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

In the matter of an appeal under and in terms of Section 5(1) of the High Court of the Provinces (Special Provisions Act) Act No. 10 of 1996.

Bank of Ceylon
No. 4,
Bank of Ceylon Mawatha,
Colombo 01.

DEFENDANT

SC Appeal No. SC/CHC/23/2008

Case No. HC (Civil) 167/2005 (1)

vs.

AraliyaImpex (Pvt) Ltd.
No. 69, Old Moor Street,
Colombo 12.

PLAINTIFF

AND NOW BETWEEN

AraliyaImpex (Pvt) Ltd.
No. 69, Old Moor Street,
Colombo 12

DEFENDANT – APPELLANT

vs.

Bank of Ceylon
No. 4,
Bank of Ceylon Mawatha,
Colombo 01
PLAINTIFF – RESPONDENT

Before: Priyantha Jayawardena PC, J
Murdu N.B. Fernando PC, J
S. Thurairaja PC, J

Counsel: Lakmini Amaratunga for the Defendant-Appellant

N. Wigneshwaran, Deputy Solicitor General with G.M. Gamage for the Plaintiff-Respondent

Argued on: 6th December, 2021

Decided on: 5th July, 2023

Priyantha Jayawardena PC, J

The Plaint

The plaintiff-respondent (hereinafter referred to as the "respondent bank") had instituted action in the District Court of Colombo to recover money given as an overdraft to the defendant-appellant (hereinafter referred to as the "appellant"). The respondent stated that the appellant had maintained a current account at the Gas Works branch of the respondent bank.

The respondent bank stated that, at the request of the appellant, it had provided an overdraft facility to the appellant on or about the 10th of October, 2000 at a rate of 30% interest per annum.

The respondent bank further stated that, as at 31st of July, 2003 the appellant had an outstanding amount of Rs. 1,829,489.21 and accrued interest of Rs. 1,212,909.98 to be paid to the respondent

bank. Hence, by the letter of demand dated 19th of August, 2002 the respondent bank had requested the appellant to pay the outstanding amount along with the interest due.

As the appellant failed to settle the said overdraft facility given to him, an action was instituted by the respondent bank in the District Court of Colombo to recover a sum of Rs. 3,042,398.29/- against the appellant on the 18th of December, 2003.

The Answer

Thereafter, the appellant filed its answer *inter alia* denying that a cause of action had been accrued to the respondent bank to sue the appellant.

Further, the following preliminary objections were raised in the answer filed by the appellant:

"(a) this Court has no jurisdiction to hear and determine this matter in that, the alleged cause of action falls within the 1st limb of schedule 1 to the High Court of the Provinces (Special Provinces) Act No. 10 of 1996.

(b) the Plaintiff does not have the authority to file this action.

(c) the Plaintiffs purported cause of action is prescribed in law."

The appellant further stated that it does not owe any money to the respondent and that the action should be dismissed.

Request to transfer the case to the Commercial High Court

On the 3rd of August, 2005 the appellant had made an application to the District Court to transfer the case to the Commercial High Court in terms of section 9 of the High Court of the Provinces (Special Provisions) Act, No. 10 of 1996, stating that the District Court has no jurisdiction to hear and determine actions where the monetary value of the action exceeds Rs. 3 million.

Having considered the said application, the learned District Judge allowed the said application and transferred the case to the Commercial High Court.

Proceedings before the Commercial High Court

The trial had commenced before the High Court, by making admissions and raising issues. After the respondent bank raised its issues, the appellant raised the following issues:

"18. As pleaded in paragraph 2 of the Answer, does the Plaintiff have the authority to file this action?

19. Has a cause of action accrued to the Plaintiff to sue the Defendant?

20. Does the Appellant have to pay the sum of money due to the Plaintiff as submitted in the Plaint?

21. Should the Respondent's case be dismissed if one or more or all of the above issues are answered in favour of the Appellant?"

