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

Disanayaka Mudiyanselage
Chandrapala Meegahaarawa,
Karandagamada,
Arawa.
Plaintiff

SC APPEAL NO: SC/APPEAL/112/2018
SC LA NO: SC/HCCA/LA/183/2017
HCCA BADULLA NO: UVA/HCCA/BA/09/2015/L
DC BADULLA NO: M/6700

Vs.

Disanayaka Mudiyanselage
Samaraweera Meegahaarawa,
Karandagamada,
Arawa.
Defendant

AND BETWEEN

Disanayaka Mudiyanselage
Samaraweera Meegahaarawa,
Karandagamada,
Arawa.
Defendant-Appellant

Vs.

Disanayaka Mudiyanselage
Chandrapala Meegahaarawa,
Karandagamada,
Arawa.
Plaintiff-Respondent

AND NOW BETWEEN

Disanayaka Mudiyanselage
Chandrapala Meegahaarawa,
Karandagamada,
Arawa.
Plaintiff-Respondent-Appellant

Vs.

Disanayaka Mudiyanselage
Samaraweera Meegahaarawa,
Karandagamada,
Arawa.
Defendant-Appellant-Respondent

Before: P. Padman Surasena, J.
S. Thurairaja, P.C., J.
Mahinda Samayawardhena, J.

Counsel: Mahinda Nanayakkara for the Plaintiff-Respondent-Appellant.
Malaka Herath for the Defendant-Appellant-Respondent.

Argued on: 24.02.2021

Further written submissions by the Appellant on: 08.03.2021

Further written submissions by the Respondent on: 10.03.2021

Decided on: 21.05.2021

Mahinda Samayawardhena, J.

The Plaintiff filed this action against the Defendant in the District Court of Badulla seeking to recover a sum of Rs. 872,000 with legal interest, on the basis that he sold 26,446.5 kg of paddy at a rate of Rs. 33 per kg to the Defendant in September 2009. According to the Plaintiff, at the time of the sale, the Defendant did not pay a single cent in cash but provided the Plaintiff with two post-dated cheques marked P1 and P2 – P1 for Rs. 20,000 and P2 for Rs. 850,000 – both of which were subsequently dishonoured. Although the action was not filed under the Bills of Exchange Ordinance or Chapter 53 of the Civil Procedure Code, the Plaintiff based his case on the aforesaid two cheques. The Defendant totally denies that he engaged in any paddy transaction with the Plaintiff and states that the Plaintiff was a money lender and that the Defendant borrowed Rs. 20,000 on P1, and P2 was additional security provided for the same. The Defendant sought dismissal of the Plaintiff's action. The District Court entered Judgment for the Plaintiff but, on appeal, the High Court of Civil Appeal set it aside and the appeal of the Defendant was allowed. Hence the Plaintiff before this Court. This Court granted leave to appeal to the Plaintiff on the following questions of law formulated by the Plaintiff:

(a) Is the judgment of the High Court of Civil Appeal wrong in law?

(b) Has the High Court of Civil Appeal failed to consider the fact that the District Court has considered all the ingredients which should be contained in a judgment as per section 187 of the Civil Procedure Code?

(c) Can the High Court of Civil Appeal dismiss the Plaintiff's action without setting aside the judgment of the District Court?

Let me consider these three questions one by one.

The first question of law formulated by the Plaintiff is broad and unspecific. It is not clear on what basis the Plaintiff says that the Judgment of the High Court of Civil Appeal is wrong in law. At the argument before this Court, learned counsel for the Plaintiff stated that the analysis of evidence by the District Court was correct whereas the analysis of evidence by the High Court was incorrect. In the facts and circumstances of this case, I do not think so. When the High Court stated the Plaintiff had not proved his case on a balance of probability and then opined that the Defendant's version was more probable than that of the Plaintiff, the High Court took *inter alia* the following matters into consideration:

(a) Admittedly, the Plaintiff is a money lender and the paddy transaction the Plaintiff speaks of is not believable.

(b) It is unlikely that a person seeking to buy a large stock of paddy would come without a rupee in cash but with two post-dated cheques.

(c) If the alleged paddy transaction is a single transaction which took place on one particular occasion, it was unnecessary for the Defendant to have provided two post-dated cheques – one for Rs. 20,000 and the other for Rs. 850,000 – instead of offering one post-dated cheque.

(d) The alleged paddy transaction took place in September 2009, but according to the document V6 dated 06.10.2010, the Defendant had not yet paid back a sum of Rs. 42,000 previously borrowed from the Plaintiff in 2006. Therefore, it is unlikely the Plaintiff would have sold the Defendant a large stock of paddy worth a sum of Rs. 872,734.50 on credit.

(e) Admittedly, the Defendant is illiterate. He can sign his name but cannot read or write. The Defendant admits his signature on the two cheques. The Plaintiff's own witness Susantha admitted in his evidence that he (Susantha) filled the cheques at the request of the Plaintiff and in the absence of the Defendant.

