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

Sabaragamuwa University of Sri Lanka, Belihuloya.
1st Defendant-Respondent-Appellant

SC/APPEAL/61/2018
WP/HCCA/RAT/66/2015 (FA)
DC BALANGODA M/2900

Vs.

Malevige Wimaladasa De Silva,
118/B, Pitawela Watta,
Gampola Road, Gelioya.
Plaintiff-Appellant-Respondent

Prof. I.K. Perera,
Vice Chancellor of Sabaragamuwa University,
31/5, A.D.M. Kolabage Mawatha,
Nawala Road, Nugegoda.
2nd Defendant-Respondent-Respondent

Before: Hon. Justice E.A.G.R. Amarasekara
Hon. Justice Kumudini Wickramasinghe
Hon. Justice Mahinda Samayawardhena

Counsel: Rasika Dissanayake for the Defendant-Appellant.
Thishya Weragoda with Chamodi Wijeweera for the Plaintiff-Respondent.

Argued on: 03.12.2024

Written Submissions on:

By the Appellant 16.05.2018 and 16.01.2025.
By the Respondent 08.08.2018 and 20.12.2024

Decided on: 25.02.2025

Samayawardhena, J.

The plaintiff filed this action in the District Court of Balangoda seeking, *inter alia*, a declaration that the contract entered into between the plaintiff and the defendant university marked P9, regarding a construction project at the university, was breached by the defendant; the recovery of a sum of Rs. 23,804,815.00 based on the three bills submitted by the plaintiff to the defendant marked P12, P14 and P15; and damages in several forms. The defendant sought the dismissal of the plaintiff's action and made a claim in reconvention to recover the excess amount paid to the plaintiff. After trial, the District Court rejected the claims of both parties predominantly on the basis that neither party had sufficiently established their claims, and dismissed the action.

On appeal by the plaintiff to the High Court of Civil Appeal of Ratnapura, the High Court set aside the judgment of the District Court and entered judgment in favour of the plaintiff for a sum of Rs. 12,395,554.98. This appeal with leave obtained by the defendant is against the judgment of the High Court.

The High Court, after analysing the evidence, came to the finding that:

> *The facts stated above strongly suggest that the bills were a sham.*

Having come to that strong finding, the High Court proceeded to enter judgment for the plaintiff in a sum of Rs. 12,395,554.98 on the basis that:

> *However, with regard to the 2nd bill, beside the lapse of the defendants, there is an unequivocal admission made by the defendants. As I have stated above, by P17 Registrar of the 1st defendant university has unconditionally admitted bill No.2, referring to its amount as well. Furthermore, he has undertaken the payment of the said sum once funds are received. Hence, in my view, defendants are not entitled to go back from their own admission and challenge the bill later.*

The claim of the plaintiff on the second bill is for a sum of Rs. 14,000,952.00. The High Court decided to grant the full sum of Rs. 14,000,952.00 based on P17 but, after deducting the amounts already paid to the plaintiff, concluded that the balance payment due was Rs. 12,395,554.98.

> *For the reasons stated above I am of the view that the Defendants are liable to pay the Plaintiff the sum of Rs. 14,000,952.00 in the 2nd bill. However, Plaintiff has admitted that firstly he received Rs. 200,000/= for the bills tendered by him. Again he has received Rs. 300,000/= (pages 141 and 142 of the appeal brief). In re-examination he has stated the exact amount as Rs. 305,400/=. Therefore, an aggregate of Rs. 505,400/= has to be deducted from the 2nd bill. Then the amount due is Rs. 13,695,552/=. The Plaintiff himself has admitted in evidence that he received an advance payment of Rs. 1,299,997.02, at the time the contract was awarded (page 141 of the appeal brief). This amount has to be deducted and then the amount due is Rs. 12,395,554.98.*

In my view, the High Court did not analyse the evidence relating to P17 in its proper perspective. If I may reiterate, after making the strong finding that the second bill was a sham, the High Court nevertheless accepted the claim on the second bill solely on the basis that P17 contains an "unequivocal" and "unconditional" admission by the defendant of "*bill No. 2, referring to its amount as well*". This constitutes a serious misdirection of fact, which vitiates the judgment.

It is undisputed that the plaintiff's claim on the second bill is for a sum of Rs. 14,000,952.00. However, P17 refers to "bill No. 2" for a sum of Rs. 1,774,774.60, not Rs. 14,000,952.00 Thus, if at all, the defendant admitted liability only for Rs. 1,774,774.60, not Rs. 14,000,952.00. The claim in the second bill is significantly greater than the amount mentioned in P17, which is over twelve million rupees. The High Court gravely erred in fact when it stated that the defendant had admitted payment of the full amount in the second bill by P17, "referring to its amount as well".

The next question is whether there is an unequivocal and unconditional admission made by the defendant to pay Rs. 14,000,952.00 or Rs. 1,774,774.60 by P17. P17 reads as follows:

SABARAGAMUWA UNIVERSITY OF SRI LANKA
P.O. Box 02, Belihuloya, 70140, Sri Lanka.
Tele: 045-23178, 045-87814 Fax: 045-23128

My No: *Your No:*

M/S M.W de Silva
Registered Building Contractors.

Dear Sir,

CONSTRUCTION OF THE APPLIED SCIENCE BUILDING FOR SUSL

This has reference to your bill No. 2 on the above construction for Rs.1,774,774.60.

I regret to inform you that we are unable to settle the above bill due to the financial constraints.

Since this matter has been referred to the Treasury and the Authorities concerned we hope that we will get sum released from the Treasury and once the money is received will be able to settle the dues as soon as possible.