Judgment of the Commercial High Court

After an *inter-parte* trial, the learned High Court Judge delivered the judgment in favour of the respondent bank and held, *inter alia*, that in terms of section 7 of the Prescription Ordinance No. 22 of 1871, as amended, the applicable prescription period to recover money lent without a written agreement is three years. Further, it was held that the prescription period is calculated starting from the date of the last payment. Moreover, according to the evidence led in the case, the last payment had been made on the 23rd of April, 2001. Therefore, since the instant case had been filed in the District Court on the 18th of December, 2003 within the stipulated period of three years, this case is not prescribed.

Appeal to the Supreme Court

Being aggrieved by the aforementioned judgment of the High Court, the appellant filed an appeal in the Supreme Court. At the hearing before the Supreme Court, the parties informed court that they would confine their submissions to the following ground of appeal referred to in paragraph (b) of the petition of appeal, which is as follows:

"(b) the learned Judge has not given sufficient thought to question of the action being prescribed in law"

Computation of time for the purpose of considering prescription

An action can be filed for a breach of an agreement/contract, whether the agreement/contract is in writing or not.

In respect of a written agreement, an action shall be filed within six years from the date of the breach of the said written agreement (from the date of the cause of action), in terms of section 6 of the Prescription Ordinance No. 22 of 1971 as amended by Act No. 2 of 1889 [hereinafter referred to as the Prescription Ordinance]. However, in the case of an unwritten agreement, an action should be filed within three years from the breach of the said agreement (from the date of the cause of action), in terms of section 7 of the said Ordinance.

In the instant appeal, it is common ground that the respondent bank had granted the overdraft facility to the appellant without a written agreement. Hence, section 7 of the Prescription Ordinance applies to the instant appeal.

Section 7 of the Prescription Ordinance states;

> *"No action shall be maintainable for the recovery of any movable property, rent, or mesne profit, or for any money lent without written security, or for any money paid or expended by the plaintiff on account of the defendant, or for money received by defendant for the use of the plaintiff, or for money due upon an account stated, or upon any unwritten promise, contract, bargain, or agreement, unless such action shall be-commenced within three years from the time after the cause of action shall have arisen."* [emphasis added]

Accordingly, the said section imposes a deterrent to institute action after three years from the time the money became due upon an unwritten agreement.

In the instant appeal, the appellant had made the last payment to repay the overdraft on the 23rd of April, 2001. Thereafter, the appellant had failed and/or neglected to pay the money due on the

overdraft. Hence, the cause of action arose on the 23rd of April, 2001, which is the date of default in the repayment of the overdraft given to the appellant by the respondent bank.

Further, because the overdraft facility was not granted based on a written agreement, the action ought to have been filed within three years from the 23rd of April, 2001 in terms of section 7 of the Prescription Ordinance. Thus, the respondent bank was required to institute the action on or before the 22nd of April, 2004.

The journal entries maintained by the District Court show that the plaint of the respondent bank was filed in the District Court on the 18th of December, 2003 which is within the three-year period stipulated in section 7 of the Prescription Ordinance.

When the District Court case was taken up in court on the 3rd of August, 2005 the appellant had made an application to the said court to transfer the case to the High Court established under the High Court of the Provinces Act (Special Provisions) Act No. 10 of 1996 [hereinafter referred to as the "High Court of the Provinces Act"] in terms of section 9 of the said Act on the basis that the District Court had no jurisdiction to hear and determine cases where the monetary value of the action exceeded Rs. 3 million (which was the applicable monetary limit at that time).

Accordingly, at the request of the appellant, the instant appeal was transferred to the Commercial High Court, and the said court had received the case record on the 3rd of August, 2005.

When the case was taken up for trial before the Commercial High Court, the learned counsel for the appellant raised an objection to the plaint on the basis that the cause of action pleaded in the plaint is prescribed in terms of section 7 of the Prescription Ordinance. The said objection was based on the fact that, the case was transferred to the Commercial High Court after three years from the date of the cause of action alleged in the plaint.

However, after an *inter-parte* trial, the learned High Court Judge had held that the cause of action pleaded in the plaint filed by the respondent bank was not prescribed in terms of the Prescription Ordinance as the case was filed in the District Court within three years from the date of the cause of action.

