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

In the matter of an application for leave to appeal made under Section 5 (1) of the High Court of the Provinces (Special Provisions) Act No. 10 of 1996.

S.C. (CHC) Appeal No. 72/2013
H.C. (Civil) Case No. CHC/244/07/MR

Standard Credit Lanka Limited carrying on its business at No. 277, Union Place, Colombo 02 and registered at No. 97, Hyde Park Corner, Colombo 02 (formerly Ceylinco Investment and Realty Limited).

Plaintiff

Vs.

1. Harankaha Arachchige Menaka Jayasankha No. 49/6, Makola South, Makola.

2. Dewasinghe Hewage Kulawathi Minipura No. 49/6, Makola South, Makola.

Defendants

AND NOW BETWEEN

1. Harankaha Arachchige Menaka Jayasankha No. 49/6, Makola South, Makola.

2. Dewasinghe Hewage Kulawathi Minipura No. 49/6, Makola South, Makola.

Defendants – Appellants

Vs.

Standard Credit Lanka Limited carrying on its business at No. 277, Union Place, Colombo 02 and registered at No. 97, Hyde Park Corner, Colombo 02 (formerly Ceylinco Investment and Realty Limited).

Plaintiff – Respondent

Before: **Jayantha Jayasuriya P.C., C.J.**

Janak De Silva, J.

Achala Wengappuli, J.

Counsel:

Thilak Wijesinghe with Gayanthika Menike Goonesinghe for the Defendants-Appellants

Wasantha Fernando with Chamathka Suriarachchi, Shaloshi Fernando and Kavindya Dharmarathnam for the Plaintiff-Respondent

Written Submissions:

Defendant-Appellants on 24.01.2022

Plaintiff-Respondent on 24.01.2022

Argued on: 14.12.2021

Decided on: 23.11.2023

Janak De Silva, J.

The Plaintiff-Respondent ("Respondent") instituted this action against the Defendants-Appellants ("Appellants") to recover a sum of Rs. 12,433,028/= and interest thereon. Admittedly, on 17.01.2006, a sum of Rs. 3,000,000/= was lent by the Respondent to the Appellants as a housing loan. The property more fully described in the schedule to the plaint was mortgaged by Mortgage Bond No. 486 as security.

At the trial, the Appellants admitted the due execution of Mortgage Bond No. 486 and the receipt of a sum of Rs. 3 million in accordance with the said Mortgage Bond.

On behalf of the Respondent, the Chief Financial Officer gave evidence and marked documents X1 to X10 as evidence. None of them were marked subject to proof. They included the statement of accounts (X9), letters of demand (X7 and X8), and the reply of the Appellants (X10) to the letter of demand (X8).

On behalf of the Appellants, only the 1st Appellant gave evidence.

The only defenses raised by the Appellants at the trial were that the contents of the Mortgage Bond were not explained prior to signing and that the statement of account was incorrect.

The learned Judge of the Provincial High Court of the Western Province holden in Colombo (Commercial High Court) rejected these contentions and entered judgment as prayed for in the plaint.

In this appeal, the Appellants seek to assail the judgment of the learned Commercial High Court Judge on the following three grounds:

(1) The amount of Rs. 12,433,028/= sought to be recovered by the Respondent is not recoverable in terms of Section 192 of the Civil Procedure Code and the law of contracts;
(2) Awarding interest on Rs. 12,420,504/= is contrary to section 192 of the Civil Procedure Code; and,
(3) Interest granted is contrary to Section 5 of the Introduction of Law of England Ordinance, No. 5 of 1852 ("Civil Law Ordinance").

According to the Appellant, in the statement of account marked (X9), the amount claimed by the Respondent includes:

(1) Defaulted instalments (as at 24.11.2006 after deduction of Rs. 158,000/= payment made by the Appellants)	-	Rs. 313,101.00
(2) Default charges (interest on defaulted instalments)	-	Rs. 12,524.00
(3) Future Rentals (from 24.11.2006 to December 2026)	-	Rs. 12,107,403.00
Total	-	Rs. 12,432,028.00

The Appellants contend that in terms of the law, the said amount of Rs. 12,432,028/= includes:

(a) Balance principal sum;

(b) Interest accrued on the principal sum prior to the institution of the action;

(c) Interest on the defaulted installments (compound interest); and,

(d) Future interest since 24.11.2006 to January 2026.

