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

In the matter of an appeal to the Honourable Supreme Court of the Democratic Socialist Republic of Sri Lanka

J B Dissanayake
No. 44/13, Dodandeniya
Matale

Plaintiff

SC Appeal 50/2014
CA 904/2000 (F)
DC Colombo 18292/MR

Vs

Seemasahitha Keells Tours
(Pudgalika) Samagama
Correct Name
Keells Tours (Private) Limited
No.429 Ferguson Road
Colombo 15

Defendant

AND BETWEEN

Seemasahitha Keells Tours
(Pudgalika) Samagama
Correct Name
Keells Tours (Private) Limited
No.429 Ferguson Road
Colombo 15

Defendant-Appellant

Vs

J B Dissanayake

No. 44/13, Dodandeniya
Matale

Plaintiff-Respondent

AND NOW BETWEEN

Seemasahitha Keells Tours
(Pudgalika) Samagama
Correct Name
Keells Tours (Private) Limited
No.429 Ferguson Road
Colombo 15

Defendant-Appellant- Appellant

Vs

J B Dissanayake
No. 44/13, Dodandeniya
Matale

Plaintiff-Respondent- Respondent

Before : Sisira J De Abrew J
Priyanthe Jayawardena PC J
Vijith Malalgoda PC J

Counsel : Harsha Soza PC Rajinda Perera with
for the Defendant-Appellant-Appellant

Shamir Zavahir for the Plaintiff-Respondent-Respondent

Argued on : 29.6.2017

Written Submission
Tendered on : 8.5.2014 by the Defendant-Appellant-Appellant

23.4.2015 by the Plaintiff-Respondent-Respondent

Decided on : 14.09. 2017

Sisira J De Abrew J.

The Plaintiff-Respondent-Respondent (hereinafter referred to as the Plaintiff-Respondent filed action in the District Court to recover a sum of Rs.250,000/- as damages from the Defendant-Appellant-Appellant (hereinafter referred to as the Defendant-Appellant) on the basis that the Defendant-Appellant violated the lease agreement entered between the Plaintiff-Respondent and the Defendant-Appellant. The learned District Judge, by judgment dated 13.11.2000, held in favour of the Plaintiff-Respondent. Being aggrieved by the said judgment the Defendant-Appellant appealed to the Court of Appeal. The Court of Appeal, by its judgment dated 7.5.2013, dismissed the appeal. Being aggrieved by the said judgment of the Court of Appeal, the Defendant-Appellant has appealed to this court. This Court, by its order dated 27.3.2014, granted leave to appeal on the questions of law set out in paragraphs 14(a),(b),(c),(d) and (e) of the petition of appeal dated 17.6.2013 which are set out below.

1. Has the Court of Appeal erred in failing to consider that there is acceptable evidence in this case which clearly shows that the Defendant has terminated the said Lease Agreement (P1) with one (1) calendar month's notice?

2. Has the Court of Appeal failed to consider that in terms of the provisions of the said lease Agreement (P1) written notice of termination is not necessary to validly terminate the said Lease Agreement (P1)?
3. Has the Court of Appeal erred in failing to appreciate that on the facts and circumstances of this case no damages are payable to the Plaintiff by the Defendant?

4. In any case, has the Court of Appeal erred in failing to appreciate that the maximum damages payable to the Plaintiff is a sum not exceeding Rupees Thirty Thousand [Rs.(LKR)30,000/=]?
5. Has the Court of Appeal erred in failing to consider that a clause permitting payment of the monthly lease rental in lieu of a calendar month's notice need not be expressly stipulated where a calendar month's notice is prescribed as a method of terminating that contract, and that no question of liquidated damages or penalty arises?

The facts of this case may be briefly summarized as follows. The Plaintiff-Respondent leased his vehicle No.32-6273 to the Defendant-Appellant for a period of two years commencing from 6.7.1995 to 5.7.1997. The monthly rental was Rs.30,000/- Clause 10 of the lease agreement reads as follows.

