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

S.C. CHC (Appeal) No. 22/2006
S.C. (H.C.) L.A. No. 28/2006
H.C. Civil No. 77/99(1)

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

Plaintiff-Petitioner-Appellant

Vs.

Yashodha Holdings (Pvt.) Ltd.,
No. 455, Galle Road,
Colombo 03.

Presently at No. 142A, 2nd Floor, S. de S. Jayasinghe Mawatha, Nugegoda.

Defendant-Respondent-Respondent

BEFORE : Shirani A. Bandaranayake, J.
N.G. Amaratunga, J. &
Saleem Marsoof, J.

COUNSEL : S. A. Parathalingam, PC, with Kushan de Alwis, Hiran Jayasuriya and Nishkan Parathalingam for Plaintiff-Petitioner-Appellant

Manohara de Silva, PC, with Yasa Jayasekera and Nimal Hippola for Defendant-Respondent-Respondent

ARGUED ON: 25.09.2008

WRITTEN SUBMISSIONS
TENDERED ON: Plaintiff-Petitioner-Appellant : 10.12.2008
Defendant-Respondent-Respondent : 31.03.2009

DECIDED ON: 25.06.2009

Shirani A. Bandaranayake, J.

This is an appeal from the order of the Commercial High Court dated 16.02.2006 (X16). By that order, the learned Judge of the Commercial High Court dismissed the application of the plaintiff-petitioner-appellant (hereinafter referred to as the appellant) for execution of Decree pending appeal. The appellant came before this Court by way of leave to appeal on which this Court had granted leave to appeal on the following grounds:

a) after having applied for, receiving and utilizing the loan facility referred to in the Plaint, is the respondent estopped from asserting that:-

i. the borrowing and/or receiving the said loan facility from the appellant bank is *ultra vires* of its memorandum and Articles of Association of the respondent?

ii. the respondent was not empowered to borrow and/or receive the said loan facility from the appellant bank?

iii. The respondent was not authorized to receive any such loan or advance from the appellant bank?

b) in terms of the laws of Sri Lanka is the respondent not entitled to deny and/or refute liability to pay the appellant on the ground that the respondent was not authorised to receive from the appellant?

c) in any event, does English Law apply to banking transactions such as the transactions between the appellant and the respondent morefully set out in the Plaint marked X1?

d) whether there are no substantial questions of law raised and/or disclosed by the respondent which warrants the dismissal of the application of the appellant for execution of Decree pending appeal?

The facts of this appeal, as submitted by the appellant, *albeit* brief, are as follows:

The appellant filed an action against the defendant-respondent-respondent (hereinafter referred to as the respondent) on 27.07.1999 seeking, *inter alia*, judgment and Decree in a sum of Rs. 328,474,520/55 together with interest at 26% per annum on a principal sum of Rs. 210,000,000/- from 01.01.1998 until the date of Decree and thereafter legal interest on the aggregate amount of the Decree until payment in full (X1 and X2).

The respondent filed Answer dated 26.11.1999 and thereafter the matter proceeded to Trial (X3).

The Admissions and Issues of the respective parties were tendered in writing and thereafter settled in Court. On 18.02.2002, the appellant commenced leading evidence in the aforementioned actions (X4(a) and X4(b)).
The evidence of W.D. Dayananda, Senior Manager of the appellant Bank was led on behalf of the appellant together with documents marked P1 to P25.

The respondent had not led any evidence and closed its case (X5). On 27.02.2004, learned Judge of the Commercial High Court delivered judgment in favour of the appellant Bank (X6).

The respondents, thereafter filed petition of appeal dated 08.04.2004 in the Supreme Court against the said judgment dated 27.02.2004 (X7). Consequently the appellant Bank filed an application for execution of Decree pending appeal dated 19.07.2004 in terms of Section 763 of the Civil Procedure Code, as amended (X8).

The respondent filed its statement of objections together with the affidavit of Y. Kasthuriarachchi, Managing Director of the respondent, resisting the appellant's application for execution of Decree pending appeal on the sole basis that there are questions of law to be adjudicated upon at the hearing of the appeal and not on grounds of substantial loss (X9 and X10).

Thereafter the matter was fixed for inquiry and at the said inquiry, Group Advisor of the respondent had given evidence by way of oral testimony and by way of an affidavit (X11).

