text should prevail. Therefore it is the Sinhala version of Section 59(5) of the Civil Procedure Code which should prevail. Therefore in Section 59(5) of the Civil Procedure Code there are two sentences. The 1st sentence is as follows.

“Where a defendant is represented by a registered attorney, the attorney shall in the proxy tendered on behalf of the defendant, state the number of the identity card or the passport, as the case may be, of the defendant and shall also make an endorsement thereon certifying the identity of such defendant.”

The 2nd sentence is as follows.

“Where a proxy is tendered on behalf of a company or a body corporate it shall be tendered under the seal of such company or the body corporate, as the case may be.”

The 1st sentence of Section 59(5) of the Civil Procedure Code deals with a natural person and the 2nd sentence of the said section deals with a juristic person. According to the 2nd sentence of Section 59(5) of the Civil Procedure Code, when a proxy is filed on behalf of a company, placing of the seal of the company is sufficient and there is no requirement in Section 59(5) of the Civil Procedure Code for any other person to place his signature on the proxy authenticating the company seal. This view is supported by the judgment of Justice Amartaunga in the case of *Pinto Vs Trelleborg Lanka (Pvt) and Others* [2003] 3 SLR 214 wherein His Lordship at page 218 held thus:

“The placing of the seal of the company is sufficient for this purpose as the company can be made answerable when the proxy contains its seal. Since there is no requirement in the Code for any other person to sign authenticating the company seal, it is not necessary to show on the face of the proxy that the two signatures appearing on the proxy were the signatures of those who were empowered to authenticate the seal and to certify their identity by the Attorney-at-Law.”

In the present case, seal of the company has been placed on the proxy. When I consider the above matters I hold that the proxy filed on behalf of Defendant Company was in conformity with section 59(5) of the Civil Procedure Code and was therefore valid. For the above reasons, I answer the aforementioned questions of law in the negative.

For the above reasons, I hold that the learned High Court Judge was correct when he overruled the objection of the Plaintiff-Appellant. I affirm the order of the learned High Court Judge dated 18.12.2014. I therefore dismiss the appeal of the Plaintiff-Appellant with costs.

Appeal dismissed.

Judge of the Supreme Court.

Vijith Malalgoda PC J

I agree.

Judge of the Supreme Court.

Murdu Fernando PC J

I agree.

Judge of the Supreme Court.