Hence, the issue that needs to be considered in the instant appeal is whether the date of institution of the action in the District Court or the date of transfer of the case from the District Court to the Commercial High Court should be taken into consideration in computing the prescription period.

Section 9 of the High Court of the Provinces Act provides for the transfer of cases to the Commercial High Court. It states as follows:

> *"Where there is evidence that the value of any action filed in any District Court is one that should have been filed in the High Court established by Article 154P of the Constitution exercising jurisdiction under section 2, the Judge shall record such fact and make order accordingly and thereupon the action shall stand removed to the appropriate Court."* [emphasis added]

The phrase *"the action shall stand removed to the appropriate Court"* in the above section 9 shows that if an action is filed in the District Court which should have been filed in the Commercial High Court, the case stands transferred to the Commercial High Court by operation of law. Further, there is no legal provision in the said Act preventing the filing of an action in the District Court where the cause of action falls within the scope of the High Court of the Provinces Act.

Thus, if a case that falls under the provisions of the said High Court Act is filed in the District Court, the said court cannot reject the plaint on the basis that the plaint has been filed in the wrong court or on the basis that the District Court has no jurisdiction to entertain the plaint.

However, in such an instance, the District Court has no jurisdiction or power to hear and determine the case, including the granting of interim relief. Furthermore, the District Court should transfer such a case to the Commercial High Court in terms of section 7 of the said Act.

Hence, in computing the prescription period, it should be calculated from the date of the alleged cause of action and the institution of the action in the District Court and not from the date on which the case was transferred to the Commercial High Court.

As stated above, the journal entries maintained by the District Court show that the plaint was filed in the District Court on the 18th of December, 2003. As the respondent bank had filed the action in the District Court within the stipulated time under section 7 of the Prescription Ordinance, the cause of action pleaded in the plaint by the respondent bank is not prescribed.

The learned counsel for the appellant cited ***Hatton National Bank Limited v Helenluc Garments Ltd. and Others [1999] 2 SLR 365*** in support of her contention. However, the said judgment has no relevance to the instant appeal, as the said case relates to an overdraft given subject to a

mortgage bond furnished as security for the repayment of the money lent by the defendant. Further, in the said case, the cause of action arose on the date of the demand.

Further, the learned counsel for the appellant cited ***Mudiyanse v Siriya*** **23 NLR 285**, ***Kuluth v Mohamadu*** **38 NLR 48** and ***Amarasekara v Abeygunawardena*** **56 NLR 361** in support of her submissions.

The above two cases were filed in the District Court, which lacked jurisdiction to hear the said cases and therefore, the plaints were returned to be presented to the proper court by the said court in terms of section 47 of the Civil Procedure Code. However, in the instant appeal, the case was filed in the District Court and transferred to the Commercial High Court in terms of section 9 of the High Court of the Provinces Act.

Furthermore, section 47 of the Civil Procedure Code has no application to a case filed under the said High Court of the Provinces Act. Therefore, the cases cited by the counsel for the appellant have no application to the instant appeal.

Moreover, the learned Deputy Solicitor General cited ***Merchant Bank of Sri Lanka v Buddhadasa and Another*** **[2002] Bar Association Law Report Vol. IX, Part II, 64** and ***Seylan Bank Limited v Intertrade Garments (Private) Limited*** **[2005] 1 SLR 80** in support of his submissions. Both of those cases are in respect of the requirement to demand money lent on a written agreement. In the instant appeal, there was no requirement to demand the money as it was not lent on a written contract or agreement, and therefore, there was no request to demand the repayment of that money given and advanced to the appellant. Therefore, the above cases also have no relevance to the instant appeal.

Conclusion

Thus, the following ground of appeal should be answered as follows:

"The learned Judge has not given sufficient thought to question of the action being prescribed in law"

No

In the circumstances, I am of the view that the learned Judge of the Commercial High Court has correctly decided that the cause of action pleaded in the plaint is not prescribed.

Accordingly, the appeal is dismissed with costs. I order a sum of Rs. 100,000 as costs.

Judge of the Supreme Court

Murdu N.B. Fernando PC, J

I Agree Judge of the Supreme Court

S. Thurairaja PC, J

I Agree Judge of the Supreme Court