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

In the matter of an application for Revision against the Judgment of the learned judge of the Commercial High Court dated 24.1.2006 made in HC (Civil) case No.17/2004(1)

Peoples Bank
No.75, Sir Chittampalam A Gardiner Mawatha
Colombo2.

Plaintiff-Petitioner

SC CHC 29/2009
SC (HC)LA 7/2009
HC Colombo (HC Civil)17/2004 (01)

Vs

1. Ocean Queen Marine(pvt) Ltd,
No.227/03, Jampettah Street, Colombo13.
2. Robert Peiris.
No.227/03, Jampettah Street, Colombo13.

3. Emmanuel Ranjith Arulanandan
No60/20 Church Street, Colombo 15
4. Sivapalan Weerasingham
No.70/33, Rock House Lane, Modara, Colombo 15
5. Pothupitiyaga Nandasena Fernando
No.70/33, Rock House Lane, Modara, Colombo 15
6. Sellapperumage Mahindasiri Fernando
No.29, Jaya mawatha, Keselwatta, Panadura.

Defendants-Respondents

Before : Eva Wanasundera PC, J
Sisira J de Abrew J
Anil Gooneratne J

Counsel : Shanki Parthalingam President's Counsel with Hiran Jayasuriya for the Plaintiff Petitioner
Chandana Prmatilake for the 2nd Defendant Respondent
Argued on : 19.10.2015
Decided on : 28.1.2016

Sisira J de Abrew J.

The 1st Defendant Respondent is a limited liability company and all times material to the transaction that took place in this case, the 2nd to 6th Defendants-Respondents (hereinafter referred to as the 2nd to 6th Respondents) have acted as Directors of the 1st Defendant Respondent Company (hereinafter referred to as the 1st Respondent). The 1st Respondent obtained from the Plaintiff Petitioner (hereinafter referred to as the Petitioner Bank) a sum of Rs.500,000/- as a loan to purchase a Trawler Boat. When the above loan was granted, the 1st Respondent signed a promissory note as security and the 2nd to 6th Respondents signed a guarantee bond [marked as P6 in evidence] securing the repayment of the loan granted by the Petitioner Bank to the 1st Respondent. As the 1st Respondent failed and neglected the repayment of the loan, the Petitioner Bank filed a case in the Commercial High Court of Colombo against the 1st to the 6th Respondents seeking, inter alia, a judgment in a sum of Rs. 5,150,108/49. Upon summons being served on the respondents, the 2nd Respondent appeared in court and filed the answer. It has to be noted here that only the 2nd Respondent appeared in court on summons. As the 1st Respondent and 3rd to 6th Respondents failed to appear in court, the case was fixed exparte against them. Upon conclusion of the trial, the learned trial Judge, by his judgment dated 24.1.2006, granted relief prayed for in the plaint only against the 1st Respondent. The learned trial Judge did not grant relief claimed against the 2nd to 6th Respondents. The learned trial Judge dismissed the case against the 2nd to 6th Respondents.

Being aggrieved by the said judgment, the Petitioner Bank made an application to this Court for Special Leave to Appeal bearing No. SCLA 30/2006. Whilst the Special Leave to Appeal Application was pending in this Court, the judgment in Ceylease Financial Services Ltd Vs Sriyalatha and Another SC/CHC/(Appeal) 48/2004 now reported in [2006] 2 SLR 169 (Ceylease case) was pronounced on 11.12.2006 by this Court. Thereafter the petitioner bank, on 22.1.2007, informed this Court that in view of the judgment pronounced in SC/CHC/(Appeal) 48/2004 (supra) the Petitioner Bank could not proceed with SCLA 30/2006. This Court relying on the said submission dismissed the said Special Leave to Appeal Application. After delivery of the judgment in the Ceylease case, this Court, on 26.1.2008, delivered judgment in SC44/2007and SC45/2007 Seylan Bank Ltd Vs Samdo Macky Sportswear (Pvt) Ltd and Others [now reported in (2008) 1 SLR76]. Thereafter the Petitioner Bank filed the present **application in revision** seeking to set aside the judgment of the trial court (High Court) dated 24.1.2006. This Court, by its order dated 4.11.2009, granted leave to appeal on questions of law set out in paragraph 23 (a), (b) ,(c) and (d) of the petition which are reproduced below.

