

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

In the matter of an Appeal
from a judgment of the
Civil Appellate High Court
Of Colombo.

Peoples' Bank,
No. 75, Sir Chittampalam A.
Gardiner Mawatha,
Colombo 02.

Plaintiff

SC CHC APPEAL 12/2011

HC (Civil) Case No. 18/2005(1)

Vs

Rola x Enterprises (Pvt.) Ltd.,
No. 97/8, Galle Road,
Dehiwala.

Defendant

NOW BETWEEN

Rolax Enterprises (Pvt.) Ltd.,
No. 97/8, Galle Road,
Dehiwala.

Defendant Appellant

Vs

Peoples' Bank,
No. 75, Sir Chittampalam A.
Gardiner Mawatha,
Colombo.

Plaintiff Respondent

BEFORE : **S. EVA WANASUNDERA PCJ.**
SISIRA J DE ABREW J. &
ANIL GOONERATNE J.

COUNSEL : Chandana Prematilaka with Yuran Liyanage for the
Defendant Appellant.
Kushan D' Alwis PC with Kaushalya Nawaratna for the
Plaintiff Respondent.

ARGUED ON : 02.03.2017.

DECIDED ON : 31.03.2017.

S. EVA WANASUNDERA PCJ.

Rolaks Enterprises Private Limited was a company which imported and distributed MDF boards, plywood, hardboard and chip board. The said company was a customer of the Peoples' Bank and maintained an account at the International Branch which is the Branch No 1. The Peoples' Bank had functioned as a commercial bank at this instance when Rolaks Enterprises made an application to the said Bank for short term loan facilities for settling the bills in relation to the goods imported by the said company under letters of credit. On 19.02.2001, the two Directors of the company, Robert Perera and Jayanthi Perera requested the Bank to grant a short term loan equivalent to US\$ 39,676/02 which is equal to Rs. 3,341,974/- according to the exchange rates prevailing at that time, to settle the bill for MDF Board imported from Malaysia under a Letter of Credit. Incidentally, the Managing Director of Rolax Enterprises, Robert Perera was an ex-employee of the Peoples' Bank.

The company signed a promissory note and a guarantee bond, agreeing to pay the money back to the Bank within 90 days. The company failed to pay. The Bank filed action in the Commercial High Court to recover the money with interest.

The Rolax Enterprises accept non payment. The contest is only on the rate of interest claimed by the Peoples' Bank.

The Plaintiff, Peoples' Bank filed action against the Defendant, Rolax Enterprises (Pvt) Ltd. on 31.01.2005 to recover Rs. 5,565,790/27 and the annual interest at the rate of 31% on the amount of Rs. 3,368,010/54 from the date of 05.04.2003, upto the date of decree and thereafter legal interest on the decreed amount from the date of the decree till the said amount is paid in full and settled and for costs of suit. The Defendant filed answer on 01.08.2005 and denied the allegations against the company and submitted that the interest rate of 31% was not agreed and also that the promissory note was against the law.

The trial commenced and was concluded with the Plaintiff Bank marking documents **P1 to P29(a)**. The Managing Director of the Defendant Company also gave evidence and stated that he had failed to repay the loan due to many unforeseen reasons and unfortunate incidents that had taken place within his company. He contested the interest rate of 31% as something which he had never agreed to. The learned Commercial High Court Judge gave judgment on 23.11.2010 granting the Plaintiff what was prayed for in the Plaint. The Defendant has appealed to this Court. The grounds of appeal in paragraph 4 of the Petition are 12 in number running from 4(a) to 4(l). The Defendant Appellant (hereinafter referred to as the Defendant) has pleaded to set aside the judgment of the learned High Court Judge dated 23.11.2010 and to dismiss the action filed by the Plaintiff in the Commercial High Court.

The trial proceeded with issues numbers 1 to 8 raised by the Plaintiff and issues numbers 9 to 13 raised by the Defendant. The Plaintiff produced P1 which was the request for a short term loan of Rs. 3431974/- . **P2 was the 'Application for Advance for Imports'**. In P2 paragraph 1, the company states that " As per the Letters of Credit No. 2001 IL 05122 dated 2001.01.27 opened by your Bank at the request made by us, we have imported MDF Boards from Malaysia to the value of US\$ 39676/02 and the relative Bill of Exchange is lying with the Peoples' Bank, International Division awaiting retirement. " In **paragraph 4 of the same**, the company states that " The said loan shall be paid **before the expiry of 90 days** from the date of advance. If payment is made within the aforesaid period of 90 days we shall be liable to pay interest at the reduced rate ofper annum. **Thereafter, the said sum shall be repayable to the Peoples' Bank , with the rate of interest agreed upon or additional rate of interest determined by the Bank"**.