It should be noted that there is no record of the Respondent being awarded future interest until January 2026. The statement of accounts (X9) claims that the total outstanding balance in respect of the loan agreement as at 25.11.2006 is Rs. 12,489,072.36, with an additional interest rate of 4% per month from 25.11.2006 on the balance of rentals receivable until payment is made in full.

In terms of the second schedule to Mortgage Bond No. 486 (X4), the Appellants agreed to pay the principal sum of Rs. 3,000,000/= with 21% interest thereon in equated monthly instalments of Rs. 52,413/= in 240 months. Hence, a sum of Rs. 12,579,120/= (Rs. 52,413/= x 240) should have been paid over 20 years by the Appellants if they were to fully perform their obligations in terms of the agreement.

The statement of account (X9) shows that the sum of Rs. 12,489,072.36 claimed by the Respondent has been arrived at after deducting payments made amounting to Rs. 158,616/= from Rs. 12,579,120/= (Rs. 12,420,504/=) plus a few other charges. Therefore, it is clear that the Respondent claimed only what it was entitled to in terms of the agreement between the parties and the interest thereon from the date of the action to the date of the judgment and to the full payment thereof.

The question to be determined is whether the sum claimed can be granted in accordance with Section 192 of the Civil Procedure Code. According to the Appellants, the Court cannot grant compound interest under Section 192(1) of the Civil Procedure Code.

Hence, I propose to address this contention after examining the provisions in Section 192 (1), which reads:

> *"When the action is for a sum of money due to the plaintiff, the court may, in the decree order interest according to the rate agreed on between the parties by the instrument sued on, or in the absence of any such agreement at the rate of twelve per centum per annum to be paid on the principal sum adjudged from the date of the action to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the action, with further interest at such rate on the aggregate sum so adjudged, from the date of the decree to the date of payment, or to such earlier date as the court thinks fit."*

These provisions specify the period and at what rate interest on money may be calculated. It deals with three distinct periods.

Firstly, it deals with interest prior to the institution of the action. Interest can be charged on the principal sum for any period prior to the commencement of the action at the rate agreed upon by the parties.

Secondly, interest can be charged on the principal sum to be paid from the date of the action until the date of the decree.

Thirdly, interest can be ordered on the aggregate sum so judged, from the date of the decree to the date of payment or such earlier date as the Court thinks fit.

I need not examine the rate at which interest may be ordered since the contention of the Appellants is on the type of interest that can be ordered and not the rate at which it can be done.

Compound interest (*anatocismus*) is the interest that is calculated based on the principal and any accumulated interest. On the question of compound interest, it appears that at one time the law was disconcerting.

Let me begin the analysis by considering the position in Roman law and Roman-Dutch law.

In Roman Law, interest was due either by agreement or by rule of law. The promise of interest usually requires *stipulatio*, a contract in the form of verbal question and answer.

Lee [*The Elements of Roman Law*, 4th ed. (Sweet & Maxwell, Reprint 2007), page 291] states that "*[b]efore Justinian the law forbade the parties to agree in advance that the loan should bear compound interest. Justinian (very absurdly) forbade it as regards accrued interest as well; that is to say, the parties were not allowed to convert accrued interest into an interest-bearing loan by a new agreement*".

Grotius [*The Introduction to Dutch Jurisprudence*, Translated by Charles Herbert (London: John Van Voorst and another, 1844), page 326] states that "*it is for good reasons forbidden to heap up and add the unpaid interest to the capital, and again stipulate for a profit thereon (Anatocismus); because parties who do not look into consequences are thereby effectually ruined.*"

Van Der Linden [*Institutes of the Laws of Holland*, Translated by J. Henry (London, 1828), page 219] states "*that interest upon interest is not allowed, nor to be turned into principal, so as to increase the original debt*".

It is evident that compound interest was not permitted under both Roman law and Roman-Dutch law.

It appears that at first, it was thought that this principle was part of our law.

Walter Pereira in *Institutes of the Laws of Ceylon* [Vol. II (H.C. Cottle – acting Government Printer, 1901), page 547] states that "*compound interest, that is interest upon interest, is not allowed [Vand. D.C. 57] even though expressly stipulated for [Pulle v. Tamby Cando, Ram. Rep. 1872-1876, 189. See Cens. For. 1.4.4.27]*".

This principle was adopted in ***Mudiyanse v. Vanderpoorten*** **[23 N.L.R. 342]** and ***Obeyesekere v. Fonseka*** **[36 N.L.R. 334]**, an authority relied on by the Appellants, where it was held that Roman-Dutch law does not allow compound interest even though expressly stipulated for.

