

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

In the matter of an application for leave to appeal to the Supreme Court in terms of section 5C 1 of the High Court of the Provinces (Special Provisions) (Amendment) Act no 54 of 2006

Ranasinghe Pedige Lional Subhasinghe,  
Kothwila Road,  
Ehaliyagoda.

**Plaintiff**

**SC Appeal 45/2015  
SC/HC/CALA631/2014  
SP/HCCA/LA 10/14  
DC Avissawella M/26352/12**

**Vs,** D.A.D. Engineering (Pvt) Ltd,  
No. 215/84, Bandaragama Road,  
Kesbewa, Piliyandala.

**Defendant**

**And between**

D.A.D. Engineering (Pvt) Ltd,  
No. 215/84, Bandaragama Road,  
Kesbewa, Piliyandala.

**Defendant- Petitioner**

**Vs,**

Ranasinghe Pedige Lional Subhasinghe,  
Kothwila Road,  
Ehaliyagoda.

**Plaintiff-Respondent**

**And now between**

D.A.D. Engineering (Pvt) Ltd,  
No. 215/84, Bandaragama Road,  
Kesbewa, Piliyandala.

**Defendant-Petitioner-Appellant**

**Vs,**

Ranasinghe Pedige Lional Subhasinghe,  
Kothwila Road,  
Ehaliyagoda.

**Plaintiff- Respondent-Respondent**

**Before: Sisira J. De. Abrew J**

**Anil Goonaratne J**

**Vijith K. Malalgoda PC J**

Counsel: Samantha Vithana with H. Mendis for the Defendant-Petitioner-Appellant

Plaintiff- Respondent-Respondent was absent and unrepresented.

**Argued on: 31.08.2017**

**Decided on: 15.12.2017**

**Vijith K. Malalgoda PC J**

Defendant-Petitioner-Appellant had filed an Application before the Supreme Court under section 5 (C) of the High Court of Provinces (Special Provisions) Act No 10 of 1996 as amended by Act No 54 of 2006 seeking leave to appeal against a decision by the High Court of Civil Appeal of the Western Province holden at Avissawella.

When the said Application for leave to appeal was supported, this court after considering the material placed, had granted the leave to appeal on the following questions of Law,

- i. Has the Learned District Judge erred in Law in deciding that the Minister has no power to confer jurisdiction to the Provincial High Court of the Western Province sitting in

- Colombo over disputes arising commercial transactions stipulated in the 1<sup>st</sup> schedule to the Act?
- ii. Has the Learned District Judge erred in Law in deciding that District Courts have jurisdiction under section 5 of the Judicator Act No. 2 of 1978, in respect of matters set out in the 1<sup>st</sup> schedule of the High Court of Provinces (Special Provisions) Act No. 10 of 1996, too?
  - iii. Have the Learned High Court Judges of the Civil Appeal High Court erred in law in deciding that the Provincial High Court of the Western Province sitting in Colombo has no jurisdiction over this case?
  - iv. Have the Learned District Judge and the High Court Judges misdirected themselves in law and facts regarding the stipulated nature and the monetary value of the action and the exclusive jurisdiction of Provincial High Court of Western Province sitting in Colombo?
  - v. Have the Learned High Court Judges erred in law in deciding that the District Court of Avissawella has jurisdiction to hear and determine this case?

As revealed before us, the Plaintiff-Respondent-Respondent (herein after referred to as the Plaintiff) had filed an action before the District Court of Avissawella to recover sum of Rs. 4,712,059/- from the Defendant-Petitioner-Appellant (herein after referred to as the Defendant). According to the plaint filed before the District Court the Plaintiff had alleged that he has requested the Defendant to install a Timber Seasoning Plant at the timber mill belonging to him, but the Defendant had failed to install the said plant within the period agreed upon by him, causing a loss to the Plaintiff.

The said trial commenced before the District Judge of Avissawella after recording three admissions, 13 issues on behalf of the Plaintiff and 22 issues on behalf of the Defendant. In the said admissions entered before the District Court, both parties agreed that there was a commercial transaction

between the two parties with regard to supply and installing a timber seasoning plant at the premises of the Plaintiff.

Among the issues raised on behalf of the Defendant, the Defendant had raised a preliminary objection for want of jurisdiction and the said issue was recorded as the 14<sup>th</sup> issue before the District Court as follows,

“Since the Plaintiff had valued the aforesaid action as Rs. 4712059/- and the transaction between the parties was a Commercial Transaction, can the Plaintiff maintain the action under section 2(1) of the High Court of Provinces Act No 10 of 1996 read with the provisions in the 1<sup>st</sup> schedule to the said Act.”