The Defendant failed to pay within 90 days. The Bank had been sending letters to the Defendant until 04.04.2003. The Defendant also had been replying that the company is undergoing bad times but kept on promising that the money and interest due will be paid. When the Defendant failed to pay even a part of the dues, the Plaintiff had sent a letter of demand. The letter of demand was sent on 04.08.2003 which demanded the amount claimed in the Plaint as well as mentioned that the short term loan interest amount at 31% also should also be added to the borrowed amount from 05.04.2003. It is observed that the percentage amount of interest is mentioned even in the letter of demand to which the Defendant had not sent any response to. The company and its directors were silent until action was filed in 2005. Silence by the Defendant in law does not stand in favor of the Defendant.

Document P3 is a promissory note which indicates that the Defendant Company is bound to pay the money granted by the bank on the short term loan on demand. The promissory note is signed by both the Directors of the Defendant Company. The Defendant's counsel contended that the promissory note does not contain the interest rate at all since there is a blank in the form where the interest rate should be included. Leave that aside, the Defendant Company having signed that, is **duty bound to pay on demand for certain**. P4 is a Guarantee signed by the Directors as security for the loans.

Then comes **P5** which is a letter issued by the Plaintiff to the Defendant after complying with the request made by the Defendant to grant a loan to ' retire the bill drawn under the Letter of Credit No. 2001ILO5122 for US\$ 39676/02 '. By **P5** dated 20.02.2001 , **the Plaintiff informs formally** that the amount is granted which is equivalent to **Rs. 3,431,974/-** has been granted on the same date and the due date for repayment is **20.05.2001** and the interest rate is 27% . It is well understood that the money has to be paid back **within 90 days** the last date of which is 20.05.2001. In page two of the said letter, on the 4th line it is mentioned that the interest rate is 27% and on the 7th line it is mentioned **that the penal rate is 31%**. This Letter P5 is full proof of the fact that the Defendant was informed of the rates of interest at different levels. The Defendant has not denied this letter even when its Managing Director Robert Perera was giving evidence.

All the documents when marked and produced at the end of the Plaintiff's case, were not objected to by the Defendant and stand as proven before the court

according to Chief Justice Samarakoon in the case of *Sri Lanka Ports Authority and Another Vs Jugolinigja-Boal East reported in 1981, 1 SLR 18*. It was held thus in the said case. “ If no objection is taken, when at the close of a case, documents are read in evidence, they are evidence for all purposes of the law. This is the *cursus curiae* of the original civil courts”. I hold therefore that the Defendant cannot be heard to state that the Plaintiff has calculated the interest at 31% wrongfully and that the Defendant did not agree for such interest rate. He was fully aware of the said penal rate and as the Defendant did not comply with the time limit granted to repay, the loan goes into the ‘non performing section’ as a matter of course. In addition to all what is said, the Managing Director of the Defendant Company having been an ex employee of the Plaintiff Bank, he cannot make any excuses at all.

The other documents are to the effect that some more of the short term loans due were also not paid by the Defendant and time and again the Plaintiff had been writing to the Defendant and the Directors to at least come to the Bank and discuss a repayment programme. P18 is a letter from the Managing Director of the Defendant to the Plaintiff dated 28.05. 2002 requesting the Plaintiff Bank to grant time till 15th June, 2002 to enable him to submit a repayment programme to settle the dues. However Rs. 63,693.46 had been received by the account between 20.02.2001 to 11.03.2001. The statement of accounts as at 04.04.2003 was produced at the trial marked as P27. In that statement, the capital outstanding is mentioned as Rs. 3,368,010/54 and interest due from 12.03.2001 to 04.04.2003 at the rate of interest at 31% on the capital is mentioned as Rs. 2,197,779/73. That is how the claim had been calculated prior to the filing of action against the Defendant.

I have gone through the evidence led at the trial and find that the Defendant had admitted the grant of the short term loan and the default of payment as well. I am of the view that the Plaintiff has established the claim of the Plaintiff against the Defendant on the balance of probability. Any way as it was held in the case of *Alwis Vs Piyasena Fernando 1993 , 1 SLR 119* that ‘**the findings of primary facts by a Trial Judge who hears and sees the witnesses are not to be lightly disturbed in appeal**’, I am of the view that this Court does not have to disturb the facts found by the trial judge but affirm the same.

I am also of the view that the Defendant Appellant by having preferred this Appeal has delayed the Plaintiff Respondent getting the benefit of the judgment delivered by the Judge of the Commercial High Court in favour of the Plaintiff.

The grounds of appeal stated in the Petition of Appeal do not stand to reason. The judgment cannot be disturbed on any of the grounds set out in the Defendant Appellant's Petition. I

The Appeal is dismissed with costs.

Judge of the Supreme Court

Sisira J De Abrew J.
I agree.

Judge of the Supreme Court

Anil Gooneratne J.
I agree.

Judge of the Supreme Court