Upon the objection raised by the appellant, the documents marked as V9, V10 and V11, which were annexed to the affidavit of the Group Advisor of the respondent, were rejected by Court. The inquiry into the application for execution of Decree pending appeal made by the appellant was concluded and Court had directed the parties to file their written submissions (X12 and X13). In H.C. (Civil) No. 75/99(1), the parties had agreed to abide by the order in application H.C. (Civil) No. 77/99(1).
On 16.02.2006, learned Judge of the Commercial High Court had delivered order dismissing the application of the appellant for execution of Decree pending appeal.

By his order dated 16.02.2006, learned Judge of the Commercial High Court refused the application filed by the appellant, on the ground that there is a substantial question of law to be determined at the final appeal of the main action. Accordingly learned Judge of the Commercial High Court had stated in his order that a substantial question on the basis that whether the appellant and respondent are bound by the terms and conditions of the contract and/or agreement between the parties in a situation, where the appellant had lent and advanced monies and the respondent had borrowed money for purposes other than for the purposes set out in the Memorandum and Articles

of Association of the respondent and therefore the transaction is *ultra vires* and if so, whether the laws of Sri Lanka provides for such a situation.

Learned President's Counsel for the appellant strenuously contended that he had brought to the notice of the learned Judge of the Commercial High Court, the applicability of the English Law to the issue in question and had referred to several authorities to illustrate that although the Companies Act, No. 17 of 1982 did not contain any provisions as to *ultra vires* transactions, in terms of Section 3 of the Civil Law Ordinance, the English Law is applicable to the question in issue and according to English Law the transaction in question is not *ultra vires* and that the Commercial High Court was in error in concluding that there were substantial questions of law.

Learned President's Counsel for the respondent contented that although the learned President's Counsel for the appellant relied on the applicability of Section 3 of the Civil Law Ordinance on the basis that the corresponding English Law would be applicable on the issue in question, that this position is not correct as the subsequent laws enacted by the British Parliament cannot have any application in Sri Lanka. Learned President's Counsel for the respondent relying on the decision in **Colletts** v **Bank of Ceylon** ([1982] 2 Sri L.R. 514) contended that the High Court was not in error, when it decided that there is a substantial question of law to be determined in the final appeal.

Having stated the main submissions made by both learned President's Counsel, let me now turn to examine the questions in issue.

It was common ground that considering all the circumstances, that this appeal could be heard on the basis of the following questions:

1. whether English Law would be applicable to the matters in issue in this appeal, morefully set out in the Plaint (X1), in terms of Section 3 of the Civil Law Ordinance; and

2. whether the learned Judge of the Commercial High Court had erred when it was decided that there is a substantial question of law based on the doctrine of *ultra vires* to be determined in the final appeal.

1. Whether English Law would be applicable to the matters in issue in this appeal morefully, set out in the Plaint (X1) in terms of Section 3 of the Civil Law Ordinance.

It is not disputed that the Companies Act, No. 17 of 1982 was the statute in force in Sri Lanka at the time, when this matter was considered before the learned Judge of the Commercial High Court. It is also not disputed that the Companies Act, No. 17 of 1982 did not contain any provisions regarding the transactions, which are *ultra vires*. In such circumstances, when there is a lacuna in the said Companies Act with regard to *ultra vires* transactions, a question would arise as to the applicable law regarding such transactions.

Considering the legal system of Sri Lanka, Statutes are the primary source of law, which could be either based on English Law or enacted as referred to by Dr. L.J.M. Cooray (An Introduction to the Legal System of Sri Lanka, Stamford Lake Publication, 2003, pg. 11) on a consideration of the local need and circumstances or be a restatement of customary or religious law. It is also to be noted that English Law had been legislatively incorporated in Sri Lanka and according to Dr. L.J.M. Cooray (supra, pg. 31), this had been effected in six (6) ways. These six (6) methods were as follows:

> "1. a statute passed by the Parliament of the United Kingdom was copied and enacted as law by the local legislature;
>
> 2. the principles underlying the decisions of the English Courts were codified and adopted by the local legislature;
>
> 3. the English Law on a particular subject was extended by the local legislature to the Island, without further elaboration of

the substance of the law in the enabling enactment, or in other words, English Law was incorporated by reference;

4. provision was made for the application of English Law where a statute in (1) or (2) above was silent;

5. the extension before 1948 of Acts of the United Kingdom Parliament to the Island as a consequence of its colonial status;

6. English Law became applicable as a consequence of the assumption of British sovereignty."

Learned President's Counsel for the respondent contended that the Companies Act, No. 17 of 1982 does not have a *casus omissus* clause and therefore English Law would not be applicable to Company Law in Sri Lanka.