Since the said issue was purely a question of law, both parties agreed before the District Court to first decide the said question of law with regard to the maintainability of the action.

The Learned District Judge who considered the said question of law with regard to the maintainability of the action had decided the said question in favour of the Plaintiff overruling the preliminary objection.

Being dissatisfied with the said decision of the Learned District Judge, the Defendant appealed to the High Court of the Civil Appeal holden in Avissawella and the Learned High Court Judges, after considering the said appeal had pronounced their judgment dismissing the Appeal.

The Defendant sought leave to Appeal from the said judgment of the High Court of Civil Appeal holden in Avissawella, to the Supreme Court and this Court had granted leave to appeal on the grounds of Appeal referred to above.

As observed by us, whilst considering the said legal objection raised by the Appellant, the High Court of Civil Appeal holden in Avissawella, held that the Commercial High Court of Colombo does not have jurisdiction over the cases island wide, under provisions of section 2(1) of the High Court of Provinces Act No 10 of 1996 and the District Court of Avissawella has got the jurisdiction to hear and determine the present case filed against the Appellant by the Respondent to recover sum of Rs. 4,712,059/- .

As further observed by this court, both parties to the District Court action, had recorded the following admissions during the District Court Trial,

1. That the Plaintiff had called for a quotation to purchase a timber seasoning machine from the Defendant and the Defendant had submitted a quotation
2. The said quotation was accepted by the plaintiff and order was placed with the Defendant to install a timber seasoning machine at the premises of the Plaintiff
3. As a security for the said transaction the Plaintiff had given a cheque for Rs. 250000/- to the Defendant, and since there was leasing facility for the full price of the transaction, the said cheque was returned by the Defendant to the Plaintiff

When considering the above admissions, it is clear that the transaction referred to in the Plaint before the District Court was a Commercial Transaction between the two parties and therefore case before the District Court was a case in the commercial nature.

The preliminary objection raised by the Appellant before the District Court was based on the provisions of the High Court of Provinces (Special Provisions) Act No 10 of 1996. I would now proceed to analyze the relevant legal provisions of the said Act.

Subsection (1) and (2) of section 2 of the High Court of the Provinces (Special Provisions) Act No. 10 of 1996 reads as follows:

2 (1) Every High Court established by Article 154 P of the Constitution for a Province shall, with effect from such date as the Minister may, by Order published in the Gazette appoint, in respect of such High Court have exclusive jurisdiction and shall have cognizance of and full power to hear and determine, in the manner provided for by written law, all actions, applications and proceedings specified in the First Schedule to this Act if the party or parties defendant to such action resides or reside , or the cause of action has arisen, or the contract sought to be enforced was made, or in the case of applications or proceedings under the Companies Act No. 17 of 1982 the registered office of the Company is situated within the Province for which High Court is established.

(2) Where an Order is made under subsection (1) in respect of a High Court established by Article 154P of the Constitution, the jurisdiction exercisable by such High Court under that subsection shall-

a) If such High Court is the High Court established for the Western Province, be exercised by that High Court sitting in Colombo and in any other place within the Western Province, as may be designated by the Minister, by Order published in the Gazette, with the concurrence of the Chief Justice:

Or

b) If such High Court is the High Court established for any other Province, be exercised by that High Court sitting in such place within that Province may be designated by the

Minister, by Order published in the Gazette, with the concurrence of the Chief Justice.

First schedule to the above act reads thus,

- 1) All actions where the cause of action has arisen out of commercial transactions (including causes of action relating to banking, the export or import of merchandise, services affreightment, insurance, mercantile agency, mercantile usage, and the construction of any mercantile document) in which the debt, damage or demand is for a sum exceeding One Million rupees or such other amount as may be fixed by the Minister from time to time, by Notification published in the Gazette, other than actions instituted under the Debt Recovery (Special Provinces) Act, No. 2 of 1990.
- 2) All applications and proceedings under sections 31, 51, 131, 210 and 211 of the Companies Act, No. 17 of 1982.
- 3) All proceedings under the Code of Intellectual Property Act, No. 52 of 1979. (other than proceedings referred to in item 2 of the second schedule)

When considering the above provisions of the High Court of the Provinces (Special Provisions) Act No. 10 of 1996, it appears that every High Court established by Article 154P, shall have cognizance of and full power to hear and determine all actions, applications and proceedings specified in the 1<sup>st</sup> Schedule, subject to the provisions of section 2 (a) and (b) of the said Act. In other words the said section had provided to take up all cases based on Commercial Transactions comes within the 1<sup>st</sup> schedule, if the value of such case is over the amount decided by the minister, by the provincial High Court established under Article 154P of the Constitution provided the Minister acting under section 2 (1), publishes an order designating such power with the provincial High Court.

