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

In the matter of an Application for Leave to appeal made in terms of Section 5C of the High Court of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006.

1. Kanangara Koralage
   Dona Anurushhika,

2. Kanangara Koralage Don Lessly
   Kanangara

   Both of:
   No. 09, Siddhamulla,
   Piliyandala.

PLAINTIFFS

SC Appeal No. 133/12

WP/HCCA/MT/51/2005 (F)

DC Moratuwa Case No. 987/02/M

Vs

Bank of Ceylon,
Head Office,
New Building,
Janadhipathi Mawatha,
Colombo 01.

DEFENDANT

AND

Bank of Ceylon,
Head Office,
New Building,
Janadhipathi Mawatha,

Colombo 01.

DEFENDANT-APPELLANT

Vs

1. Kanangara Koralage
   Dona Anurushhika,

2. Kanangara Koralage Don Lessly
   Kanangara

   Both of:
   No. 09, Siddhamulla,
   Piliyandala

PLAINTIFFS-RESPONDENTS

AND NOW BETWEEN

Kanangara Koralage
Dona Anurushhika,
No. 09, Siddhamulla, Piliyandala
PLAINTIFF-RESPONDENT-PETITIONER

Kanangara Koralage Don Lessly
Kanangara. (Deceased)

Vs

Bank of Ceylon,
Head Office,
New Building,

Janadhipathi Mawatha,
Colombo 01.

DEFENDANT-APPELLANT-RESPONDENT

Before : Priyantha Jayawardena PC, J
Kumudini Wickremasinghe, J
A.L. Shiran Gooneratne, J

Counsel : Chathura Galhena with Darani Weerasinghe for the Plaintiff-Respondent-Appellant

Suren Gnanaraj with Wathsala Kekulawala for the Defendant-Appellant-Respondent

Argued on : 5th September, 2023

Decided on : 29th February, 2024

Priyantha Jayawardena PC, J

This is an appeal to set aside the judgment of the Civil Appellant High Court of the Western Province of Mount Lavinia dated 13th of June, 2011 which set aside the judgment of the District Court of Moratuwa dated 3rd of June, 2005, where it was held that the newspaper advertisement published by the defendant-appellant-respondent (hereinafter referred to as the "respondent-bank") was an invitation to treat and not an offer.

Facts of the case

The respondent-bank published an advertisement in several newspapers, including the newspaper "Sirikatha" to invest money in minors' accounts with the respondent-bank.

After seeing the said newspaper advertisement, the 2nd plaintiff-respondent-appellant (hereinafter referred to as the "2nd appellant") opened an account with the respondent bank and deposited a sum of Rs. 5,400/- on behalf of his daughter, the 1st plaintiff-respondent-appellant (hereinafter

referred to as the "1st appellant"), who was a minor at that time. The appellant stated that in terms of the conditions stipulated in the advertisement published on the 12th of July, 1981, the 1st appellant was entitled receive a sum of Rs. 351, 519/- after 21 years from the date of the said deposit.

Upon the 1st appellant reaching 21 years of age on the 17th of July, 2002 she had requested the respondent-bank to remit the said sum of Rs. 351, 519/- to her account maintained at the Piliyandala Branch of the respondent bank. Responding to the said letter, the said bank by its letter dated 18th of September, 2002 had informed the 1st appellant that she is only entitled for a sum of Rs. 72, 244.96/-. However, the appellants stated that they were not informed of any conditions regarding the variations of the interest rate and expected to receive the fixed benefits set out in the said advertisement. Hence, the appellants have insisted that they be paid the amount agreed between the parties which is Rs. 351, 519/-.

As the respondent-bank failed to pay a sum of Rs. 351, 519/-, the appellants instituted action in the District Court of Moratuwa seeking to recover the said sum. Thereafter, the respondent bank filed its answer stating that the said advertisement was an invitation to treat and not an offer and sought for a dismissal of the plaint.

After the conclusion of the trial, the learned District Judge, by his judgment dated 3rd of June, 2005 granted the reliefs prayed for in the prayer to the plaint on the basis that the said newspaper advertisement and the Certificate of Deposit marked 'P2' constitutes a contract binding on the parties.

Being aggrieved by the said judgment of the learned District Judge, the respondent-bank appealed to the Civil Appellant High Court of the Western Province of Mount Lavinia (hereinafter referred to as the "High Court") to have the said judgment set aside.