Nevertheless, in ***Abeydeera v. Ramanathan Chettiar*** **[38 N.L.R. 389]**, it was held that in Ceylon (as it was then) compound interest may be recovered where the party charged has agreed to pay it. In ***Marikar v. Supramaniam Chettiar*** **(44 N.L.R. 409)** the majority held that compound interest is recoverable under the law of Ceylon, although the question of such a charge may be considered on the reopening of a transaction in terms of the Money Lending Ordinance. Section 5 of the Civil Law Ordinance was believed by the majority to have abolished the Roman-Dutch law rule against compound interest.

Weeramantry in *The Law of Contracts* [Vol. 2, (Lawman (India) (Pvt.) Ltd., 1969 reprint in 1999), page 925] clarified this position and stated:

> *"The Roman Law prohibited compound interest so also the Roman Dutch Law did not allow compound interest even though expressly stipulated for, but the Roman-Dutch law prohibition against compound interest is no longer in force in South Africa or in Ceylon."*

The Court of Appeal in ***Kiran Atapattu v. Pan Asia Bank Ltd.*** **[(2005) 2 Sri.L.R. 276]** adopted this position.

On the basis of the above authorities and the reasoning therein, I am of the opinion that compound interest is not prohibited in Sri Lanka. Moreover, there is nothing in Section 192 of the Civil Procedure Code which contradicts this position.

I reject the Appellants' argument that compound interest cannot be claimed by the Respondent.

Nonetheless, it is important to consider the provisions in Section 5 of the Introduction of Law of England Ordinance, No. 5 of 1852 (“Civil Law Ordinance”) which states that the amount recoverable on account of interest shall in no case exceed the principal amount.

It is interesting to note that although this rule is embodied in an enactment made by the British, it formed part of Roman-Dutch law.

Van Der Linden [supra.] states that “*the amount of interest may not exceed the principal*”.

Lee [supra.] states that “*in the classical period arrears of interest, might not be recovered in any action in excess of the capital. Justinian enacted that the capital might not in any circumstances yield in interest a sum greater than itself. This meant that when the capital had doubled it ceased to bear interest*”.

It appears that due to the genesis of the rule in the Roman-Dutch law, at some point, the rule was refused to be applied in Ceylon (as it was then) on equitable considerations.

In ***Sedembranader v. Sangerapulle*** **(Ram. Rep. 1843-1855, 19)**, decided in 1845 before the Civil Law Ordinance was enacted in Ceylon (as it then was), Oliphant C.J. commented that the rule is unknown to the English law and refused to apply the rule as there was no equity in it.

It is possible that the rule was incorporated into the Civil Law Ordinance to overcome the apprehension of the English judges in enforcing it as part of Roman-Dutch law. It is thus clear that Section 5 of the Civil Law Ordinance is in fact based on the principle in the Roman-Dutch Law inasmuch such principle was not known to English law.

It has been confirmed in ***Lucia Perera v. Albert Fernando*** **(1 C.L.W. 107**) that the rule in Section 5 of the Civil Law Ordinance is a restatement of the Roman-Dutch law rule.

Walter Pereira in *Laws of Ceylon* [supra.] states that where interest is paid from time to time there is no limit to the amount which may be recovered as interest. The amount already paid may exceed the principal. Still, the creditor is entitled to recover a sum equal to the principal as interest.

It appears that Pereira was of the view that if interest is paid periodically, there is no limit to the amount that can be recovered as interest. He relies on two authorities, ***Coomarevelo v. Sittarapuwalpillai*** **(4 S.C.C. 28) and** ***Sidenberenada v. Sangarapulle*** **(sic) [supra.]** for this proposition. Let me examine them to test the validity of this proposition.

In ***Sinnathamby Cumaraveley and another v. Muttutamby Sitterapuvalpulley*** **[(1881) 4 S.C.C. 28]** the headnote states that the plaintiff was entitled to recover in this action his principal and all arrears of interest then due *up to the amount of the principal*. The principal sum borrowed in that case was rupees 5,000. Cayley C.J. states [ibid., page 29] that "*the plaintiff cannot recover more than 5,000 rupees*". The only principle sought to be made is that there is nothing preventing the obligee of a bond from recovering at any time arrears of interest equal to the principal, however much interest he may have previously received.

