

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

Arpico Finance Company Limited,  
No. 146, Havelock Road,  
Colombo 05.

Plaintiff

**SC APPEAL NO: SC/APPEAL/107/2017**

**SC LA NO: SC/HCCA/LA/198/2016**

**HCCA NO: WP/HCCA/MT/135/2011 (F)**

**DC MT LAVINIA NO: 3034/00/M**

Vs.

1. Jayasinghe Chandrakeerthi Jayasinghe,  
No. 532/5, Elvitigala Mawatha,  
Colombo 05.
2. Chrishani Renuka Jayasinghe,  
No. 532/5, Elwitigala Mawatha,  
Colombo 05.

Defendants

AND BETWEEN

Arpico Finance Company Limited,  
No. 146, Havelock Road,  
Colombo 05.

Presently known as,

Associated Motor Finance Company PLC,  
No. 89, Hyde Park Corner,  
Colombo 02.

Plaintiff-Appellant

Vs.

1. Jayasinghe Chandrakeerthi Jayasinghe,  
No. 532/5, Elvitigala Mawatha,  
Colombo 05.
2. Chrishani Renuka Jayasinghe,  
No. 532/5, Elwitigala Mawatha,  
Colombo 05.

Defendant-Respondents

AND NOW BETWEEN

1. Jayasinghe Chandrakeerthi Jayasinghe,  
No. 532/5, Elvitigala Mawatha,  
Colombo 05.
2. Chrishani Renuka Jayasinghe,  
No. 532/5, Elwitigala Mawatha,  
Colombo 05.

Defendant-Respondent-Appellants

Vs.

Associated Motor Finance Company PLC,  
No. 89, Hyde Park Corner,  
Colombo 02.

Plaintiff-Appellant-Respondent

Before: S. Thurairaja, P.C., J.

Janak De Silva, J.

Mahinda Samayawardhena, J.

Counsel: Sandamal Rajapaksha for the Defendant-Respondent-Appellants.

Palitha Kumarasinghe, P.C., with Asanka Ranwala for the  
Plaintiff-Appellant-Respondent.

Argued on : 15.09.2022

Written submissions:

by the Defendant-Respondent-Appellants on 17.09.2018.

by the Plaintiff-Appellant-Respondent on 24.08.2017.

Decided on: 10.08.2023

Samayawardhena, J.

The plaintiff company filed this action in the District Court of Mount Lavinia against the two defendants seeking to recover a sum of Rs. 809,991.13 with interest arising out of the Lease Agreement marked P4. The defendants filed answer seeking dismissal of the plaintiff's action and made a claim in reconvention for a sum of Rs. 428,684 on unjust enrichment. After trial, the District Court dismissed the plaintiff's action as well as the defendants' claim in reconvention. Being dissatisfied with the judgment of the District Court, the plaintiff appealed to the High Court of Civil Appeal of Mount Lavinia. The High Court of Civil Appeal set aside the judgment of the District Court and entered judgment for the plaintiff. Hence this appeal by the defendants. This Court granted leave to appeal on the question whether the plaintiff is legally entitled to recover the balance due arising out of the Lease Agreement after its termination.

There is no dispute that the defendants entered into the Lease Agreement P4 dated 24.10.1997 with the plaintiff company. Under the terms of the Lease Agreement the defendant-lessees agreed to pay the plaintiff-lessor 48 monthly lease rentals of Rs. 48,219 each and take the Minor Passenger Bus on lease. Although the leased vehicle was in the possession of the defendants for 29 months, they only paid a total of Rs.

977,035 as rental fees. The defendants were admittedly in default (as seen from paragraph 14 of the answer and P8).

If there is a default, 4% monthly overdue interest is added to the amount due (as stated in item 5 of the schedule to the Lease Agreement).

Since arrears were not settled, the Lease Agreement was terminated by the plaintiff by P9 dated 27.03.2000 and the leased vehicle was repossessed and thereafter sold for a sum of Rs. 850,000 on 05.04.2000.

The position of the plaintiff is that as at 15.08.2000, the defendants were obliged to pay the plaintiff a sum of Rs. 809,991.13 (as seen from the statement of account marked P14).