1. Is the judgment of the learned Judge of the Commercial High Court dated 24.1.2006 dismissing the action of the Petitioner against the 2nd to 6th Respondents contrary to law?
2. Is the Guarantee Bond marked P6 in evidence, duly stamped?
3. Has the learned Judge of the Commercial High Court erred in law and misdirected himself in rejecting the Guarantee Bond P6 as evidence?

4. Are the 2nd to 6th Respondents liable jointly and severally to pay the Petitioner the monies due owing and payable by the 1st Respondent to the Petitioner?

It has to be noted here that this is the 2nd occasion that the Petitioner Bank seeks to set aside the judgment of the trial court which dismissed the action of the Petitioner Bank against 2nd to 6th Respondents. It is interesting to find out the basis on which the learned trial Judge dismissed the action of the Petitioner Bank against the 2nd to 6th Respondents. The learned trial Judge dismissed the case against the 2nd to 6th Respondents on the ground that the guarantee bond (P6) had not been properly stamped as set out in regulations made by the Minister of Finance under Section 69 of the Stamp Duty Act No. 43 of 1982 (published in Govt. Gazette No.1119/7 dated 14.1.2000). The said regulations read as follows.

"The regulations made by the Minister of Finance under Section 69 of the Stamp Duty Act No 43 of 1982 and published in the Gazette Extraordinary No.224/3 of December 20, 1982 as last amended by regulations published in the Gazette Extraordinary No.1020/14 of March 25, 1998 are hereby further amended with effect from the midnight February 14/15th,2000 in part I of the Schedule hereto, by the deletion of item 7(a) and the substitution therefor, of the following item:-

	Column I	Column II Rs: Cts
7(a).	Bond, pledge, bill of sale or mortgage for any definite and certain sum of money affecting any property other than any aircraft registered under the Air navigation Act, (Chapter 365)-	
	(i) where such bond pledge, bill of sale or mortgage is for a sum of Money not exceeding Rs.100,000	

	for every Rs. 1000 or part thereof	2	00
(ii)	where such bond pledge, bill of sale or mortgage is for a sum of money exceeding Rs.100,000		
	On the first Rs.100,000	200	00
	On every Rs.1000 or part thereof in excess of Rs.100,000	5	00

The Guarantee Bond marked P6 only bears only a Rs.100/- stamp. Therefore it appears that guarantee bond marked P6 has not been stamped in accordance with the said regulations. The learned trial Judge, in his judgment, has observed that although the Petitioner Bank was given the opportunity of correcting this mistake it did not make use of the said opportunity on the ground that there was no stamp deficiency in the said guarantee bond. The learned trial Judge finally decided not to consider the said guarantee bond as evidence. He therefore dismissed the case of the Petitioner Bank against the 2nd to 6th Respondents. The learned trial Judge delivered the said judgment on 24.1.2006. It appears that the view taken up by the learned trial Judge in his judgment is in line with the judgment of the Supreme Court in Ceylease Financial Services Ltd Vs Sriyalatha and Another [2006] 2SLR 169 (Ceylease case) delivered on 9.12.2006. This Court in the Ceylease case observed the following facts. “The appellant instituted action against the respondents seeking to recover certain sum of money based on three guarantees and indemnity documents. At the trial when the evidence of the plaintiff’s witness was given the plaintiff appellant sought to mark the guarantee and indemnity. This was objected to by the defendant-respondent on the ground that the said guarantee and the indemnity have not been properly stamped. The High Court after the inquiry into the objection upheld the objection of the defendant-respondent. It was contended by the plaintiff appellant that the guarantee and indemnity sought

to be marked was not a bond." Justice Shirani Bandaranayake (Justice Amaratunga and Justice Marsoof agreeing) held thus:

1. In considering the document in question what is necessary would be to look to the substance of it in order to identify whether that would come within the meaning of a Bond.
2. Guarantee and the indemnity given by the defendants-respondents is security for the facility granted in terms of the lease agreement they had entered into. They had entered into an agreement to pay a fixed sum of money at a definite time and thus the said document falls into the meaning of a Bond.
3. It is apparent that a bond which is an instrument under seal whereby one person binds himself to another for the payment of a specified sum of money either immediately or at a fixed future date could include a guarantee bond and or indemnity bond.
4. The appellant was entitled to rectify the deficiency of the stamp duty with the payment of penalty.
5. Though sufficient time and opportunity was given to the appellant to rectify the deficiency of stamp duty on the guarantee and indemnity he had not taken any steps in that regard.
6. Where an instrument has to be admitted in evidence and if it is not duly stamped the deficiency has to be cured prior to the instrument being marked in evidence.
7. The person who draws, makes or executes the relevant instrument pertaining to a lease agreement is the leasing company and therefore under and otherwise there is an agreement to the contrary the liability of paying the stamp duty would be with the leasing company.

It is also to be noted that the regulations are made in terms of Section 69 of the stamp Duty Act and the rule of this court is to give effect to the said provisions as it is the bounden duty of any court and the function of every judge to impart justice within the given parameters."

Learned Counsel who appeared for the Petitioner Bank in the Special Leave to Appeal Application [SCLA (HC) No. 30/2006] which sought to set aside the judgment of the learned trial Judge dismissing action of the Petitioner Bank against the 2nd to 6th Respondents, had submitted to the Supreme Court that he could not proceed with said Special Leave to Appeal Application in view of the judgment of the Ceylease case (supra). Now learned President's Counsel who appeared for the Petitioner Bank in the present case contended that he could seek to set aside the judgment of the learned trial Judge in view of the subsequent judgment of the Supreme Court in the case of Seylan Bank Ltd Vs Samdo Mackey Sportswear (Pvt) Ltd and Another (Seylan Bank case) [2008] 1SLR 76 delivered on 26.6.2008 wherein Justice Shirani Thilakawardene (SN Silva CJ and Justice Somawansa agreeing) held thus:

1. Stamp Duty Act imposes a pecuniary burden on persons, and it has to be subject to strict consideration. There is no room for intention, construction or equity about duties or taxation.
2. A bond in the context of the Stamp Duty Act is an instrument where the primary or principal covenant is to create an obligation to pay money, defeasible on the happening of the specified event and binds his property, as security for the debt.

In case of the guarantee bond, the term providing for guarantor liability is not the principal covenant between the parties, but merely a condition subsequent to primary obligation.

The obligation to pay is in the form of a penalty that comes into operation, if and only if the proposed obligation of the principal debtor is violated. The arrangement contemplated by the guarantee bond is merely a transaction where the obligation to pay money arises as a consequence of the commission of breach of the principal debtor obligation.

3. Inherent in the monetary obligation of a 'bond' contemplated by section 7(a) is that such obligation is for an ascertained sum of money. Such a requirement is a necessity given that the value of the stamp duty to be paid depends upon the slab of the amount or value secured. Given the inherently indeterminate nature of the guarantors respective payment obligations under the guarantee bond, such an instrument cannot be construed as the type of bond referred to in section 7(a). As such the guarantee bond does not warrant stamp duty as bond under the Stamp Duty Regulations."

Judicial decision in the Ceylease case has been decided by a three judge bench of the Supreme Court and judicial decision in the Seylan Bank case has also been decided by a three judge bench of the Supreme Court. Therefore the judicial decision in the Seylan Bank case could not overrule the judicial decision in the Ceylease case. In considering the contention of learned President's Counsel appearing for the Petitioner Bank in the present case, it is necessary to consider whether the legal principles enunciated in the Ceylease case have been taken away by the judgment in the Seylan Bank

case. In considering this contention it is important to take into account the following passages of the judgment in Seylan Bank case [2008] 1SLR 76 at pages 98-99.