In ***Sedembranader v. Sangerapulle*** **[supra.]**, the Court considered the rule as part of the Roman-Dutch law and not in the context of Section 5 of the Civil Law Ordinance. It is clear that the learned judge was under a misapprehension about the ambit of the rule

for he says the application of the rule means that one who has lent say £100 at ten percent for ten years, and who has regularly been paid £10 a year as interest, would not be entitled to demand his £100 at the end of the tenth year, because he had been paid that sum in the shape of interest.

I am of the view that the above decisions do not support the proposition made by Pereira [supra] that where interest is paid from time to time there is no limit to the amount which may be recovered as interest.

However, there appears to be support for a narrower version of Pereira's proposition in the case of ***Talpe Gamagey Don Carolis De Silva Appuhami v. Baffamagey Don Theodoris*** **[(1882-1883) S.C.C. 16]** where Clarence A.C.J. held:

> "*… running interest stops when the amount in arrear reaches the amount of the principal, but that if a part-payment of interest be then made, interest may then run on till the amount of the principal be again reached: and this is in accordance with the Roman-Dutch Law or practice as described by Voet, who says (xxii, i. 19) "Non iniquum ex nostris moribus visum fuit, durare obligationem usurariam, donec sors restituta fuerit, etiamsi triplicatoe vel quadruplicatoe sortis supercent quantitatem, si modo particiulatim soluatoe sint."*

According to Roman-Dutch law, running interest stops when the amount in arrears reaches the principal. However, if part-payment of interest is made thereafter, interest may then run until the principal amount is reached again. In ***Talpe Gamagey Don Carolis De Silva Appuhami v. Baffamagey Don Theodoris*** **[ibid.]** Clarence A.C.J. held that this was indeed the practice in the country.

How does section 5 of the Civil Law Ordinance affect that position in Roman-Dutch law? Is that part of the Roman-Dutch law still valid in Sri Lanka after Section 5 was enacted? I need not address that question here as there is no evidence in this case that the amount

of interest to be paid by the Appellants to the Respondent reached the principal amount. It is a matter to be considered in appropriate proceedings when the issue arises.

The ambit of Section 5 of the Civil Law Ordinance was considered in ***Fernando and Another v. Sillappen & Others*** **[5 C.W.R. 301]** which was decided in 1918, where Bertram C.J. explained the meaning of the words *"the amount recoverable on account of interest"*. He did so after interpreting Section 192 of the Civil Procedure Code to provide for the adjustment of three sums, firstly, the principal sum, secondly, the interest on the principal sum up to the date of action, and in the third place, a supplementary sum in respect of interest from the date of action brought to the date of judgment.

In so far as the interest is concerned, Section 192 of the Civil Procedure Code allows the Court to award interest on the principal sum at the rate agreed between parties firstly, for any period prior to the institution of the action, and secondly, from the date of action to the date of the decree. Furthermore, the Court is competent to grant interest on the total amount decided upon from the date of the decree to the date of payment.

Bertram C.J. [ibid., page 303] took the view that the words *"the amount recoverable on account of interest"* in Section 5 of the Civil Law Ordinance did not apply to the aggregate amount made up of the two sums of "interest", i.e., firstly, the interest due up to the date of action brought, and secondly, the interest due from the date of action brought to the date of judgment.

In other words, the prohibition in Section 5 of the Civil Law Ordinance applies only to the amount of interest due on the principal sum as at the date of the institution of the action.

This prohibition does not apply to the power vested in Court in terms of Section 192 of the Civil Procedure Code to award interest on the principal sum according to the rate

agreed between parties from the date of action to the date of decree and on the aggregate sum so adjudged from the date of the decree to the date of payment or such earlier date determined by Court.

Bertram C.J. [ibid.] held that Section 192 of the Civil Procedure Code intended to give the creditor a certain additional statutory right to interest in addition to the limit of interest which he was allowed by the common law. The principle of this additional statutory right is that the creditor's rights ought not to be prejudiced by the length of the resistance offered to his claim by the debtor.

In ***Lucia Perera v. Albert Fernando*** **[supra.]** decided in 1931, it was held that Section 192 of the Civil Procedure Code does not in anyway repeal the provision in Section 3 (present Section 5) of the Civil Law Ordinance and that it must be read subject to that. The decision in ***Fernando and Another v. Sillappen & Others*** **[supra.]** was not discussed.

Weeramantry in *The Law of Contracts* [supra., page 932] states:

> *"Section 192 of the Civil Procedure Code does, however confer on creditors an additional right in this sense, that interest may be claimed for the period between the plaint and judgment even in cases where the interest claimed in the plaint already equals the amount of the principal. The date of plaint is thus the time at which the line is drawn in calculating the limit of interest allowed under the Civil Law Ordinance, the underlying principle being that the creditors rights ought not be prejudiced by the length of resistance offered in Court by the debtor."*

In my view, this proposition has much merit given that the Civil Procedure Code was enacted in 1889 whereas the Civil Law Ordinance was enacted in 1852.