I cannot find fault with the analysis of the learned High Court Judge in deciding that the Plaintiff failed to prove his case.

Learned counsel for the Plaintiff accepts that if the Plaintiff fails to prove the paddy transaction, the Plaintiff's action shall fail. The finding of the High Court that on a preponderance of probability the paddy transaction was not proved is acceptable.

In the facts and circumstances of this case, the Defendant's version is more probable than that of the Plaintiff.

At the argument, learned counsel for the Plaintiff heavily relied on the failure of the Defendant to reply to the letter of demand sent prior to the institution of the action. Counsel vehemently submits that the Defendant is estopped from denying liability due to the failure to answer the letter of demand.

In business matters, if the party receiving a letter, email or the like, disputes the assertions contained in it, he must reply, for failure to do so can be regarded as an admission of the claim made therein.

In the oft quoted decision of *Saravanamuttu v. de Mel (1948) 49 NLR 529*, it was held:

> *In business matters, if a person states in a letter to another that a certain state of facts exists, the person to whom the letter is written must reply if he does not agree with or means to dispute the assertions. Otherwise, the silence of the latter amounts to an admission of the truth of the allegations contained in that letter.*

The following dicta of *Lord Esher M.R. in Wiedeman v. Walpole (1891) 2 Q.B. 534* was quoted with approval in *Colombo Electric Tramways and Lighting Co. Ltd v. Pereira (1923) 25 NLR 193* at 195:

> *Now there are cases—business and mercantile cases—in which the Courts have taken notice that, in the ordinary course of business, if one man of business states in a letter to another that he has agreed to do certain things, the person who receives that letter must answer it, if he means to dispute the fact that he did so agree. So, where merchants are in dispute one with the other in the course of*

> *carrying on some business negotiations, and one writes to the other, "but you promised me that you would do this or that", if the other does not answer that letter, but proceeds with the negotiations, he must be taken to admit the truth of the statement.*

The above has been quoted with approval in several cases, including *Seneviratne v. LOLC [2006] 1 Sri LR 230.*

However, I must add that although it is a general principle that failure to answer a business letter amounts to an admission of the contents therein, this is not an absolute principle of law. In other words, failure to reply to a business letter alone cannot decide the whole case. It is one factor which can be taken into account along with other factors in determining whether the Plaintiff has proved his case. Otherwise, when it is established that the formal demand, which is a *sine qua non* for the institution of an action, was not replied, Judgment can *ipso facto* be entered for the Plaintiff. That cannot be done. Therefore, although failure to reply to a business letter or a letter of demand is a circumstance which can be held against the Defendant, it cannot by and of itself prove the Plaintiff's case. The impact of such failure to reply will depend on the facts and circumstances of each case. *Vide* the Judgment of Weeramantry J. in *Wickremasinghe v. Devasagayam (1970) 74 NLR 80.*

In the instant case, there is no strong evidence in favour of the Plaintiff to support the alleged paddy transaction. It is admitted that the Defendant is illiterate and the Plaintiff is a money lender. Document V1 goes to prove that the Plaintiff had lent money to the Defendant prior to the alleged paddy transaction

and that loan remained unsettled. In the facts and circumstances of this case, the failure to answer the letter of demand P3 is not decisive.

The first question of law shall be answered in the negative.

The second question of law for me is meaningless. It is: "*the High Court of Civil Appeal failed to consider the fact that the District Court has considered all the ingredients which should be contained in a judgment as per section 187 of the Civil Procedure Code*". No argument in relation to the ingredients of a Judgment was advanced before the High Court by either party. The High Court did not consider such a matter in its Judgment; nor did the High Court set aside the Judgment of the District Court on the basis that the same did not contain all the requirements of a Judgment as per section 187 of the Civil Procedure Code.

This question shall be answered against the Plaintiff.

The third question of law is of a technical nature. The last paragraph of the High Court Judgment when translated into English reads: "*For the above-mentioned reasons, the Court decides to allow the appeal of the Defendant-Appellant. Accordingly, the appeal is allowed and the Plaintiff-Respondent's action is dismissed. No costs.*"

Learned counsel for the Plaintiff argues it is wrong to have dismissed the Plaintiff's action without setting aside the Judgment of the District Court. Although the High Court does not expressly state that it sets aside the Judgment of the District Court, the same is implicit in allowing the appeal of the Defendant-Appellant. After allowing the appeal, the High Court was correct, for the reasons set out in the Judgment, to have

stated that the Plaintiff's action in the District Court shall stand dismissed. Judgments need not be set aside on such flimsy technical grounds which have not prejudiced the substantial rights of the parties or occasioned a failure of justice.

I dismiss the appeal but without costs.

Judge of the Supreme Court

P. Padman Surasena, J.
I agree.

Judge of the Supreme Court

S. Thurairaja, P.C., J.
I agree.

Judge of the Supreme Court