

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

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

Kalutota Investment and Leasing
Limited,
No. 49,
Hudson Road,
Colombo 03.

Presently at,
No. 562/16,
Nawala Road,
Rajagiriya.

SC (CHC) Appeal No: 48/17

Plaintiff

**Commercial High Court
No: 10/12/MR**

Vs.

1. Loku Galappaththige Susantha,
No. 77/5,
Ranmal Place,
Hewagama,
Kaduwela.
2. Ariyawathi Galappaththi,
No. 77/5,
Ranmal Place,
Hewagama,
Kaduwela.

Defendants

AND NOW BETWEEN

1. Loku Galappaththige Susantha,
No. 77/5,
Ranmal Place,
Hewagama,
Kaduwela.
2. Ariyawathi Galappaththi,
No. 77/5,
Ranmal Place,
Hewagama,
Kaduwela.

Defendants-Appellants

Vs.

Kalutota Investment and Leasing
Limited,
No. 49,
Hudson Road,
Colombo 03.

Presently at,
No. 562/16,
Nawala Road,
Rajagiriya.

Plaintiff-Respondent

Before : **P. Padman Surasena, J**
Mahinda Samayawardhena, J
K. Priyantha Fernando, J

Counsel : Samantha Vithana with Kalana
Kodikara instructed by Achini
Liyanadure for the 1st and 2nd
Defendants-Appellants.

Thanuka Nandasiri for the Plaintiff-
Respondent.

Argued on : 17.10.2023

Decided on : 17.01.2024

K. PRIYANTHA FERNANDO, J

1. This is an appeal from the judgment of the Commercial High Court of *Colombo* dated 12.06.2017. The 1st and the 2nd Defendants-Appellants (hereinafter referred to as the appellants) were aggrieved by the decision of the learned Judge of the Commercial High Court of *Colombo* in dismissing the claim in reconvention sought by the appellants with costs.

Facts in brief

2. The respondent in the instant case is an Investment and Leasing Company. The respondent has been the owner of the Mitsubishi Pajero Jeep type vehicle bearing Registration No. HD-4206. On 02.04.2008, the appellants have entered into a lease agreement [P-1/V-1] bearing No. CO/02/04/2008/Q-46 with the respondent company in respect of the vehicle aforementioned, for a sum of Rs. 2,500,000 for a period of three years (from 02.04.2008 to 02.04.2011). The lease in question was to be paid off by the appellants in 36 monthly installments.
3. It was the position of the respondent that, according to the agreement [P-1/V-1], the appellants were to pay a monthly installment of Rs. 98,611.11 for a period of 36 months. Therefore, the appellants were to pay Rs. 3,549,999.96 (Rs. 98,611.11 x 36) to the respondent in terms of the lease agreement. The respondent states that, the agreement provides that the failure to pay the monies due would result in the breach of the said lease agreement. It also provides that, in breach, the respondent company is entitled to terminate the lease agreement and recover loss of profit, all rentals, interests

payable, damages and compensation and may also recover the possession of the said vehicle from the appellants. Further, the appellants have agreed under the agreement [P-1/V-1] that a monthly interest of five percent would be charged as penalty in the instance there is a delay on the part of the appellants in settling the payments due.