Moreover, this assertion is of greater significance in the current context where laws delays have had a negative impact on the administration of justice. To apply the principle in Section 5 of the Civil Law Ordinance to the additional right conferred on creditors

terms in Section 192 of the Civil Procedure Code will embolden the debtors to prolong litigation with the assistance of canny legal advice. The creditor may, at the end of a prolonged litigation, be left with a worthless paper decree.

In ***Nimalaratne Perera v. Peoples Bank*** **[(2005) 2 Sri.L.R. 67]** it was held that the limitation placed by Section 5 of the Civil Law Ordinance on the amount recoverable as interest has no application to interest recoverable relating to a banking transaction. The Respondent is not a bank. The transaction in question is not a banking transaction. Hence, we are not called upon to test the validity of the *ratio* in ***Nimalaratne Perera v. Peoples Bank*** **[ibid.]**.

It is pertinent to note that the rule in Section 5 of the Civil Law Ordinance has been referenced in some recent legislation by the legislature. On one occasion it is repeated, and on another occasion an exception has been made.

Section 5 of the Money Lending Ordinance No. 2 of 1918 as amended, states that in taking account under Section 2 therein, the court shall observe the rule that no interest shall at any time be recoverable to an amount in excess of the sum then due as principal.

In terms of Section 21 of the Debt Recovery (Special Provisions) Act No. 2 of 1990 as amended, notwithstanding anything to the contrary in that Act or any other law, "*an institution*" may recover as interest "*in an action instituted under this Act*", a sum of money in excess of the sum of money calculated as principal, in such action. (emphasis added)

However, the Respondent does not benefit from this exception as this action has not been instituted under that Act.

For all the foregoing reasons, I hold that the rule in Section 5 of the Civil Law Ordinance is part of our law. It prevents the recovery on account of interest a sum exceeding the principal as at the date of the institution of the action even where interest has been paid

from time to time provided that the interest so paid has not reached the principal sum. However, the rule in Section 5 of the Civil Law Ordinance does not apply to the interest that the Court can order in terms of Section 192 of the Civil Procedure Code on the principal sum and interest thereon from the date of the action to the date of the decree and on the aggregate sum so adjudged from the date of the decree to the date of payment or such earlier date determined by Court.

The learned Commercial High Court Judge awarded the Respondent a sum of Rs. 12,433,028/= and interest of 21% per annum on a sum of Rs. 12,420,540/= from 25.11.2006 to the date of payment. This is contrary to the rule set out in Section 5 of the Civil Law Ordinance.

Accordingly, I am of the view that the Respondent is only entitled to the following relief:

(1) The balance of the principal sum of Rs. 2,841,384/= (Rs. 3,000,000/= less payment received as at termination Rs. 158,616/=);
(2) Interest on Rs. 3,000,000/= at the rate of 21% per annum agreed between the parties from 07.01.2006 (the date of the Mortgage Bond No. 486) up to 24.07.2007 (the date of institution of this action). If the total amount of interest exceeds Rs. 3,000,000/=, the Respondent is only entitled to Rs. 3,000,000/= in view of Section 5 of the Civil Law Ordinance;
(3) From the date of institution of this action to the date of the decree, the Respondent is entitled, in terms of Section 192 of the Civil Procedure Code, to interest on the principal sum of Rs. 3,000,000/= at the agreed rate of 21% per annum;
(4) For the aggregate amount, namely the interest recoverable under item (2) and (3) above, an interest at the rate of 13% from the date of judgment till the date on which the entire amount is paid.

The rule in Section 5 of the Civil Law Ordinance will not apply to items (3) and (4).

The above calculation is based on the statement of accounts marked X9 which was not challenged during the evidence of the 1st Appellant.

For the foregoing reasons, the judgment of the learned Commercial High Court Judge is varied to the extent set out above. The learned Judge of the Commercial High Court is directed to enter a decree accordingly.

Appeal partly allowed. I make no order as to costs.

JUDGE OF THE SUPREME COURT

Jayantha Jayasuriya P.C., Chief Justice

I agree.

CHIEF JUSTICE

Achala Wengappuli, J.

I agree.

JUDGE OF THE SUPREME COURT