Admittedly, unlike Section 100 of the Evidence Ordinance or Section 2 of the Trusts Ordinance, the Companies Act, No. 17 of 1982 does not contain a clause which provides for the application of English Law in the event of a *casus omissus* in the local statute. Accordingly there is no possibility of applying English Law on the basis that there is no provision in the Companies Act, No. 17 of 1982. However, it is to be noted that, as clearly pointed out by Dr. L.J.M. Cooray (supra), English Law could also be incorporated to our legal system by reference. Accordingly, the Civil Law Ordinance, also known as the Laws of England Ordinance, is referred to by Dr. L.J.M. Cooray (supra) as an enactment in point, where English Law has been incorporated by reference.

Along with the British occupation of the Maritime Provinces by the Proclamation of September 23, 1799, Roman Dutch Law was applied as the Common Law of the country. When the Courts were constituted, although there had been instances that the English judges had followed English precedents merely due to the reason that they were not familiar with the language to follow the writings of the Roman-Dutch jurists, it is also clearly evident that the British judges during the early

19th century had applied Roman-Dutch Law in commercial disputes. For instance in **Boyd** v **Staples** ((1820 – 33) Ramanathan Reports, 21), in considering a matter, it was stated that,

> "The English statutory limitation is not the law of this Island, the Roman-Dutch law and the regulations of the Government are guided in the administration of justice."

However, later decisions reveal that the dictum in **Boyd** v **Staples** (supra) did not continue for very long. The English judges, as stated earlier were not familiar with the Roman-Dutch law as they were trained in the traditions of Anglo-Saxon jurisprudence and gradually they had sought to follow English precedents in considering matters concerned with Commercial Law. For instance in **Sivapooniam** ((1820 - 33) Ramanathan Report 78), it was clearly stated that Roman-Dutch law is applicable subject to useful alterations, which are actually necessary. Accordingly it was stated that,

> "It has always been understood that this Court has always acted on the understanding that the basis of law in this Island is the Roman-Dutch law in the period of conquest in 1796, with such deviations, expedients and useful alterations as shall be either actually necessary and unavoidable or evidentially beneficial and desirable."

This process created uncertainly as there were instances, where the Court had been in doubt whether to apply Roman-Dutch law principles or the concepts of English Law in dealing with matters related to Commercial Law. The decision by Carr, C.J., in **Gerard and Brown** v **Fulton** ((1843 – 55) Ramanathan Report pg. 124), clearly indicates the difficulties the judges had encountered in this regard. The kind of confusion, which prevailed during that time was vividly described by H. W. Tambiah (Principles of Ceylon Law, H.W. Cave and Company, 1972, pg. 529, which reads as follows:

> "Attempts to equate the principles of English law and Roman-Dutch law on commercial matters by the judges brought about chaos and obscurity in Commercial Law, resulting in great dissatisfaction among

> the powerful English commercial circles in Ceylon. As a result of persistent agitation by this powerful community, the English law on commercial matters was introduced by legislation. In **Gerard and Brown** v **Fulton,** Carr C.J. was not sure whether Roman-Dutch law or English law applied in considering the days of grace permitted for the acceptance or payment of a bill of exchange. The English law allowed days of grace while the Roman-Dutch law did not recognise them. It was this decision which made the mercantile community to agitate for law reform."

The resulting position of this decision was the interest taken by the British administration to take steps in introducing the Civil Law Ordinance in 1852, which came into effect from 01.07.1853.

The Civil Law Ordinance was enacted for the purpose of introducing into the then Ceylon, the law of England in certain cases and to restrict the operation of the Kandyan Law.

Section 3 of the Civil Law Ordinance refers to the fact that law of England to be observed in all commercial matters and states as follows:

> "In all questions or issues which may hereafter arise or which may have to be decided in Ceylon with respect to the law of partnerships, corporations and banks and banking, principals and agents, carriers by land, life and fire insurance, the law to be administered shall be the same as would be administered in England in the like case, at the corresponding period, if such question or issue had arisen or had to be decided in England unless in any case other provision is or shall be made by any enactment now in force or hereafter to be enacted."

When considering Section 3 of the Civil Law Ordinance, it is clear that, subject to any changes made by the legislature, the English Law on Banking at the time being in force, would apply in Sri Lanka.