The contention of learned counsel for the defendants before this Court is that, once the Lease Agreement is terminated, the plaintiff cannot recover future rentals but can only seek damages for the breach of contract. This is the crux of the matter.

In my view, this contention is unsustainable in view of the terms of the Lease Agreement the parties have agreed upon. Let me explain.

In terms of Article 5(1)(a) of the Lease Agreement, "*if Lessee fails to make due and effective payment of any rent as and when it falls due or of any other sum payable by Lessee as provided for in this Agreement after such sum becomes due and payable*", he is considered as a defaulter.

Article 5(2) reads as follows:

***"In the event of Lessee being in breach of this Agreement as aforesaid Lessor shall have the right to exercise one or more or all the following remedies without having to give any prior notice or demand to Lessee:-***

(a) *the Lessor to receive immediate payment from Lessee of a part or the entire amount of the total rent payable under this Lease Agreement for the full term of the lease and all other costs and expenses incurred by Lessor in this connection together with interest thereon at the rate specified in item (11) of the Schedule to this Agreement from the date of default less the amount of the rent paid by Lessee and duly received by Lessor under this Lease Agreement.*

(b) *to make a written demand to Lessee for the return of Property and to take possession of Property and to sell any or all of the said Property by public auction or private treaty without notice to Lessee or hold, use, operate, lease or otherwise dispose of or deal with such property as Lessor pleases. Lessee agrees that within 7 days of receipt of such written demand from Lessor for the return of Property, Lessee will return Property to Lessor in accordance with the provisions of Article 23 and if Lessee fails to return Property as aforesaid the provisions of Article 23 shall become applicable immediately.*

*Lessee further agrees that should Lessee fail to return Property to Lessor within 7 days of receipt of a written demand from Lessor for the return of Property, in the same condition Lessee received it, fair wear and tear excepted, Lessee will pay and will be liable to pay Lessor the market value of Property in fair and marketable condition.*

(c) *To terminate the Lease hereby created and to receive from Lessee compensation for all indirect and consequential damages including loss of profits and in particular loss of profits in the event of Lessor consequent to the termination of the Lease Agreement suffering loss as a result of being unable to re-let Property at a rental equivalent to the rental payable under this Lease Agreement.*

*(d) to exercise any other right or remedy available to Lessor in Law.*

This is repeated in the schedule to the Lease Agreement (which includes the payment plan) where it states: “*Failure to comply with any of the above provisions shall entitle Lessor to all or any of the remedies provided for in Article 5 hereof [quoted above].*”

Learned counsel for the defendants relies on Article 5(2)(c) quoted above to contend that, after the plaintiff terminated the Lease Agreement, the plaintiff can only seek compensation/damages for loss of profit, and the plaintiff is not entitled to recover the balance due amount in terms of the Lease Agreement. This argument presupposes that the balance due amount in terms of the Lease Agreement (a sum of Rs. 809,991.13 as at 15.08.2000) comprises only profit, but this has not been established.

In terms of Article 5(2)(a) quoted above, when there is a default in payment of any rent as and when it falls due or any other sum payable by the lessee, the lessor shall have the right to receive immediate payment from the lessee the entire amount of the total rent payable under the Lease Agreement for the full term of the lease. The lessor has the right to do it without terminating the Lease Agreement.

In terms of Article 5(2)(c), if the lessor terminates the Lease Agreement, the lessor shall have the right to claim compensation for all indirect and consequential damages including loss of profits. Indirect and consequential damages would not include damages which arise naturally upon the breach of the Agreement. Loss of future rentals to my mind is a natural consequence of the breach of the Lease Agreement. The issue of whether future rentals include profits, and what proportion of future rentals is attributable to profits, has not been, as I stated earlier, clarified before this Court.

Article 5(2)(5) is also relevant in this regard. It reads: “*Even if the remedies provided for in sub-paragraphs 2(a) and 2(b) of this Article have been taken by Lessor, Lessee shall not be relieved from any other liability under this Lease Agreement including liability for damages.*” This goes to show that, when there is a breach, a claim for damages has no direct bearing on the right of the lessor to claim the total rent payable under the Lease Agreement for the full term of the lease. It may be noted that, in the instant case, although the plaintiff has terminated the Lease Agreement, the plaintiff does not seek compensation or damages from the defendants.

