

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

D. A. J. Ranwala,
No. 32/1, 2nd Lane, Egodawatta,
Boralesgamuwa.

S.C. Appeal No. 19/2017

S.C. (HCCA) L.A. No. 75/2016

WP/HCCA/MT/51/11/(F)

D.C. Mt. Lavinia Case No. 5304/06 M

Plaintiff

Vs.

Ceywater Consultants (Pvt) Ltd.,
No. 51/1A, Vihara Mawatha, Pepiliyana,
Boralesgamuwa.

Defendant

AND BETWEEN

D. A. J. Ranwala,
No. 32/1, 2nd Lane, Egodawatte,
Boralesgamuwa.

Plaintiff – Appellant

Vs.

Ceywater Consultants (Pvt) Ltd.,
No. 51/1A, Vihara Mawatha, Pepiliyana,
Boralesgamuwa.

Defendant – Respondent

AND NOW BETWEEN

Ceywater Consultants (Pvt) Ltd.,
No. 51/1A, Vihara Mawatha, Pepiliyana,
Boralesgamuwa.

Defendant – Respondent – Appellant

Vs.

D. A. J. Ranwala,
No. 32/1, 2nd Lane, Egodawatta,
Boralesgamuwa.

Plaintiff – Appellant – Respondent

Before: Hon. P. Padman Surasena, J.

Hon. Janak De Silva, J.

Hon. Arjuna Obeyesekere, J.

Counsel: Murshid Maharoo with Shoaib Ahamed and Dasuni Ruhunage for the
Defendant-Respondent-Appellant.

N. Mahendra with D. Pathirana for the Plaintiff-Appellant-Respondent.

Written Submissions:

23.03.2017 and 25.04.2022 by Defendant-Respondent-Appellant

15.05.2017 and 05.05.2022 by Plaintiff-Appellant-Respondent

Argued on: 06.04.2022

Decided on: 08.08.2024

Janak De Silva, J.

The Plaintiff-Appellant-Respondent (“Respondent”) instituted this action against the Defendant-Respondent-Appellant (“Appellant”) in the District Court of Mount Lavinia (“District Court”) claiming a sum of Rs. 2,500,000/-, as loss and damages for the breach of the terms and conditions of the agreement entered into between the parties.

The Respondent is a Chartered Civil Engineer/Hydrologist having over 23 years of experience at the time this action was instituted.

In or about January 2000, tenders were called for by the Sri Lanka Land Reclamation and Development Corporation on behalf of the Ministry of Housing and Plantation Infrastructure in order to select a consultant to perform the engineering services relating to the “Lunawa Environmental Improvement and Community Development Project” (“Project”).

The Appellant, which was carrying on the business of engineering consultancy services, submitted a bid for the tender in collaboration with two Japanese companies and a Sri Lankan company, and was the successful tenderer.

The Respondent claimed that T.D.F. Karunaratne, the Managing Director of the Appellant (“MD”), invited him to submit his Curriculum Vitae (භූ.8) promising him employment as a Design Engineer for the full period of the Project which consisted of two phases; the “Design Phase” (which was due to be covered within a period of 11 months) and the “Construction Phase” (which was due to be covered within a period of 36 months).

The Respondent was issued a letter of appointment (භූ.11) for the Design Phase, dated 22.09.2003, to be effective from 01.10.2003. He was subsequently given two extensions by letters dated 10.08.2004 and 03.12.2003. These documents are marked (භූ.12) and (භූ.13) respectively.

It is the case of the Respondent that he was waiting to be called for the Construction Phase of the Project but was not called upon, violating the terms and conditions of the agreement made between the Appellant and Respondent.

The trial proceeded on one (1) admission and eighteen (18) issues. The Respondent testified and then led the evidence of two witnesses, one of whom was an officer from the University of Moratuwa, and the other was an officer from the Institution of Engineers. Both were called to prove his educational qualifications.

The Appellant led evidence of two witnesses, one of whom was the MD and the other, Hidetoshi Sawada, the Project Leader of the Project.