4. The respondent states that, although the period for which the lease agreement was entered into has expired, the appellants have failed to duly settle the monthly lease payments and defaulted the lease agreement and has also failed to hand over the possession of the said vehicle back to the respondent. Admittedly, the appellants have settled a sum of Rs. 2,887,259 to the respondent. The computer-generated statement of accounts maintained by the respondent has been produced as [P-2/V-2]. Consequently, the respondent has sent a letter of demand [P-3] to the appellants requesting the appellants to pay a sum of Rs. 1,864,316.31 and to hand over the possession of the vehicle to the respondent. The respondent states that the appellants have failed to comply with the letter of demand. The appellants however deny receiving the document [P-3].
5. Thereafter, the respondent instituted action against the appellants in the Commercial High Court of *Colombo* on 06.01.2012 to recover a sum of Rs. 1,864,316.31, an interest of five percent upon that sum from the date of instituting proceedings until the payment in full, the possession of the vehicle or a sum of Rs. 5,000,000 which was the valuation of the vehicle as at the date of filing the action, and for costs and further relief. While the case has been pending, on 06.07.2012, the respondent has taken possession of the vehicle which the appellants valued at Rs. 6,000,000 at the time.
6. The appellants in their answer dated 17.07.2012, prayed that the plaint of the respondent be dismissed and made a claim in reconvention to recover Rs. 5,337,259.04 with legal interest from 06.07.2012 (the date on which the respondent recovered the possession of the vehicle) to be recovered from the respondent until the payment in full, together with costs and

further relief. Thereafter, respondent has filed a replication dated 24.09.2012 seeking to dismiss the claim in reconvention of the appellants and for further costs and relief.

7. When the case was taken up for trial, the respondent informed Court that they wish to withdraw the plaint. The appellants informed Court that they would proceed with the claim in reconvention.
8. The learned Judge of the Commercial High Court of *Colombo* by judgment dated 12.06.2017 held in favour of the respondent and dismissed the appellants' claim in reconvention with costs, stating that the appellants have failed to prove the claim in reconvention. Thereafter, the appellants preferred the instant appeal to this Court seeking that the claim in reconvention of the appellants be allowed.
9. At the argument of this appeal, the main points in contention were based on the issues of compound interest and unjust enrichment. I will first deal with the issue of compound interest.
10. It was submitted by the learned Counsel for the appellants that the learned High Court Judge has failed to take into consideration that the respondent company in their Statement of Accounts [P-2/V-2] has included compound interest instead of calculating interest on reducing balance method as stated in Sri Lanka Accounting Standard No. 17 [V-4] issued by the Institute of Chartered Accounts of Sri Lanka. It was further submitted that in cross examination, the respondent's witness has clearly stated that the respondent company has not followed Sri Lanka Accounting Standard No.17 [V-4] in preparing the document [V-2/P-2].
11. The learned Counsel submitted further that, the learned High Court Judge has erred in ignoring the fact that compound interest cannot be charged for the subject of leasing facilities according to the Roman Dutch Law. The learned Counsel relied on the case of ***Mudiyanse v. Vanderpoorten [1922] 23 N.L.R. 342*** and submitted that Roman Dutch Law is the law

applicable to leasing facilities granted by financial companies in Sri Lanka which does not allow compound interest even in an instance where it is expressly stipulated.

12. His Lordship *Janak De Silva, J.* in the case of ***Harankaha Arachchige Menaka Jayasankha and another v. Standard Credit Lanka Limited S.C. (CHC) Appeal No. 72/2013 S.C. Minute 23.11.2023*** has dealt extensively on the issue of the applicability of compound interest in Sri Lanka.

*“...in **Mudiyanse v. Vanderpoorten [23 N.L.R. 342]** and **Obeyesekere v. Fonseka [36 N.L.R. 334]**, an authority relied on by the Appellants, where it was held that Roman-Dutch law does not allow compound interest even though expressly stipulated for.*

*Nevertheless, in **Abeydeera v. Ramanathan Chettiar [38 N.L.R. 389]**, it was held that in Ceylon (as it was then) compound interest may be recovered where the party charged has agreed to pay it. In **Marikar v. Supramaniam Chettiar (44 N.L.R. 409)** the majority held that compound interest is recoverable under the law of Ceylon, although the question of such a charge may be considered on the reopening of a transaction in terms of the Money Lending Ordinance. Section 5 of the Civil Law Ordinance was believed by the majority to have abolished the Roman-Dutch law rule against compound interest.*

*Weeramantry in **The Law of Contracts [Vol. 2, (Lawman (India) (Pvt.) Ltd., 1969 reprint in 1999), page 925]** clarified this position and stated:*

“The Roman Law prohibited compound interest so also the Roman Dutch Law did not allow compound interest even though expressly stipulated for, but the Roman Dutch law prohibition against compound interest is no longer in force in South Africa or in Ceylon.”