"The matter to be determined in this case arises out of an appeal against the Commercial High Court order, which held, in response to an attempt by the appellant to submit a Guarantee Bond into evidence in each action, that (i) the Guarantee Bond (marked P9 in the appellant's affidavits for the actions, dated 18th January 2006 and 24th May 2006, respectively, and hereinafter referred to as 'Document P9') was not sufficiently stamped and (ii) the petitioner would be afforded a final opportunity of stamping the said document by 20th September 2007"

"Document P9 did not at the time of the creation of the principal covenant, seek to secure or refer **to any property** in other words it was not a bond that bound the property for the payment of money" [emphasis added] [page 100].

"The arrangement contemplated by document P9 is merely a transaction where the obligation to pay money arises as a consequence of the commission of breach of the Principal Debtor's obligation" [page101].

"However, **the decision in the Ceylease Case is inapplicable to, and therefore not determinative of, the present matter at hand** as the facts of the Ceylease Case are clearly distinguishable in a very material and relevant manner from the facts of the present actions before this Court. **The Ceylease Case is distinguishable as the finance company in that had entered into a bond with the security of the property – more particularly a vehicle – that was mortgaged and which could be considered movable property. No such arrangements exist in the current actions** and suggest their

inclusion within Section 7 of the Stamp Duty Regulations" [emphasis added] [Page 102-103].

It is therefore seen that the judgment in the Seylan Bank case itself clearly states that the decision in the Ceylease case has no application to that case (Seylan Bank case) as the facts are different. The judgment in the Seylan Bank case clearly states that the Ceylease case is distinguishable as the finance company in that case had entered into a bond regarding the security of the property more particularly a vehicle. Therefore it appears that the principles enunciated in the Ceylease case have not been taken away by the decision in the Seylan Bank case. When I consider all these matters, I hold the view that the principles enunciated in the Ceylease case are still in operation. If this is the legal situation, what is the basis on which the Petitioner Bank for the 2nd time moves the Supreme Court to set aside the judgment of the trial court which dismissed the case of the Petitioner Bank against the 2nd to 6th Respondents? There is absolutely no basis. On this ground alone the present Revision Application filed by the Petitioner Bank should be dismissed.

Guarantee Bond P6 only bears Rs.100/- stamp. According to the regulations made under Stamp Duty Act which I have earlier referred to, the guarantee bond has not been properly stamped. In my view if the Stamp Duty Act or regulations made thereunder or any other law specifies that a document should be stamped, such a document cannot be produced in evidence without being properly stamped. In the present case, P6 (Guarantee Bond) has not been properly stamped. In other words it has not been stamped in accordance with the regulation made under the Stamp Duty Act. Therefore P6 could not be produced in evidence. Thus the decision of the

learned trial Judge is correct. The principles adopted by the learned trial Judge in his judgment have been later affirmed by the Supreme Court in the Ceylease case (supra). I have earlier held that the principles enunciated in the Ceylease case have not been taken away by the judicial decision in the Seylan Bank case (supra). When I consider all these matters, I hold that the decision of the learned trial Judge remains as the correct decision even after the delivery of the judgment in the Seylan Bank case (supra). Therefore it is clear that there are no errors in the judgment of the learned trial Judge. When I consider all the above matters, I hold the view that there are no errors in the judgment of the Supreme Court in SCLA 30/2006. If there are no errors in both the judgments, an application for correction of errors of the judgments does not arise for consideration. In view of the aforementioned matters, the present Revision Application of the Petitioner Bank should fail.

In the Special Leave to Appeal Application filed by the Petitioner Bank, the Petitioner Bank had moved the Supreme Court to set aside a part of the judgment of the trial court. This is the part of the judgment whereby the learned trial Judge dismissed the action of the plaintiff (the Petitioner Bank) against the 2nd to 6th defendants (2nd to 6th Respondents). When the Supreme Court, by its order dated 22.1.2007, dismissed Special Leave to Application of the Petitioner Bank it refused to set aside the said part of the judgment of the trial court. Thus refusal by the Supreme Court to set aside the said part of the judgment is in operation even now. If the Supreme Court is to grant relief claimed by the Petitioner Bank in present Revision Application, the Supreme Court will have to act in revision to set aside its own order made on 22.1.2007. If this court now sets aside the said order of the Supreme Court dated 22.1.2007, then it can be interpreted to say that the

judgments of the Supreme Court are not final. The Supreme Court is a court of last resort in appeal. There is finality in its judgments. This view is supported by the judgment in the case of Ganeshanantham Vs Vivienne Goonewardene and three others [1984] 1SLR 319 wherein the Supreme Court held:

"The Supreme Court is a Court of last resort in appeal and there is finality in its judgment whether it is right or wrong. That is the policy of the law and the purpose of Chapter XV of the Constitution".