As revealed before us the Minister acting under section 2 (1) of the said Act had published the Gazette Extra Ordinary 943/12 dated 01.10.1996 designating the High Court established under Article 154P for the Western Province with effect from 11.10.1996. Since the said Order refers only to the High Court established under Article 154P for the Western Province, this Court observes that the said designation is only applicable to sub-section 2 (a) to the section 2 of the High Court of Provinces (Special Provisions) Act No. 10 of 1996, which reads as follows;

- 2) Where an Order is made under subsection (1) in respect of a High Court established by Article 154P of the Constitution, the jurisdiction exercisable by such High Court under that subsection shall –
  - a) If such High Court is High Court established for the Western Province, be exercised by that High Court sitting in Colombo and in any other place within the Western Province, as may be designated by the Minister, by Order published in the Gazette, with the concurrence of the Chief Justice.

Therefore it is clear that, the only High Court designated by the Minister to hear cases comes within the 1<sup>st</sup> Schedule of the High Court of Provinces (Special Provisions) Act, is the High Court established under Article 154P of the Constitution for the Western Province and the said High Court will only have jurisdiction to hear cases specified in the 1<sup>st</sup> schedule, if the party or parties Defendant to such action resides or reside, or the cause of action has arisen, or the contract sought to be enforced was made, or in the case of applications or proceedings under the Companies Act No. 17 of 1982 the registered office of the Company is situated, in the Western Province only.

It is further observed by this court that the jurisdiction assigned to a High Court by the High Court of Provinces (Special Provisions) Act No. 10 of 1996 is a special jurisdiction conferred upon such High

Court, under the said act and therefore the provisions of the said act will have to be strictly adhered to when the High Court is exercising the said special jurisdiction conferred on the said Court.

As revealed from the facts placed before us, the original plaint was filed by the Plaintiff, before the District Court of Avissawella against the Defendant to recover sum Rs. 4,712,059 with regard to the implementation of a Commercial Transaction. The said action was filed before the District Court on 27.01.2012. By Gazette Extra Ordinary 943/12 published by the Minister, on 01<sup>st</sup> October 1996, the amount referred to in the 1<sup>st</sup> schedule was increased from One Million to Three Million, for the purpose of filing cases before the High Court under section 2 of the High Court of Provinces (Special Provisions) Act.

As further observed by this court the value referred to above had been now increased to five million by Gazette Extra Ordinary 1759/35 dated 25.05.2012 but at the time relevant to the case in hand the value was considered as Rs. Three Million.

However as referred to above in this judgment, the jurisdiction conferred on the High Court of Western Province holden in Colombo is a special jurisdiction conferred upon the said court and therefore, it is the duty of this court to go through the facts very carefully before coming to any conclusion. In this regard I am more careful than in any other case, for the reason that the arguments in this case was taken, in the absence of one party i.e. the Plaintiff-Respondent-Respondent.

Even though it was not placed before us by the Defendant-Petitioner-Appellant, according to the Judgment of the District Court of Avissawella, it is revealed that the agreement referred to in the plaint was taken place in Ehaliyagoda which comes within the Sabaragamuwa Province and not within the Western Province. However District Court Jurisdiction of Ehaliyagoda had been Gazetted

under Avissawella which comes under Western Province, and that is why the District Court action was filed in Avissawella with regard to a Commercial Transaction taken place outside the Western Province, in Sabaragamuwa Province.

In my view the Minister's order published in Gazette Extra Ordinary 943/12 dated 01.10.1996 only relates to the Western Province and Section 2 (2)(a) of the High Court of Provinces (Special Provisions) Act No 10 of 1996 had only provided the High Court of Western Province holden in Colombo to hear cases based on Commercial Transactions over Three Million (value applicable to the present case) when the transaction referred to the said case, if the party or parties defendant to such action resides or reside, or the cause of action has arisen or the contract sought to be enforced was made in the Western Province only. In the absence of any material to say that any of the above had taken place within the Western Province, I am reluctant to agree with the argument placed before this court by the Learned Counsel for the Defendant-Petitioner-Appellant.

In the said circumstance I answer the questions of Law raised before this court in the negative and dismiss this appeal with costs.

Appeal is dismissed with costs.

**Judge of the Supreme Court**

**Sisira J. De. Abrew J**

**I agree,**

**Judge of the Supreme Court**

**Anil Goonaratne J**

**I agree,**

**Judge of the Supreme Court**