*The Court of Appeal in **Kiran Atapattu v. Pan Asia Bank Ltd. [(2005) 2 Sri.L.R. 276]** adopted this position.*

On the basis of the above authorities and the reasoning therein, I am of the opinion that compound interest is not prohibited in Sri Lanka.”

13. In light of the above, as the position stipulated in the case of ***Mudiyanse v. Vanderpoorten [1922] 23 N.L.R. 342*** has now been changed in Sri Lanka, it is my finding that the respondent company in the instant case has not acted contrary to law and are entitled to charge compound interest in respect of the leasing facility.

14. The learned Counsel for the appellants submitted that the learned Judge of the High Court has also failed to consider section 5 of the Introduction of Law of England Ordinance No. 05 of 1852, which does not permit to charge interest exceeding the capital amount. The learned Counsel relied on the case of ***Nimalrathna Perera v. Peoples Bank [2005] 02 SLR 67*** in support of this position.

15. Section 5 of the Introduction of Law of England Ordinance No. 05 of 1852 (“Civil Law Ordinance”) provides that,

“Provided that no person shall be prevented from recovering on any contract or engagement any amount of interest expressly reserved thereby or from recovering interest at the rate of twelve per centum on any contract or engagement, in any case in which interest is payable by law and no different rate of interest has been specially agreed upon between the parties, but the amount recoverable on account of interest or arrears of interest shall in no case exceed the principal.”

16. His Lordship *Janak De Silva, J.* in ***Harankaha Arachchige Menaka Jayasankha(supra)*** stated that,

*“The ambit of Section 5 of the Civil Law Ordinance was considered in *Fernando and Another v. Sillappen & Others [5 C.W.R. 301]* which was decided in 1918, where *Bertram C.J.* explained the meaning of the words “the amount recoverable on account of interest”. He did so after*

interpreting Section 192 of the Civil Procedure Code to provide for the adjustment of three sums, firstly, the principal sum, secondly, the interest on the principal sum up to the date of action, and in the third place, a supplementary sum in respect of interest from the date of action brought to the date of judgment.

In so far as the interest is concerned, Section 192 of the Civil Procedure Code allows the Court to award interest on the principal sum at the rate agreed between parties firstly, for any period prior to the institution of the action, and secondly, from the date of action to the date of the decree. Furthermore, the Court is competent to grant interest on the total amount decided upon from the date of the decree to the date of payment.

Bertram C.J. [ibid., page 303] took the view that the words “the amount recoverable on account of interest” in Section 5 of the Civil Law Ordinance did not apply to the aggregate amount made up of the two sums of “interest”, i.e., firstly, the interest due up to the date of action brought, and secondly, the interest due from the date of action brought to the date of judgment.

In other words, the prohibition in Section 5 of the Civil Law Ordinance applies only to the amount of interest due on the principal sum as at the date of the institution of the action.”

17. The appellants in the instant case have failed to show how the respondent company has charged interest exceeding the capital amount as at the date of instituting action. Therefore, it is my view that the position of the appellants is without merit.

18. Now I will consider the issue on unjust enrichment that has been advanced by the appellants. It was the submission of the learned Counsel for the appellants that the learned High Court Judge failed to consider that the appellants have paid Rs. 2,887,259 to the respondent in terms of the lease agreement [V-1] and that the respondent also recovered the value of the vehicle amounting to Rs. 6,000,000. It was submitted that the

learned High Court Judge has failed to consider that the respondent has recovered a sum of Rs. 8,887,259.00 against the recovery of the lease of Rs. 2,500,000 in terms of the lease agreement.