This position was considered by H.W. Tambiah (supra pg. 533), where reference was made to Section 3 of the Civil Law Ordinance and it was stated tht,

> "It is clear that by this provision, subject to any changes made by legislature, the English law on banking at the time being in force (both the common law as well as the statutory law) would apply in Ceylon."

Learned President's Counsel for the respondent contended that the Civil Law Ordinance was enacted in 1852, at a time this country was under colonial rule. The contention was that although at that time the British Parliament had the authority to enact laws for this island, since the country became a Republic after 1972 there was total severance from the British Government. Moreover as the English Companies Act had come into effect after 1978, learned President's Counsel for the respondent submitted that laws enacted by the British Parliament after 1972 cannot be applicable in this country as the sole authority to enact laws is in the Parliament of Sri Lanka.

It is to be borne in mind that there cannot be any dispute that the legislative power of the people shall be exercised by Parliament. The legislature has the authority to make law and the 'legislation which emanates from the supreme legislative authority should take precedence over all other forms of law'. The Parliament shall have power to make laws, including laws having retrospective effect and repealing or amending any provision of the Constitution or adding any provision to the Constitution, provided that Parliament shall not make any law suspending the operation of the Constitution or any part thereof or repealing the Constitution as a whole, unless such law also enacts a new Constitution to replace it. Article 76 of the Constitution refers to delegation of legislative power and Article 76(1) states that Parliament shall not abdicate or in any manner alienate its legislative power and shall not set up any authority with any legislative power. However, it is to be noted that sub-Articles to Article 76 of the Constitution, states that it shall not be in contravention of the provisions of Article 76(1) for the President to make emergency regulations and the Parliament to make any law relating to public security according to such law.

However, the decisions in **The Mahakande Housing Company Ltd**. v **Duhilamomal and others** ([1981] 2 Sri L.R. 232) and **Wright and Three others** v **People's Bank** ([1985] 2 Sri L.R. 292), clearly show that English Law had been applied to the questions, which arose in those matters through the operation of the Civil Law Ordinance.

In **The Mahakande Housing Company Ltd.** (supra) considering the question concerning a partnership, Soza, J. held that although there is a Partnership Ordinance in Sri Lanka, that is mainly concerned with providing that certain classes of persons should not be regarded as partners and therefore it does not affect the English Law of Partnership being applicable in terms of the provisions of Section 3 of the civil Law Ordinance.

In **Wright and Three others** (supra) the question, which came up for consideration was based on the Agent's authority to bind his Principal. Examining the issue at hand, G.P.S. de Silva, J. (as he then was), stated that,

> "The law relating to principal and agent governs the question whether the defendants had the authority to pledge goods of their clients. The provisions of the Civil Law Ordinance (Chap. 79) would therefore be very relevant . . . .
>
> Having regard to the wide language used, namely 'the law to be administered shall be the same as would be administered in England in the like case, in the corresponding period, if such question or issue had arisen or had to be decided in England', it is not only the English Common Law, but also the statute law of England that is made applicable."

Referring to the decision in **Usman** v **Rahim** ((1930) 32 N.L.R. 259), G.P.S. de Silva, J. (as he then was) further held that in terms of the provisions of the Civil Law Ordinance, what is applicable is not only the English Law in force at the time of the enactment, but also any subsequent statute.

It is to be noted that in **The Mahakande Housing Company Ltd.** (supra) and **Wright and Three others** (supra) were decided well after the 1972 and 1978 Constitutions came into effect.

As clearly stated in, **In re Amand** ((No. 2) 1942 1 K.B. 445) any law could be enforced in this country only by the legislative authority of our Parliament. By the introduction of the Civil Law Ordinance in 1952, provision was made for the application of the English Law governing bills of exchange, promissory notes and banking etc.

The laws passed by the Parliament, which is the supreme legislative authority, subject to constitutional safeguards, will repeal all existing legal rules, which are in conflict with any of the relevant provisions, as stated by Dr. L.J.M. Corray (supra pg. 155) whether found in prior statutes, delegated legislation, custom, religion, case law or the Roman-Dutch law. Dr. L.J.M. Corray (supra) had further stated that,

> "It must be noticed that such repeal could be partial-abrogating particular branches of law and leaving other sections untouched, or it could be complete."