After hearing the submissions of the parties, the High Court delivered its judgment dated 13th of June, 2011 setting aside the judgment of the District Court on the basis that the newspaper advertisement produced marked as 'P1' is only an advertisement inviting the public to make offers and thus, it cannot constitute a contract between the parties.

Being aggrieved by the judgment of the High Court, the appellants sought leave to appeal from this court and the court granted leave to appeal on the following questions of law;

"a) Whether the learned High Court Judges have misconceived the legal definition for an offer and invitation to treat?"

b) Whether the learned High Court Judges erred in law setting aside the judgment of the learned District Judge who had pronounced it on proper analysis of law of Contract?

c) Whether the learned High Court Judges have misinterpreted the contractual obligations arising out of offer and acceptance and duty and obligation of a banker who opens accounts on prior invitations?"

Submissions of the appellant

The learned counsel for the appellant submitted that all the conditions relating to the said account have been set out in the said newspaper advertisement marked and produced as 'P1'. Thus, the said advertisement is an offer and not an invitation to treat.

The learned counsel drew the attention of court to the word 'offer' referred to in *The Law of Contracts* Volume 1 at page 110 by C.G. Weeramantry where it states;

> *"an offer is a proposal by one person to another of certain terms of performance, which proposal is made with the intention that it be accepted by such other person."*

It was further submitted that an account holder/investor and the respondent-bank are bound by the terms and conditions stipulated in the said advertisement. Further, internal circulars of the respondent-bank, which are not known to such account holders/investors have no application to the said deposits. Moreover, the learned counsel contended that acceptance of an offer may take place by express words or by conduct of the parties. In support of the above contention, the learned counsel cited ***Carlill v Carbolic Smoke Ball Company*** **(1893) 1 QB 256**

Hence, it was submitted that the advertisement marked and produced as 'P1' is an offer, and therefore, the respondent-bank is bound by the terms and conditions set out in it as it constitutes a valid contract between the parties. In the circumstances, it was submitted that the said judgment of the High Court should be set aside and the judgment of the learned District Judge should be affirmed.

Submissions of the respondent bank

The learned counsel for the appellants submitted that the main distinction between an offer and an invitation to treat is that an offer can be accepted, and upon acceptance of an offer, it constitutes a contract, whereas an invitation to treat is not capable of being accepted.

In support of the above submission, the learned counsel cited *Chitty on Contracts,* 27th edition, Volume 1 at page 94, which states;

> *"A communication by which a party is invited to make an offer is commonly called an invitation to treat it is distinguishable from an offer primarily on the ground that it is not made with the intention that it shall become binding as soon as the person to whom it is addressed simply communicates his assent to its terms. A statement is clearly not an offer if it expressly provides that the person who makes it is not be bound merely by the other party's notification of assent but only when he himself has signed the document in which the statement is contained."*

It was further submitted that the said newspaper advertisement invited any person interested in the scheme referred to the advertisement to visit the bank, obtain further information, and thereafter, submit a formal application to the bank to open an account referred to in the advertisement. Hence, the advertisement was clearly an invitation to visit the bank and for customers to make an offer to the bank to accept his application to open an account. Further, the learned counsel for the respondent-bank contended that it is trite law that an advertisement published in a newspaper is generally considered an 'invitation to treat' and not an offer. In support of the above contention, he cited ***Partridge v Crittenden* [1968] 2 AER 421.**

The learned counsel also cited *Law of Contracts* Volume 1 at page 114 by C.G. Weeramantry which refers to "Tradesmen's Puff". It states;

> *"Tradesmen often endeavor to increase their sales by extolling the virtues of their goods. Common human experience teaches us that the laudatory expressions used by vendors must not be literally accepted. Consequently, offers by a tradesman to sell goods which he describes as being of a high order of excellence must not be seriously taken to be offer terms. In order that an assertion regarding his willingness to sell goods of the description indicated be regarded as a serious offer, it must fall outside the pale of puffery."*

The learned counsel further submitted that the 2nd appellant's evidence given at the trial shows that the said newspaper advertisement was only an invitation to treat and not an offer. Further, the said newspaper advertisement was not capable of being accepted as it was not an offer but an invitation to treat. Thus, the actual offer was made by the 2nd appellant when he visited the Moratuwa branch on the 17th of July, 1981 and signed the mandate marked and produced as 'V1', which was accepted by the respondent-bank, resulting in a binding contract between the parties on the terms and conditions set out in 'V1'.

