

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

Distilleries Company of Sri Lanka Limited,
No.110, Norris Canal Road,
Colombo 10.

Plaintiff

SC APPEAL NO: SC/APPEAL 125/2014

SC LA NO: SC/HCCA/LA/406/2013

CA NO: WP/HCCA/COL 84/2003 (F)

WP/HCCA/COL 84/2003A (F)

DC COLOMBO NO: 19147/ MR

Vs.

P.D.A. Gunawardena,
No.31/4, Thalakotuwa Garden,
Colombo 05.

Defendant

AND BETWEEN

P.D.A. Gunawardena,
No.31/4, Thalakotuwa Garden,
Colombo 05.

Defendant-Appellant

Vs.

Distilleries Company of Sri Lanka Limited,
No.110, Norris Canal Road,
Colombo 10.

Plaintiff-Respondent

AND NOW BETWEEN

P.D.A. Gunawardena,
No.31/4, Thalakotuwa Garden,
Colombo 05.

Defendant-Appellant-Appellant

Vs.

Distilleries Company of Sri Lanka Limited,
Presently known as
Distilleries Company of Sri Lanka PLC,
No.110, Norris Canal Road,
Colombo 10.

Plaintiff-Respondent-Respondent

Before: P. Padman Surasena, J.
Achala Wengappuli, J.
Mahinda Samayawardhena, J.

Counsel: R. Chula Bandara with G. Kodagoda for the Defendant-
Appellant-Appellant.
N.R. Sivendran with Renuka Udumulla for the Plaintiff-
Respondent-Respondent.

Argued on : 07.02.2022

Written submissions:

by Defendant-Appellant-Appellant on 10.11.2014 and
24.02.2022.

by Plaintiff-Respondent-Respondent on 28.10.2014 and
23.02.2022.

Decided on: 12.05.2023

Samayawardhena, J.

The plaintiff company filed this action against the defendant employee in the District Court of Colombo seeking an order for the return of the share certificate for 11,606 bonus shares in the plaintiff company and the sum of Rs. 7,776.02 paid as dividends on those shares on the basis that the share certificate was delivered and the dividend payment made by mistake. The defendant filed answer denying the plaintiff's claim and made a claim in reconvention seeking an order against the plaintiff for delivery of the original share certificate and damages in a sum of Rs. 1 million for failure to allot bonus shares and dividends after 1993.

After trial, the District Court answered the issues raised by the plaintiff against the plaintiff and the issues raised by the defendant in favour of the defendant and dismissed the plaintiff's action. The District Judge states in several places of the judgment that the defendant is entitled to bonus shares and dividends.

The District Judge answered *inter alia* the following issues in favour of the defendant:

10) Has the plaintiff any legal right or status to

(I) refuse to allot the 11606 shares allotted to the defendant by the Secretary to the Treasury?

(II) recall the 11606 Bonus Share Certificate No. 035411 issued to the defendant?

(III) recall the dividend of Rs. 7776/02 paid to the defendant in 1992?

(IV) instruct the Central Depository System that the Bonus Share Certificate No. 03541 for 11606 shares had been lost or stolen?

11) If issue No.10 is answered in favour of the defendant, is the act of the plaintiff wrongful and illegal?

12) If issues 10 and 11 are answered in favour of the defendant is the defendant entitled to

(i) an order of Court directing the plaintiff to issue the original share certificate in respect of the 11606 shares issued by the Secretary to the Treasury?

(II) an order of Court directing the plaintiff to withdraw the instructions given to the Central Depository System that the 11606 Bonus Share Certificate issued to the defendant was lost or stolen?

(III) an order of Court directing the plaintiff to issue to the defendant all dividends, bonus shares and rights issued by the plaintiff after 1993?

Having answered the above issues in favour of the defendant, the District Judge, at last, states thus:

පැමිණිල්ල නිෂ්ප්‍රභා කරමි. විත්තිකරු පැමිණිලිකාර සමාගම විසින් නිකුත් කල කොටස් 11606 සහ ප්‍රසාද කොටස් 11606 ටද, නිකුත් කල ලාභාංශ රු.7776.02 ටද හිමිකම් ලබයි. නමුදු, මෙම අධිකරණය තවදුරටත් ප්‍රකාශ කරනුයේ එදින සිට අද දක්වා ලාභාංශ

එනම් මෙම තීන්දුව දෙන අද දක්වා ලාභාංශ ගෙවීමට පැමිණිලිකාර සමාගම නොබැඳෙන බවටය. නිකුත් කළ කොටස් 11606 සහ ඒ මත නිකුත් කළ ප්‍රසාද කොටස් 11606 ට විත්තිකරු හිමිකම් ලබන අතර, සෙන්ට්‍රල් ඩිපොසිටරි සිස්ටම් හි පැමිණිලිකාර සමාගම විසින් ඉදිරිපත් කළ පැමිණිල්ල පැමිණිලිකාර සමාගම විසින් ඉල්ලා අස් කර ගත යුතු බවටද මෙම අධිකරණය නියෝග කරනු ලබයි.

