

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

In the matter of an application for Leave to appeal under Section 5C (i) of the High Court of the Provinces (Special Provinces) Act No.19 of 1990 as amended by Act No. 54 of 2006.

**SC. Appeal No. 198/15**

SC(HC) CALA/Application  
No. 594/14

NWP/HCCA/KUR/89/2011(F)

D.C Kuliyaipitiya Case  
No. M/15408/06

ElectroRef Engineers (Pvt) Ltd.,  
No. 74, Lesley Ranagala Mawatha  
(Serpentine Road), Borella,  
Colombo 8.

**Defendant-Petitioner-Appellant-  
Petitioner-Appellant**

-Vs-

Sandalankawa Coconut Production  
& Industrial Co-operative Society  
Ltd.,  
Wetakeyyawa, Gonawila.

**Plaintiff-Respondent-Respondent-  
Respondent-Respondent**

**BEFORE** : Sisira J. de Abrew, J.  
K. T. Chitrasiri, J. &  
Prasanna S. Jayawardena, PC, J.

**COUNSEL** : I. S. de Silva with Sarath Walgamage for the  
Defendant-Petitioner-Appellant-Petitioner-Appellant.

Pulasthi Rupasingha for the Plaintiff-Respondent-  
Respondent-Respondent-Respondent.

**ARGUED &  
DECIDED ON** : 25.07.2016

**Sisira J. de Abrew, J.**

Heard both Counsel in support of their respective cases.

The main point urged by learned Counsel for the Defendant-Petitioner-Appellant (hereinafter referred to as the Defendant-Appellant) is that, the Plaintiff – Respondent – Respondent (hereinafter referred to as Plaintiff – Respondent) has failed to prove the payment made by him to the Defendant - Appellant. He further submits that the judgment of the District Court is not in accordance with Section 187 of the Civil Procedure Code.

We have perused the documents and heard submissions of the learned Counsel. Learned Counsel for the Plaintiff-Respondent is unable to point out to Court as to how the payment of 43,000 \$ was made to the Defendant-Appellant. He submits that he relies on the documents marked P7 and P8. We have perused the documents marked P7 and P8 but the said documents do not prove the fact that the payment had been made to the Defendant-Appellant. Prayer in the Plaint was to recover the full amount alleged to have been paid to the Defendant.

When we consider the totality of evidence led at the trial, we are unable to conclude that the Plaintiff-Respondent has paid the amount stated in the Plaint to the Defendant-Appellant.

In these circumstances, we hold that we are unable to

allow the judgment of the District Judge dated 27/03/2009 to stand. We therefore set aside the judgment of the learned District Judge and the judgment of the Civil Appellate High Court which affirmed the judgment of the District Judge.

We allow the appeal.

Case is sent back to the District Court for retrial.

Learned District Judge is directed to give priority and to conclude this case without delay.

In all the circumstances of this case, we do not make an order to pay costs.

Appeal allowed.

**JUDGE OF THE SUPREME COURT**

**K.T. Chitrasiri, J.**

I agree.

**JUDGE OF THE SUPREME COURT**

**Prasanna S. Jayawardena, PC, J.**

I agree.

**JUDGE OF THE SUPREME COURT**

Ahm