Can the Supreme Court act in revision and set aside its own order? Answer to this question is found in the following judicial decisions.

In Ganeshanantham Vs Vivienne Goonewardene and three others [1984] 1SLR 319 the Supreme Court held thus:

(1) The Supreme Court has no jurisdiction to act in revision of cases decided by itself. None of the provisions of the Constitution expressly conferring jurisdiction confer such a jurisdiction on it. Nor has the Legislature conferred such a jurisdiction by law. The Supreme Court is a Court of last resort in appeal and there is finality in its judgment whether it is right or wrong. That is the policy of the law and the purpose of Chapter XV of the Constitution.

(2) As a superior Court of record the Supreme Court has inherent powers to correct its errors which are demonstrably and manifestly wrong and where it is necessary in the interests of justice. Decisions made per incuriam can be corrected. These powers are adjuncts to existing jurisdiction to remedy injustice - they cannot be made the source of new jurisdictions to revise a judgment rendered by that court.

In Jeyaraj Fernandopulle Vs Premachandra Silva and others [1996] 1SLR 70 the Supreme Court (five judge bench decision) held as follows:

1. *When the Supreme Court has decided a matter, the matter is at an end and there is no occasion for other judges to be called upon to review or*

revise a matter. The Supreme Court is a creature of statute and its powers are statutory. The Court has no statutory jurisdiction conferred by the Constitution or by any other law to rehear, review, alter or vary its decision. Decisions of the Supreme Court are final.

2. *As a general rule, no Court has power to rehear, review, alter or vary any judgment or order made by it after it has been entered.*
3. *A Court has no power to amend or set aside its judgment or order where, it has come to light or if it transpires that the judgment or order has been obtained by fraud or false evidence. In such cases relief must be sought by way of appeal or where appropriate, by separate action, to set aside the judgment or order. The object of the rule is to bring litigation to finality.*
4. *However all Courts have inherent power in certain circumstances to revise an order made by them such as -*

   (i) An order which has not attained finality according to the law or practice obtaining in a Court can be revoked or recalled by the Judge or Judges who made the order, acting with discretion exercised judicially and not capriciously.

   (ii) When a person invokes the exercise of inherent powers of the Court, two questions must be asked by the Court.
   (a) Is it a case which comes within the scope of the inherent powers of court?
   (b) Is it one in which those powers should be exercised?

   (iii) A clerical mistake in a judgment or order or some error arising in a judgment or order from an accidental slip or omission may be corrected.

   (iv) A Court has power to vary its own orders in such a way-as to carry out its own meaning and where the language is doubtful, to make it plain or to amend it where a party has been wrongly named or described but not if it would change the substance of the judgment.

(v) A judgment against a dead party or non-existent Company or in certain circumstances a judgment entered in default or of consent will be set aside.

(vi) The attainment of justice is a guiding factor.

(vii) An order made on wrong facts given to the prejudice of a party will be set aside by way of remedying the injustice caused.

I have earlier held that the judgments of the trial court and the Supreme Court [in SCLA 30/2006] are correct and that there are no errors in both the judgments. When I consider all these matters, I hold that there is no merit in the Revision Application filed by the Petitioner Bank and it should be dismissed. In view of the above conclusion reached by me, I answer the questions of law raised by the Petitioner Bank in the negative.

For the above reasons, I dismiss the Revision Application filed by the Petitioner Bank with costs.

Judge of the Supreme Court.

Eva Wanasundera PC J

I agree.

Judge of the Supreme Court.

Anil Gooneratne J

I agree.

Judge of the Supreme Court.

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