Let us assume that the plaintiff seeks damages upon termination. Then Article 5(3) also becomes relevant. It reads: “*Lessee agrees that the sums due under this Article to Lessor are provided as liquidated damages for breach of contract and not as a penalty.*” Liquidated damages are pre-determined damages set at the time of entering into the contract upon reasonable prior estimation of the damage which is likely to occur to the injured party. Liquidated damages are meant to be compensatory rather than punitive. Learned counsel for the defendant does not say that this Article is a spurious one intended to disguise its true nature and purpose. Instead, learned counsel accepts that “*unconditionally accrued rights, fixed sums payable under the contract in respect of performance rendered prior to breach, and causes of action which have accrued because of a breach, are also unaffected by termination.*” As I stated earlier, in terms of Article 5(2)(a), a cause of action accrues to the lessor, before the termination of the Lease Agreement, to receive immediate payment from the lessee the entire amount of the total rent payable under the Lease Agreement for the full term of the lease when there is a default in payment of any rent as and when it falls due.

Let me re-emphasise that at the time of entering into the Lease Agreement, the parties have agreed to these terms. Although I accept that

freedom of contract is not absolute and enforcement is subject to countervailing reasons of public policy, illegality etc., the general rule is that, the parties must have the freedom to incorporate remedies into their terms of contract, and general principles would apply only in the event there are gaps.

Before I part with this judgment, let me explain the position taken up by the defendant in his answer when he claimed Rs. 428,684 from the plaintiff as a claim in reconvention. He admits that according to the Lease Agreement he had to pay 48 monthly instalments of Rs. 48,219 each and the total amount payable was Rs. 2,314,512 (Rs. 48,219 X 48=Rs. 2,314,512). He says he kept the vehicle 29 months and therefore he had to pay Rs. 1,398,351 (Rs. 48,219 X 29=Rs. 1,398,351) but paid only Rs. 977,035 and therefore the balance due at the end of 29 instalments was Rs. 421,316 (Rs. 1,398,351-Rs.977,035=Rs.421,316). Then he says the vehicle was sold for Rs. 850,000 and when Rs. 421,316 is deducted from that amount, the balance money of Rs. 428,684 should be returned by the plaintiff to him. It is on this basis the defendant makes a claim in reconvention for a sum of Rs. 428,684. At the trial, the defendant raised issues and the plaintiff's witnesses were cross-examined on this basis. This is a layman's approach and definitely not an approach to be adopted in the interpretation of a Commercial Lease Agreement, to say the least.

Defaults on Lease Agreements can have a detrimental effect on finance companies, as they may result in a loss of revenue and potentially impact the company's ability to make further investments. In order to ensure the financial stability of such companies, it is important to uphold the terms of Lease Agreements and permit finance companies to recover balance dues to the extent legally possible in the Agreement. This also supports the broader economic goals of maintaining a stable and prosperous financial sector.



For the aforesaid reasons, on the facts and circumstances of the case, I hold that the termination of the Lease Agreement does not prevent the plaintiff from claiming the defendants the total rent payable under the Lease Agreement for the full term of the lease.

I answer the question of law on which leave to appeal was granted in the affirmative and dismiss the appeal without costs.

However, since it has taken a very long time to see a finality of this matter from the date of the High Court judgment, for which the defendants are not singularly responsible, on the facts and circumstances of this particular case, I think, it is fit and proper and equitable to limit the reliefs of the plaintiff to the date of the High Court Judgment. I am persuaded to adopt this approach by following the observations made by Prasanna Jayawardena J. in *Seylan Bank Limited v. Epasinghe* (SC/CHC/39/06, SC Minutes of 01.08.2017). Let the District Court enter judgment accordingly.

Judge of the Supreme Court

S. Thurairaja, P.C., J.

I agree.

Judge of the Supreme Court

Janak De Silva, J.

I agree.

Judge of the Supreme Court