The learned Additional District Judge by his judgment dated 18.03.2011, dismissed the Respondent's action on the basis that no cause of action has accrued to the Respondent since he failed to establish that that the Appellant was successful in having the tender awarded to it due to the qualifications of the Respondent. It was further held that no documents were produced by the Respondent to prove that the Appellant had agreed to recruit him for the second phase of the Project.

Aggrieved by the said judgement, the Respondent appealed to the Civil Appellate High Court of the Western Province Holden in Mount Lavinia ("High Court").

By judgement dated 18.01.2016, the learned Judges of the High Court allowed the appeal and held that the Respondent had proved on a balance of probability that a contract had been entered into between the parties to employ the Respondent for the second phase of the Project as well.

Appellant sought leave to appeal against the said judgment. Leave to appeal was granted on the following two questions of law:

- 1) Did the learned judges of the High Court of Civil Appeal err in upholding the contention that the Respondent had proved that the Appellant had dishonoured the alleged promise of employing the Respondent in the purported 2nd Stage of the project?

- 2) Did the High Court of Civil Appeal err in holding that the Petitioner had not upheld the promise of employing the Respondent in the 2nd Stage of the project as per document marked “P9”?

It is important to emphasize at the outset that the Respondent has not filed this action on the basis of any misrepresentation. Where representations were made as part of the negotiations which induced a party to enter into a contract, and if that representation did not become part of the terms of the contract, a party has certain remedies in Roman-Dutch law. A plaintiff who has been induced to enter into a contract by an innocent misrepresentation, is entitled to the remedy of rescission. A party who has been induced to enter into a contract based on a fraudulent misrepresentation can either affirm or repudiate the contract, set up fraud as a defence to an action on the contract, or sue for damages.

The Respondent instituted this action specifically claiming that the Appellant has, by not employing the Respondent for the full term of the Project, breached the terms of the agreement entered into between the parties.

Hence, it was incumbent upon the Respondent to prove, on a balance of probability, that the agreement entered into between the parties included a term that the Respondent will be employed by the Appellant for the full term of the Project.

According to the Respondent, he met the MD in his office around June, 2003. The alleged promise to employ the Respondent for the full duration of the Project, including the design phase as well as the construction phase of the Project was made there. This was denied by the MD in his evidence.

The Respondent sought to corroborate this assertion by reference to the “Schedule V for Professional Personnel” (ex.9) where the bar chart in front of the name of the Respondent shows him working on the Project until June, 2008. This is a document on which the High

Court placed much reliance in holding that there was a contract between the parties to employ the Respondent for the 2nd phase, Construction stage as well.

Nevertheless, the Respondent did not testify that "Schedule V for Professional Personnel" (ಅ.9) was given to him by the Appellant prior to him entering into the contract dated 22.09.2003 with the Appellant (ಅ.11). This contained the following terms:

- 1) *You will be attached to the office of "Lunawa Environment Improvement & Community Development Project - Detailed Design Phase". Please report to the Team Leader, Mr. H Sawada.*
- 2) *Your appointment as Designs Engineer will be on contract basis (Full time), valid for a period of eleven months (11) from 1 October 2003.*
- 3) *Your appointment is subject to a probation period of six months. If your work is found to be unsatisfactory during the probation period, your services could be terminated any time within this period without notice.*
- 4) *If in the interest of the Project, the Client/Team Leader decides to reduce the number of months allocated to you, we will reluctantly be compelled to terminate your services by giving you one month's notice notwithstanding the fact that you still have remaining months of service as stated in (2) above. We record your agreement to waive any claim that you may have against us in that event and also record that you will not be entitled to any compensation what so ever in that event.*
- 5) *You will be paid a salary of Rupees Sixty Thousand (Rs.60,000/=) per month. In addition, you are entitled to claim a maximum sum of Rupees Thirty Thousand (Rs.30,000/=) per month, for all other expenses incurred on this project.*
- 6) *You Will be required to contribute 8% of your salary to the Employees Provident Fund while the Company will contribute 12% thereto and remit a further 3% to the Employees Trust Fund.*
- 7) *PAYE deductions, (if applicable) will be made from your salary according to the Inland Revenue Act.*
- 8) *You will be required to observe the normal working hours of the Client as per Company rules. The Client / Team Leader may also request you to work on extended hours or on Saturdays and Sundays in the interest of the project*

depending on the exigencies of the service. Being an Executive Member of the Team of Consultants, no additional remuneration will be paid for such services.