Along with the introduction of the Companies Act, No. 17 of 1982, the applicability of the Civil Law Ordinance regarding matters pertaining to several areas dealing with Commercial Law became limited to such areas, where there was a lacuna in the statutory provisions. In the circumstances, it would not be correct to state that the applicability of English Law 'in the like case at the corresponding period' would be an abdication of the legislative authority given to the Parliament of Sri Lanka. If provision is made in the Companies Act, for such areas, where there is a lacuna in the law, then there cannot be a need to apply English Law prevailing at the corresponding period.
It is thus clear that in a situation where there are no provisions in the Companies Act, No. 17 of 1982 regarding banking transactions, which are categorised as *ultra vires*, that it would be necessary to refer to English Law, which is in force 'at the corresponding period', as Section 3 of the Civil Law Ordinance had stated that in such an instance 'the law to be administered shall be the same as would be administered in the like case, at the corresponding period'.

Learned President's Counsel for the appellant referred to the decision in **The Shantha Rohan** ([1994] 3 Sri L.R. 54) to emphasis his contention that the words 'for the time being in force' means the time, when the question or dispute arose or when proceedings commence or when an action is instituted. In **Shantha Rohan** (supra) reference was made to the House of Lords decision by Lord Cross in **Attorney-General** v **Howard Reformed Church, Bedford** ([1975] 2 All E.R. 337), where the words 'for the time being' under Section 55(1) of the Town and Country Planning Act, 1971 was defined, which referred to the time at which an offence was committed under Section 55(1) by the execution of works for the demolition or alternation of the building.

Accordingly it is apparent that the relevant period under Section 3 of the civil Law Ordinance, as correctly contended by the learned President's Counsel for the appellant, would be a date after the institution of the action and/or a date after the answer of the respondent, where he had raised the defence of *ultra vires*.

It is common ground that the action was instituted by the appellant on 26.07.1999 and the respondent had filed answer on 12.11.1999.

The *ultra vires* transactions in Companies were governed by Section 35 of the Companies Act of 1989, which was amended in 1991 and this would be the applicable Law in England at the corresponding time. Learned President's Counsel for the appellant correctly referred to Paget's Law of Banking (12th Edition, Butterworth pg. 147), where reference is made to the *ultra vires* transactions and the applicability of Section 35 of the English Companies Act (as amended), which reads as follows:

> "An *ultra vires* transaction is one which it is beyond the capacity of a company to enter into. It is to be distinguished from an unauthorized transaction, i.e. a transaction which, although within the capacity of the company, is carried out otherwise then through the proper exercise by the company's agents of their powers . . . .

> The law in this area was transformed by the substitution of a new Section 35 in the Companies Act 1985, which applies to any act done by a company on or after 4 February 1991. The new Section provides that the validity of an act done by a company (as defined in Section 735) shall not be called into question on the ground of lack of capacity by reason of anything in the company's memorandum (Section 35(1)) . . . . **The effect of the new Section 35 is that a third party dealing with a company need not concern himself with the company's capacity to enter into the transaction. It is expressly provided in Section 35B that a party to a transaction with a company is not bound to enquire as to whether it is permitted by the company's memorandum**" (emphasis added).

It is therefore apparent that the English Companies Act of 1985 (as amended), clearly provides for a situation, where a Company had borrowed money for purposes out side the objects in its Memorandum and Articles of association.

Considering all the aforementioned circumstances, it is apparent that English Law would be applicable to the matters in issue in this appeal in terms of Section 3 of the civil Law Ordinance.

2. Whether the learned Judge of the Commercial High Court had erred when it was decided that there is a substantial question of law based on the doctrine of *ultra vires* to be determined in the final appeal.

Learned President's Counsel for the respondent submitted that although the learned High Court Judge had expressed the view that this question is well settled in England, it is not so in Sri Lanka under the Companies Act, No. 17 of 1982, which was the Act in operation at the time this action was decided. Accordingly his position was that since there is an Act 'to amend and consolidate the law relating to Companies', Section 3 of the Civil Law Ordinance would not be applicable in the instant matter.

Learned President's Counsel for the appellant strenuously contended that English Law applies under Section 3 of the Civil Law Ordinance as stated under the first question of law and even the learned Judge of the High Court had appreciated this position. Accordingly learned President's Counsel for the appellant contended that learned Judge of the High Court could not have come to the conclusion that the defence of *ultra vires* raised by the respondent amounts to a substantial question of law.