පැ.6 මත විත්තිකරුට නිකුත් කළ ලාභාංශයන් නැවත ලබා ගැනීමට පැමිණිලිකරුට අයිතියක් නොමැති බවට මෙම අධිකරණය තීරණය කර ඇත. නමුදු හිඟ ලාභාංශ සඳහා විත්තිකරු හිමිකම් නොලබන අතර, නිකුත් කළ කොටස් හෝ ඒ මත වර්තමාන අගය ලැබීමට විත්තිකරු හිමිකම් ලබන බවට මෙම අධිකරණය ප්‍රකාශ කරයි.

This means the plaintiff need not pay dividends on those shares from 1993 until the date of the judgment. The District Judge is silent on damages although she answered that issue (issue No. 12 quoted above) in favour of the defendant.

Both parties appealed to the High Court of Civil Appeal against the judgment.

In the petition of appeal, the defendant sought the following reliefs from the High Court:

- (i) to vary that part of the judgment to entitle the defendant-appellant to obtain all rights and dividends from the inception of the action without limiting it to after the date of judgment,
- (ii) to award damages in a sum of rupees one million (Rs.1,000,000) being damages suffered by him for not being able to sell or deal with his shares,
- (iii) to award costs and such other reliefs as to the Court shall seem meet.

The High Court dismissed the appeal of the plaintiff. In respect of the appeal of the defendant, the High Court says counsel for the defendant informed Court at the argument that he does not pursue the claim for damages. Therefore the High Court has rightly not considered the claim for damages. I quoted above the reliefs sought by the defendant before the High Court. The claim for damages is the second relief sought by the defendant. That is the claim not pursued by the defendant at the argument. The High Court judgment is silent about the first relief – the dividend issue – which the District Court denied from 1993 till the date of the judgment.

The plaintiff did not appeal against the judgment of the High Court to this Court but the defendant did. Although this Court granted leave to appeal on all three questions of law stated in paragraph 17(a), (b) and (c), at the argument before this Court, learned counsel for the defendant informed Court that the defendant confines himself to the question of law stated in 17(b), which reads as follows:

Have the Judges of Civil Appeal High Court erred in law in holding that the petitioner is entitled to all shares under the two share certificates but failing and or not giving a decision whether or not the petitioner is entitled to the declared dividends attached to the said shares?

The defendant claims that dividends were given to all other shareholders but denied to him, except for the year 1993. It is not the contention of the plaintiff at the trial or before this Court that dividends were not approved by the Board of Directors and shareholders at the annual general meetings and therefore the defendant is disentitled to them. The only submission made by learned counsel for the plaintiff at the argument was that the defendant in the prayer to the answer sought damages instead of dividends and the defendant withdrew that claim before the High Court and therefore

the defendant is not entitled to dividends. I am unable to agree with that line of argument.

A judgment has to be understood holistically, not piecemeal. The defendant sought dividends for his shares by way of issues and the Court answered those issues in the affirmative. Therefore the plaintiff cannot say that the defendant did not claim dividends but only damages. The District Court held that the defendant can retain paid dividends in a sum of Rs. 7776.02 until 1993 and that the defendant is entitled to dividends after the date of the judgment but not entitled to dividends from 1993 until the date of the judgment. No basis or reason whatsoever was given for this by the District Court. A Court cannot come to such a conclusion without giving reasons. The High Court failed to address that issue in the judgment possibly by oversight. I set aside the finding of the District Court which denies dividends for a specified period and answer the question of law above-quoted in the affirmative.

The District Court shall enter decree recognising the defendants' entitlement not only to shares but also to dividends on those shares, without limiting it to take effect from the date of the judgment. The defendant is not entitled to damages but entitled to costs in all three courts.

The judgments of the District Court and the High Court are varied to that extent. The appeal is allowed with costs.

Judge of the Supreme Court

P. Padman Surasena, J.

I agree.

Judge of the Supreme Court

Achala Wengappuli, J.

I agree.

Judge of the Supreme Court