The learned counsel contended that in the instant case, the respondent-bank did not convey an intention to be bound with a reader of its advertisement. On the contrary, it invited the reader to obtain further details from the nearest branch of the respondent-bank with regard to the Savings Scheme and to submit an application to the bank for its acceptance.

Hence, it was submitted that the High Court was correct in law in setting aside the judgment of the learned District Judge. Therefore, it was submitted that the instant appeal should be dismissed with costs.

Whether the learned High Court Judges have misconceived the legal definition for an offer and invitation to treat?

The learned Judges of the High Court held that the newspaper advertisement marked and produced as 'P1' is only an invitation to treat. Hence, it cannot be accepted by the public. Thus, the issue that needs to be considered is whether the said advertisement was an offer or an invitation to treat.

An offer is part of contract negotiations where a party agrees to carry out a specific act or refrain from doing it in exchange for consideration. Further, if an offer is accepted, it would form a binding contract. However, an invitation to treat is an invitation to start negotiations with the intention to create a contract. An invitation to treat cannot be accepted and thus, it does not create a contract. Further, the distinction between an offer and an invitation to treat was referred to in *The Law of Contracts* Volume 1 by C.G. Weeramantry at page 109, where it states;

> *"The main distinction is that whereas an offer ripens into a contract upon acceptance, an invitation to treat on the other hand, "is not capable of being accepted and is certainly not intended to be binding"."*

Does the advertisement marked 'P1' constitute an offer or an invitation to treat?

Generally, advertisements are *considered* as invitations to treat as it is considered that an effective offer cannot be made to the public at large.

In ***Partridge v Crittenden*** **[1968] 2 EAR 421** at 424, Lord Parker C.J. held;

> *"I say "with less reluctance" because I think that when one is dealing with advertisements and circulars, unless they indeed come from manufacturers, there is business sense in their being construed as invitations to treat and not offers for sale."*

However, an advertisement would be considered as an offer where one party makes it clear expressly or impliedly that he is prepared to be bound by the said advertisement as soon as the offer is accepted by a person. A similar view was observed in ***Carlill v Carbolic Smoke Ball*** **[1892] 2 QB 256** where Bowen L.J. held;

> *"It is an offer to become liable to anyone who, before it is retracted, performs the condition, and, although the offer is made to the world, the contract is made with that limited portion of the public who come forward and perform the condition on the faith of the advertisement."*

Thus, an offer could be made to the public at large and such offers are known as unilateral offers. Further, such offers can be accepted by performing the conditions set out in the advertisement.

Hence, in order to consider whether an advertisement is an offer or an invitation to treat, the wording of the advertisement should be considered to ascertain whether it contains an offer intended to be legally bound when anyone accepts it. Moreover, an advertisement would be considered as an offer where it contains all the terms that are required to formulate a contract.

Further, once an advertisement is published in a newspaper to be read by the public, the wording in the said advertisement should be read in its plain meaning, as the public would read and understand it. In the circumstances, the court needs consider the said advertisement in the way an ordinary person reading it would understand it.

The wording in the advertisement produced at the trial marked as 'P1' stated as follows;

"ඔබේ දුවට පුතාට අනාගතයක් හිමි කරදීම ඔබේ එකම අභිලාශය විය හැක, ඔබේ ඒ අභිලාෂය මුදුන් පත් කර ගැනීම සඳහා උදව් දීමට දැන් ලංකා බැංකුව සුදානම්. **ඔබ විසින් කළ යුත්තේ සුළු මුදලක් ඔබේ දරුවා වෙනුවෙන් අප වෙත වෙන් කර තැබීමයි. අපි ඒ සුළු මුදල අති විශාල මුදලක් කොට ඔහු හෝ ඇය වැඩිවිය පැමිණ සමාජයට පිවිසෙන අවස්ථාවේදී ඔහුට හෝ ඇයට පිරිනමින්නෙමු. ඔබේ දරුවා ලක්ෂ්පතියකු කරන්න**.