> *"One calendar months notice will be given to either party for handing back or withdrawal of the vehicle."*

It is therefore seen from the above clause that if the Defendant-Appellant wanted to give back the vehicle he has to give one months notice to the Plaintiff-Respondent and if the Plaintiff-Respondent wanted to withdraw the vehicle he too has to give one months notice to the Defendant-Appellant. The Plaintiff-Respondent, in his evidence states that on 6.10.1995, when he visited the office of the Defendant-Appellant, he was requested by the Defendant-Appellant to take back the vehicle. He claims that the Defendant-Appellant did not give him one months notice as stipulated in clause 10 of the lease agreement and that therefore the Defendant-Appellant has violated the lease agreement. The Defendant-Appellant claims that he, on 4.9.1995, gave one months notice to the Plaintiff-Respondent over the phone and that the Plaintiff-Respondent took the vehicle from

the custody of the Defendant-Appellant on 6.10.1995. He therefore claims that he had given one months notice as stipulated in clause 10 of the lease agreement. Samantha Rohan Jayasinghe, the Executive Officer of the Defendant-Appellant's company admitted in evidence that the Defendant-Appellant terminated the lease agreement (page 812 of the brief).

The most important question that must be decided in this case is whether the Defendant-Appellant terminated the lease agreement as per clause 10 of the lease agreement. Did the Defendant-Appellant give one month's notice before handing back the vehicle? I now advert to these questions. If the Defendant-Appellant gave one months notice as stipulated in clause 10 of the lease agreement, he should have raised an issue on this point. It has to be noted here that the Defendant-Appellant did not raise any issue on this point. Further when the Plaintiff-Respondent gave evidence, the Defendant-Appellant did not suggest to the witness that he (the Defendant-Appellant) gave notice over the phone on 4.9.1995. When I consider all the above matters I hold that the Defendant-Appellant had not given one months notice to the Plaintiff-Respondent as stated in clause 10 of the lease agreement and that the Defendant-Appellant had violated the lease agreement.

Learned President's Counsel for the Defendant-Appellant contended that even if the Defendant-Appellant violated the lease agreement, the Plaintiff-Respondent is only entitled to one month rental (Rs.30,000/-). I now advert to this contention. Is there any clause in the lease agreement that in the event of the lease agreement being violated by the Defendant-Appellant, the Plaintiff-Respondent is entitled only to Rs.30,000/-. This question has to be answered in the negative as there is no such clause in the lease agreement. For the above reasons, I reject the contention of learned President's Counsel for the Defendant-Appellant. When the Defendant-

Appellant terminated the lease agreement without notice to the Plaintiff-Respondent, he would suffer damages. The Plaintiff-Respondent has claimed Rs.250,000/- as damages. When considering damages it is important to consider a passage from the book titled 'The Law of Contracts by CG Weeramanthry Vol. 11 page 925' which reads as follows.

> *"The award of damages is based upon the general principle that a sum of money to be given in reparation of the damages suffered should, as nearly as possible, be the sum which will put the injured party in the position he would have enjoyed had he not sustained the wrong for which the award of damages is made, and that it should include both actual loss and loss of profit. Damages for breach of contract must, in other words, place the plaintiff, "so far as money can do it, in the same position as he would have been in had the contract been performed."*

When a party to a contract violates the contract, the innocent party cannot be allowed to suffer. The party violated the contract must pay damages to the innocent party to compensate the loss suffered by him as a result of the violation of the contract. In such a situation the court has the power to award compensation. I have elsewhere in this judgment held the Defendant-Appellant had violated the contract. Considering all these natters I hold that the Defendant-Appellant should pay compensation to the Plaintiff-Respondent. The Plaintiff-Respondent has claimed Rs.250,000/-. But he has failed to state any basis for the calculation of the above amount. When the above amount is considered, it appears that the Plaintiff-Respondent has not asked for compensation for the entire period of two years. When the Defendant-Appellant without any notice to the Plaintiff-Respondent requested him to take back the vehicle it was not possible for him to find a person

who would take the vehicle on rent or lease immediately. But it cannot be said that he would not be able to give the vehicle on rent or lease during the entire period of two years. In my view, rental for five months (Rs.30,000/-x5= Rs.150,000/-) would be justified. I therefore hold that the Plaintiff-Respondent is entitled to Rs.150,000/-. Subject to the above variation of the amount of compensation, I affirm the judgment of the Court of Appeal and dismiss the appeal of the Defendant-Appellant with costs. The learned District Judge is directed to amend the decree accordingly. In view of the conclusion reached above I answer the above questions of law in the negative.

Appeal dismissed

Judge of the Supreme Court.

Priyantha Jayawardena PC J

I agree.

Judge of the Supreme Court.

Vijith Malalgoda PC J

I agree.

Judge of the Supreme Court.