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

SC/CHC/25/2009
Commercial High Court Case
No. HC/Civil/132/2006(1)

Ceylinco Development Bank Limited
No. 69, Janadhipathi Mawatha,
Colombo 01.

PLAINTIFF

Vs.

1. Janaka Kumara Elvitigala
   No. 850, Rukmale Road,
   Kottawa, Pannipitiya.

2. Gunasinghe Arachchige Jayanthi Mala
   No. 850, Rukmale Road,
   Kottawa, Pannipitiya.

DEFENDANTS

AND NOW BETWEEN

1. Janaka Kumara Elvitigala
   No. 850, Rukmale Road,
   Kottawa, Pannipitiya.

2. Gunasinghe Arachchige Jayanthi Mala
   No. 850, Rukmale Road,
   Kottawa, Pannipitiya.

DEFENDANTS-APPELLANTS

Vs.

1. Ceylinco Development Bank Limited
   No. 69, Janadhipathi Mawatha,
   Colombo 01.

PLAINTIFF-RESPONDENT

BEFORE: S.E. Wanasundera P.C., J.
Upaly Abeyrathne J. &
Anil Gooneratne J.

COUNSEL: Palitha Yaggahawita for the Defendants-Appellants

N. R. Sivendran with Ms. S. Somarathne
And Ms. A. Raman for the Plaintiff-Respondent

ARGUED ON: 09.09.2016

DECIDED ON: 13.10.2016

GOONERATNE J.

This is a direct appeal to the Supreme Court from the Judgment delivered on 31.07.2009 by the Commercial High Court of the Western Province exercising Civil Jurisdiction (Holden in Colombo). The action itself was based on

a hire purchase agreement of a vehicle. Plaintiff-Respondent namely Ceylinco Development Bank Limited, by Agreement marked P1 with the 1st Defendant-Appellant leased the vehicle in question on a monthly rental as agreed between the parties. The 2nd Defendant-Appellant was the guarantor to the said agreement. The 1st Defendant-Appellant defaulted in making payment in terms of the said agreement. The Plaintiff-Respondent by notice P2 had given notice of termination of the agreement and the agreement was accordingly terminated by letter P3. It is pleaded that notwithstanding the termination of the agreement the 1st Defendant-Appellant failed to return the vehicle in question as per the agreement and also failed to make the instalment payments.

In the Commercial High Court parties proceeded to trial on five (5) admissions and 34 issues. The learned High Court Judge after trial entered judgment in favour of the Plaintiff-Respondent. At the hearing before us the only point urged by learned counsel for the Appellants, was that the statement of account marked P6 (X3) and produced at the trial is incorrect, and the amounts reflected therein are not due and owing to the Plaintiff-Respondent. On the other hand, learned counsel for the Plaintiff-Respondent raised a preliminary objection before us that the Petition of Appeal filed of record is defective and bad in law and as such no relief could be granted in terms of the prayer to the petition i.e prayer to the petition refer to set aside a judgment dated

05.04.2007, whereas the judgment was delivered on 31.07.2009 and not on 05.04.2007. In fact this court in open court having perused the record found that the correct date of judgment was 31.07.2009. Therefore the point urged by learned counsel for the Plaintiff-Respondent was correct. This being a mistake the Appellant party could have corrected the prayer, since the body of the Petition of Appeal refer to the correct date of the Judgment of the High Court. It is either negligence or carelessness of the Registered Attorney for the Appellants. Under normal circumstances this court could have rejected the Petition of Appeal, there being no application to rectify such obvious error, within a reasonable time. This court is mindful of such objection and to the several authorities cited by learned Counsel for Plaintiff-Respondent, but permitted both parties to address court on the merits of the case.

The learned counsel for the Appellant was only able to urge the above points referred to above, by him in his submissions. We are not convinced on the point raised by the learned counsel for the Appellant. The proceedings in the High Court indicates that the Plaintiff-Respondent produced through their witness, documents marked P1 to P11 which includes the statement of Accounts marked P6 (X3) without any objection as and when the documents were produced and marked in court. Nor was there any objection at the closure of the Plaintiff-Respondent's case for leading in evidence documents P1 to P11.

Therefore we have to hold that the documents are proved for all purposes of the case in hand. That is the cursus curiae of the original court. Perusal of the evidence and the judgment of the High Court it is evident that the Plaintiff's evidence remains un-contradicted, on all material points. On a perusal of all the evidence transpired before the High Court I cannot find a valid acceptable defence placed before the trial court, even to consider the case of the Appellants. The trial Judge in her Judgment refer to the following material points which transpired in cross-examination of the 1st and 2nd Defendant. I would reproduce as follows that portion of the judgment of the learned High Court Judge for purpose of clarity.

> In the course of the cross-examination the 1st Defendant had admitted the signing of the document marked 'P1'. Further he admitted that the Plaintiff had explained the nature of the alleged transaction. The 1st Defendant had also admitted that he could not pay the instalments in terms of the agreement marked 'P1'. This Defendant had also admitted the receipt of the documents marked 'P3' and 'P4' sent by the Plaintiff. It is being viewed from his evidence that the 1st Defendant had accepted a sum of Rs. 665,000/- with the intention of selling the vehicle in question to a third party without the consent and knowledge of the Plaintiff. But it is the contention of the Defendants that the said vehicle in question had been robbed and he is not aware of the fact that the vehicle is in whose possession now.

she placed her signature to the above document only as a witness and not as a guarantor. It is also said that the 1st Defendant had used the above vehicle only for one year and thereafter it had been robbed and was never recovered. In the course of the cross examination the above Defendant had admitted that she placed her signature as a guarantor and the 1st Defendant had failed to pay the Plaintiff as per terms of the lease agreement. Further she admitted that the 1st Defendant had accepted a sum or Rs. 665,000/- from a third part in respect of the vehicle in question.

I observe that the transaction between parties and its characteristics of a hire purchase agreement, conclude that the contract had been breached by the Appellants. Plaintiff-Respondent delivered the vehicle to the Hirer (1st Defendant-Appellant) who took immediate possession. Credit facilities made available to Hirer, who made deposit but defaulted in paying the instalments. Hirer failed to purchase the vehicle by completing the payment of instalments and to comply with the other conditions of the agreement or to determine the hiring by returning the vehicle to the owner (Plaintiff-Respondent).

In all the facts and circumstances of the case in hand we see no basis to interfere with the Judgment of the High Court. As such Judgment of the High Court dated 31.07.2009 is affirmed. This appeal stands dismissed with costs.

Appeal dismissed.

JUDGE OF THE SUPREME COURT

S.E. Wanasundera P.C., J.

I agree.

JUDGE OF THE SUPREME COURT

Upaly Abeyrathne J.

I agree.

JUDGE OF THE SUPREME COURT