9) You will be entitled to seven days Casual Leave per annum. Casual Leave entitlement will be on a proportionate basis for the current year.

10) Company will not provide transport from your residence to office and back, which will be your responsibility.

11) You are specifically required to:

(a) Discharge the work assigned to you to the satisfaction of the Client/Team Leader.

(b) Perform your work at the place/ places specified by the Client/ Team Leader.

(c) Meet the deadlines as specified in the contract and by the Client/ Team Leader.

(d) To conform to and comply with the instructions of the Client/ Team Leader.

12) You are required to maintain strict confidentiality in all matters pertaining to work with the Company.

13) Should you resign from your post, you may do so by giving one calendar month's notice or by payment of one month's fee in lieu thereof. Similarly, the Company reserves the right to terminate your services by giving one calendar month's notice or payment of one month's fee in lieu thereof, in the event that your services are no longer required by the Company, without giving any reason to it.

The Respondent agreed to the terms of this letter in writing.

According to Clause 2, the contract period was only for eleven (11) months from 1 October 2003, which was subsequently extended until end November, 2004 (ဗဇ.12, ဗဇ.13). Clause 4 specifically provided for the reduction of the number of months allocated to the Respondent. Clause 13 permitted the Appellant to terminate the services of the Respondent by giving one calendar months' notice or payment of one month's fee in lieu

thereof, in the event his services are no longer required by the Appellant without giving any reasons to it.

These terms negate the alleged agreement to employ the Respondent for the full term of the Project. No doubt, it is possible to sometimes imply certain terms into a written contract. Certain terms can be implied into a written contract for various reasons such as to give business efficacy or necessity or due to custom. Nevertheless, the term to be implied must not be inconsistent with the express terms of the contract [***Duke of Westminster and Others v. Guild (1985) Q.B. 688 at 700; Johnstone v. Bloomsbury H.A. (1992) 1 Q.B. 333, per Browne-Wilkinson V-C. and Leggat L.J. at pp. 347 and 350***].

It appears that the “Schedule V for Professional Personnel” (භූ.9) came into the hands of the Respondent after he agreed to the terms and conditions in the contract dated 22.09.2003 with the Appellant (භූ.11). In the absence of any evidence to establish that the “Schedule V for Professional Personnel” (භූ.9) was shown to the Respondent by the Appellant, prior to entering into of the contract dated 22.09.2003 with the Appellant (භූ.11), it is not possible to conclude that the time bar therein formed part and parcel of the agreement between the Appellant and Respondent. In any event, the terms and conditions in the contract dated 22.09.2003 (භූ.11) are at cross purposes with the “Schedule V for Professional Personnel” (භූ.9).

The High Court placed much reliance on the statements made by Weeramantry [*Law of Contracts*, Vol. I, pages 102, 104-105] that contracts may be express or implied and that an objective test must be adopted in determining the intention of the parties. Similar reliance was placed on *Chitty on Contracts* [General Principles, Vol. I (13th ed.), pages 815-816] where it is stated that an agreement may be partly oral and partly written.

I am in agreement with this exposition of the law. Nevertheless, as Chitty states (supra), in such cases it will be necessary to prove what statements or stipulations were intended to be incorporated as terms of the contract to have contractual effect. Where the written contract between parties contains terms which runs contrary to the alleged implied terms, the written contract must take precedence.

For all the foregoing reasons, I answer the two questions of law in the affirmative.

The judgment of the High Court dated 18.01.2016 is set aside. The judgment of the District Court dated 18.03.2011 is affirmed.

The Appellant shall be entitled to costs both in the High Court and in this Court.

Appeal allowed with costs.

JUDGE OF THE SUPREME COURT

P. Padman Surasena, J.

JUDGE OF THE SUPREME COURT

Arjuna Obeyesekere, J.

JUDGE OF THE SUPREME COURT