Sgd/T.K.W.T. Thalagune
Registrar

Copy: Bankers to the contractor

During cross-examination, the plaintiff was questioned about P17. According to the plaintiff, P17 was issued by the Registrar of the university at his request to present to the Bank in order to prevent the Bank from taking action against the plaintiff for non-payment of dues. In other words, it has been given for a different reason. Although P17 states, "Copy: Bankers to the Contractor", it lacks clarity. The plaintiff in the evidence-in-chief stated that a copy of this letter was not sent to the Bank by the university, but that he personally presented it to the Bank. The letter has no reference number. It is undated. The sum mentioned in the letter is an arbitrary sum, not based on the second bill, or any other bill or document. The plaintiff's evidence on P17 makes this position clear:

ප්‍ර : පැ.17 කියලා ලේඛනයක් ගරු අධිකරණයට ඉදිරිපත් කලා? (පැ.17 පෙන්වයි) මහත්මයා මේවනවිට අධිකරණයට ඉදිරිපත් කලා? එතකොට මේ ලිපිය මහත්මයාට විශ්ව විද්‍යාලයේ රෙජිස්ට්‍රාර් වරයා, ලේඛකාධිවරයා දුන්නා? මේකෙ තියෙන්නේ ඔබගේ බිල අනාගතයේ දෙනවා කියන සම්බන්ධය?

උ : ඔව්.

ප්‍ර : මේ පැ.17 කියන ලිපිය දුන්නේ කාගේ ඉල්ලීම පිටද?

උ : මගේ.

ප්‍ර : ඇයි ඉල්ලුම් කලේ?

උ : බැංකු වලින් සල්ලි අරන් තිබුනා. බැංකු කරදර කලා.

ප්‍ර : මොනවාහරි කරලා හරි ගෙවන්න තීරණය කලේ නැහැ ?

උ : 2වන බිලට ආව. කිව්වා වැඩ කරන්න සල්ලි ආවම දෙන්නම් කිව්වා. ඒ අතරේ 3වන බිල දැම්මා. බැංකුවෙන් ගෙදරටත් ආවා. මිනිස්සුන්ට ගෙවන්න හැටියක් නැහැ. කරුණු කියලා රෙජිස්ට්‍රාර්වරයාට ලිව්වා බැංකුවට ලිපියක් දෙන්න මේ සල්ලි හමුවුනාම සල්ලි ගෙවන්නම් කියලා. ඒ අනුව දුන්න ලිපිය.

ප්‍ර : මූලික සාක්ෂියේදී කිව්වා මේ ලේඛකාධිවරයා පොරොන්දු වෙලා තියෙනවා අංක 2 බිල මත මුදල් ගෙවන්න?

උ : ඔව්.

ප්‍ර : මහත්මයා ඔය 2වෙනි බිල්පත මගින් ඉල්ලා සිටියා. කොච්චරද ඉල්ලා සිටි මුදල? 14,000,952 ක්?

උ : ඔව්.

ප්‍ර : නමුත් පැ. 17 හි 1වන ඡේදය බලන්න? (කියවයි) රු. 1,774,774.60 ගෙවනවා කියලා?

උ : මේ බිල දුන්නේ බේරෙන්න බැරිකමට බැංකුවට දෙන්න. නමක් ගමක් කිසි දෙයක් නැතිව දැනට ඔයා ගිහින් බේරගන්න කියලා.

The High Court did not consider this evidence at all which explains the true nature of P17. I accept that if the defendant had unconditionally accepted the full amount in the second bill by P17, the plaintiff would be entitled to recover that sum from the defendant without further proof. However, there is no unequivocal admission made by the defendant to pay Rs. 14,000,952.00 or Rs. 1,774,774.60 to the plaintiff by P17. This was the sole ground on which the High Court set aside the judgment of the District Court and allowed the appeal of the plaintiff.

Learned counsel for the plaintiff sought to argue that P17 was not marked “subject to proof” and therefore it cannot be given a different interpretation at a later stage. P17 was marked from the proper custody.

There is no question about the authenticity of the document. The defendant does not deny the issuance of P17, but the defendant's position is that it was issued for a different purpose. The defendant or this Court does not intend to give a different interpretation to P17. It was the High Court which gave a different interpretation to it.

On the other hand, merely because a document was marked without any objection does not mean that the Court must accept it for all intents and purposes. If Courts are to adopt such an approach, it would encourage the prevailing unhealthy practice of some lawyers moving to mark every document "subject to proof" as a routine. Similarly, merely because a document is marked "subject to proof" does not mean that it cannot be regarded as evidence unless it is proved by calling witnesses. For instance, when a document is marked by the author himself, and the opposite party moves to have it marked subject to proof, there is no need to call witnesses to prove it. Whether or not a document is admissible in evidence, and the extent of its admissibility, should not depend on whether it was marked "subject to proof". It should be decided at the conclusion of the trial, taking into account all the facts and circumstances of the case. I discussed this matter in *Sanjeewa Fernando v. Somawathie Perera* (SC/APPEAL/1/2025, SC Minutes of 10.02.2025).

Leave to appeal in this case was granted on several questions of law and the first of which is whether the High Court of Civil Appeal erred in law by granting a sum of Rs. 12,395,554.98 based on the second bill. I answer this question in the affirmative. As such, there is no need to address the other questions of law. The judgment of the High Court cannot be allowed to stand.

I set aside the judgment of the High Court dated 02.06.2016 and restore the judgment of the District Court dated 03.06.2015 and allow the appeal. Let the parties bear their own costs.

Judge of the Supreme Court

E.A.G.R. Amarasekara, J.
I agree.

Judge of the Supreme Court

Kumudini Wickremasinghe, J.
I agree.

Judge of the Supreme Court