ලංකා බැංකුවේ ජාතික තිළිණ ක්‍රමය පිහිටුවා ඇත්තේ මේ සඳහාය, රු. 600/-ක අවම තැන්පතුවකින් හෝ රු. 600.-ක දෙගුණ, තෙගුණ, සිව්ගුණ ආදී (600/- න් බෙදෙන ඕනෑම ගණනකින්) ඔබට මේ තිළිණ ගිණුම් සඳහා මුදල් තැන්පත් කළ හැකිය. ලංකා බැංකුවේ තිළිණ ගිණුම් ක්‍රමය සඳහා තැන්පත් කළ හැකි අවම තැන්පත් ප්‍රමාණය රු. 600/-කි. එයද රු. 25/- මගින් මාසික වාර 21කින් හෝ එකවර හෝ තැන්පත් කළ හැකිය. **ලංකා බැංකු තිළිණ ක්‍රමය යටතේ රු. 600ක මුදලක් තැන්පත් කළහොත් අවුරුදු 21ක් ගෙවුණු පසු ඔහුට රු. 40,000කට ආසන්න මුදලක් ලැබේ**. අවු. 21ක අවසානයේදීත් එම මුදල ඔබේ දරුවා ආපසු නොගෙන තිබෙන්නට හැරියොත් ඔබ ආරම්භයේදී තැන්පත් කළ මුළු මුදල වන රු. 600/-ක් වූ මාස් පතා ගෙවීමක් වශයෙන් ඔහුට ලැබේ. ඔහු කැමති කාලයක් ඒ මුදල තිබෙන්නට හැරිය හැකි අතර අවශ්‍ය ඕනෑම විටෙක මුළු මුදලම ලබා ගත හැකිය.

අද උපදින දරුවකු වෙනුවෙන් රු. 2,400/-ක තිළිණ ගිණුමක් විවෘත කළහොත්, ඔහුගේ 21 වැනි උපන් දිනයේදී ඔහුට රුපියල් එක් ලක්ෂ පණස් හය (රු. 1,56,231ක්) දහසකට වැඩි මුදලක හිමිවේ. එම මුදල අවශ්‍ය නම් මාසික තැන්පතුවක් වශයෙන් රු. 100/- බැගින් වූ මාස 21ක් ගෙවා සම්පූර්ණ කළ හැකිය.

ඔබ අද ලංකා බැංකුවේ තිළිණ ගිණුම ක්‍රමය යටතේ තැන්පත් කිරීමට බලාපොරොත්තු වන මුදල අනුව ඔබට ඔබේ දරුවා අනාගතයේදී ලක්ෂ්පතියෙකු කළ හැකිය.

ලංකා බැංකුව සමග හවුල් වී ඔබේ දරුවාට රත්තරන් අනාගතයක් හිමිකර දෙන්න. **වැඩි විස්තර සහ අයදුම්පත් ළඟම ඇති ලංකා බැංකුව ශාඛාවකින් ලබා ගන්න**."

[emphasis added]

The advertisement published in the Sirikatha Newspaper stipulated the sum to be deposited and the amount to be received after 21 years, i.e.;

ඔබ තැන්පත් කරන සුළු මුදල කිසිම වෙහෙසක් නොමැතිව රුපියල් ලක්ෂ ගණන් වන අයුරු මේ චක්‍රයෙන් බලා ගන්න								
	රුපියල්	රුපියල්	රුපියල්	රුපියල්	රුපියල්	රුපියල්	රුපියල්	රුපියල්
එකවර තැන්පතුව හෝ මාසික වාරික 21	600	1,200	2,400	4,800	9,600	12,000	15,600	18,000
	25	50	100	200	400	500	650	750
අවුරුදු 21 කින් ලැබෙන මුදල	39,057	78,115	156,231	312,462	624,924	781,155	1,015,501	1,171,731
මුදල ආපසු ගන්නා තෙක් මාසිකව ලැබෙන මුදල	600	1,200	2,400	4,800	9,600	12,000	15,000	18,000

It is pertinent to note that the above advertisement specifically stated the amount that should be deposited, how the money should be deposited, and the amount that will be paid after 21 years. It also stated, **"ඔබ තැන්පත් කරන සුළු මුදල කිසිම වෙහෙසක් නොමැතිව රුපියල් ලක්ෂ ගණන් වන අයුරු මේ චක්‍රයෙන් බලා ගන්න".** Accordingly, by the said advertisement the public was informed how a small sum deposited by them could turn into a large sum, as shown in the said schedule.