As stated earlier, it was common ground that Companies Act, No. 17 of 1982 was the Act in operation at the time the question at issue was considered by the High Court. It was also not disputed that there were no provisions stipulated under the said Act of 1982 to deal with '*ultra vires'* transactions as referred to by the respondent in the High Court. In such circumstances, as stated earlier, Dr. L.J.M. Cooray had referred to the instances in which English Law had been incorporated by reference.

Although under the Companies Act, No. 17 of 1982, steps were taken 'to amend and consolidate the law relating to Companies', it is not disputed that there was no provision, which deals with the '*ultra vires* transactions'. In such circumstances, as described earlier, the law that has to be administered shall be the English Law at the corresponding period in England in terms of Section 3 of the Civil Law Ordinance of 1852. This situation cannot be considered as an instance, where the inalienable sovereignty of this country under Article 3 of the Constitution had been affected. In fact, quite contrary to the aforesaid contention, Section 3 of the Civil Law Ordinance, clearly indicated **that the said incorporation of English Law by reference is a limited process, as steps could be taken to introduce legislative provision, either by a new enactment or by the introduction of an amendment**. Section 3 of the Civil Law Ordinance has clearly stated that the law to be administered, when a question or issue arises on the subjects described in that Section should be the same as would be in the like case at the corresponding period if such question or issue had arisen or led to be decided in England '**unless in any case other provisions is or shall be made by any enactment now in force in Sri Lanka or hereinafter to be enacted**'.

Section 35A and 35B of the Companies Act of 1985 of England, which were incorporated by the Companies Act of 1989 that came into effect on 04.02.1991 clearly deal with the validity of acts,

which are within a Company's corporate capacity or which cannot be called into question on the ground of lack of capacity.

In such circumstances, the question arises as to whether there was a substantial question of law that had to be decided by the Supreme Court?

What constitutes a substantial question of law was discussed by this Court in **Collettes Ltd.** v **Bank of Ceylon** ([1982] 2 Sri L.R. 514). Considering the question at issue, Sharvananda, J. (as he then was) referred to the decision in **Chunilal Mehta** v **Century Shipping and Manufacturing Co. Ltd.** ((1962) A.I.R. S.C. 1314), which had quoted with approval the view expressed by the Madras High Court in **Subbarao** v **Veeraju** ((1951) A.I.R. Madras 969). In **Subbarao** (supra) the Court had framed a test that could be applied in identifying a substantial question of law, which was in the following terms:

> "When a question of law is fairly arguable, where there is room for difference of opinion on it or where the Courts below thought it necessary to deal with the question at some length and discuss alternative views, then the question would be a substantial question of law. On the other hand if the question was practically covered by the decisions of the Highest Court or **if the general principles to be applied in determining the question are well settled and the only question was of applying those principles to the particular facts of the case, it would not be a substantial question of law**" (emphasis added).

On a consideration of the submissions of both learned President's Counsel and the applicable legal principles stated earlier, it is quite evident that the general principles that had to be applied to the question before the High Court were well settled. Admittedly, there was no provision for the question in issue in terms of our Companies Act of 1982 and Section 3 of the Civil Law Ordinance therefore had to be applied in that instance. In terms of the provisions contained in Sections 35A and 35B of the English Companies Act, the respondent could not have succeeded in the defence of '*ultra vires'*.

In fact it appears that the learned High Court judge had appreciated the position, that in England the Companies Act had been amended to incorporate the authority to exercise the Company's corporate capacity.

> "bx.%Sis kS;sfhys fï nj meyeos,sj i|yka lrñka wruqKqj,g mrsndysr lghq;= ïïnkaOfhka jk .súiqï j,skao iud.ula neoS isák njg kS;sh ixfYdaOkh ù we;. oekg fhdacs; iud.ï mkf;ao, ta wdldrfha kS;suh ;;a;ajhla we;=<;a lsrSug meyeos<s W;aidyhla f.k we;."

In the aforesaid circumstances, it is evident that the High Court had erred when it decided that there was a substantial question of law based on the doctrine of *ultra vires* to be determined in the final appeal.

For the reasons aforementioned, both the questions on which this appeal was heard are answered in the affirmative. This appeal is accordingly allowed and the order of the High Court of Colombo (Commercial) dated 16.02.2006 is set aside. Learned Judge of the High Court of Colombo (Commercial) is directed to make order for the execution of the Decree pending appeal and issue writ accordingly.

I make no order as to costs.

Judge of the Supreme Court

N.G. Amaratunga, J.

I agree.

Judge of the Supreme Court