After seeing the above advertisement in the Sirikatha Newspaper, the 2nd appellant deposited a sum of Rs. 5,400/- on behalf of the 1st appellant in the Moratuwa branch of the respondent bank. Thereafter, the respondent-bank issued a 'Deposit Certificate' which was produced marked as a receipt of the said sum. It stated as follows;

"BANK OF CEYLON

NATIONAL ENDOWNMENT (MINORS & ADULTS) SCHEME

DEPOSIT CERTIFICATE

Date: 17th July 1981

Received the sum of Rs. 5400/- (Rupees FIVE THOUSAND FOUR HUNDRED ONLY) to be placed to the credit of the NATIONAL ENDOWNMENT (MINORS AND ADULTS) Account of KANNANGARA KORALALAGE DONA ANURUDDHIKA (Name of Account holder) No. 9, Siddhamulla Piliyandala (Address).

~~*The account holder shall make further 20 monthly instalments of identical sums shown on the opposite page overleaf"~~

BANK OF CEYLON

RAWATAWATTE, MORATUWA BRANCH

…….. …….

Accountant Manager

The above 'Deposit Certificate' shows that it is specifically prepared to acknowledge payments made by the public who wants to participate in the investment plan stated in the said advertisement. Further, the manager and the accountant who signed the said 'Deposit Certificate' had struck off the phrase "The account holder shall make further 20 monthly instalments of identical sums shown on the opposite page overleaf" as it has no application to the appellant since he has deposited a lump sum.

Hence, taking into consideration the terms set out in the said advertisement and the aforementioned 'deposit certificate', it is evident that the said advertisement contained all the terms and conditions that are required to formulate a contract and could be accepted without any negotiations.

However, it was held by the learned High Court Judge that the document marked 'V1' was the contract between the parties and not the advertisement marked 'P1'. Further, it was contended by the learned counsel for the respondent-bank that the document marked 'V1' was a mandate given

by the appellants to the respondent-bank with regard to the deposit made in the name of the 1st appellant and the respondent bank had the discretion to convert the said account opened by the 2nd appellant into a renewal fixed deposit.

As a banking practice, whenever interest rates vary, such variations are communicated to the depositors by the bank. It was submitted by the learned counsel for the respondent-bank that variation in interest rates was stipulated in the document marked and produced as 'V1' and the circulars marked and produced as 'V3' and 'V4' in evidence. Upon a perusal of the said documents, it is apparent that the said documents are formal documents maintained by the respondent-bank with respect to general deposit schemes. However, the deposit under consideration in the instant appeal falls under a special scheme, and thus, the documents marked 'V1', 'V3' and 'V4' have no application to the advertisement under reference though the 2nd appellant has signed 'V1'.

It is pertinent to note that the variation in interest rates stipulated in the said document and the circulars were not referred to in the advertisement marked 'P1'. Thus, it is not possible for the respondent-bank to offer totally different terms and conditions when the public goes to the bank to make a deposit under the scheme stated in the said advertisement. If the respondent-bank intended to offer different terms and conditions that were different from those of the said advertisement, it should have cancelled the said advertisement and informed the public regarding the new deposit scheme.

Moreover, the case of ***Partridge v Crittenden*** *(supra)* cited by the learned counsel for the respondent has no application to the instant appeal as the advertisement under reference was a unilateral offer made to the public at large and not an invitation to treat as submitted by him.

In the circumstances, I am of the opinion that the advertisement marked 'P1' was an offer made by the respondent bank to the public, and when the 2nd appellant deposited the sum of Rs. 5,400/- a binding contract was created between the respondent-bank and the appellants.

Therefore, I hold that the 1st appellant is entitled to a sum of Rs. 351, 519/- as agreed between the parties.

Conclusion

In light of the above, the following question of law is answered as follows;

Whether the learned High Court Judges have misconceived the legal definition for an offer and invitation to treat?

Yes

In the circumstance, the other questions of law need not be answered.

In view of the aforementioned answer given to the question of law stated above, and the reasoning given in this judgment, I set aside the judgment of the Civil Appellate High Court dated 13th of June, 2011 and affirm the judgment of District Court dated 3rd of June, 2005.

The appeal is allowed. No costs.

Judge of the Supreme Court

Kumudini Wickremasinghe, J

I Agree

Judge of the Supreme Court

A.L. Shiran Gooneratne, J

I Agree

Judge of the Supreme Court