19. In terms of the lease agreement, 36 installments of Rs. 98,611.11 were to be paid which amounts to Rs. 3,549,999.96 (Rs. 98,611.11 x 36). It was submitted that, had the appellants complied with the lease agreement, the total monies to be recovered by the respondent would have been Rs. 3,549,999.96 of which the appellants have settled Rs. 2,872,240.99. Therefore, what was yet to be paid by the appellants to the respondent was Rs. 677,758.97 (Rs. 3,549,999.96- Rs. 2,872,240.99).
20. The learned Counsel submitted that, as the respondent has recovered a sum of Rs. 8,887,259.00 and as a sum of Rs. 3,549,999.96 (Rs. 98611.11 x 36) was to be paid to the respondent under the lease agreement, a sum of Rs. 5,337,259.04 (Rs. 8,887,259.00 -Rs. 3,549,999.96) should be returned to the appellants.
21. Paragraph 12.3 of the lease agreement [V-1] provides that,

“On the termination howsoever or whenever occasioned or on expiry of the Lease constituted by this Agreement the Lessee shall forthwith return the equipment to the Lessor as such address as the Lessor may direct in good order and in good working condition and at the Lessee’s expense and risk. Without prejudice to the foregoing or to the Lessor’s claim for any arrears of rent or damages for any breach of this agreement or any other right hereunder the Lessor may at any time after any such termination or expiry of the lease constituted by this Agreement without notice retake possession of the equipment and for such purpose enter upon any premises belonging to or in the occupation for all costs, charges, and expenses incurred by the Lessor in retaking possession of the equipment as aforesaid”

22. Paragraph 6 (k) of the lease agreement [V-1] provides that,

“The lessee acknowledges that the title to the property shall at all times remain vested in the lessor...”

23. According to the above paragraphs of the lease agreement [P-1/V-1], the respondent has rightly taken possession of the vehicle as it has been expressly provided for in the lease agreement. Further, as the appellants have not duly complied with the lease agreement [P-1/V-1] the title to the vehicle in question has not been passed to the appellants. In an instance where one does not own the vehicle, one cannot claim compensation in respect of it once it has been taken into possession by the respondent.

24. In light of the issue of unjust enrichment by the respondent, it is pertinent to note that, it is admitted that the appellants have defaulted the lease agreement by not paying the installments that were due. The appellants admit that the vehicle in question has been in their possession even when they had defaulted the lease agreement, until it was taken into possession by the respondent on 06.07.2012. Therefore, at no point in time did the appellants become the owners of the said vehicle. Further, although the appellants claim that they would only have to settle a sum of Rs. 677,758.97 (3,549,999.96-2,872,240.99) had the appellants paid the dues duly complying with the lease agreement, this position would not have any merit as in reality the appellants have admittedly not complied with the terms of the lease agreement by failing to pay the monies due under the lease agreement and also by failing to hand over the possession of the vehicle. Further, it is vital to note that the appellants have continued to use the vehicle for a period exceeding an year even after the lease agreement had expired. Therefore, within the facts and circumstances of this particular case, I am unable to see how the respondent has been unjustly enriched at the expense of the appellants.

25. Although it was not pursued at the argument of this appeal, the learned Counsel for the appellants in his written submissions stated that the respondent has breached section 20(b)(ii), section 22 and 23 of the Finance Leasing Act No. 56 of 2000. However, when considering the facts and circumstances of the instant case, the above provisions have no applicability. Therefore, it is my position that the respondent has not acted in contravention of the provisions of the Finance Leasing Act.
26. It was the submission of the learned Counsel for the appellants that, according to the document [V-3] (page 372 of the brief) the 'analysis of custom payment card' which has been prepared by the accountant of the appellants, the respondent has already recovered a sum of Rs. 1,866,393.14 in terms of the lease agreement. Therefore, the outstanding amount to be settled was Rs. 633,606.86. It is also submitted that according to the document [V-3], the respondent has already recovered the total interest from the appellants amounting to Rs. 1,005,855.86.
27. When considering the evidence of *K.R. Nilanthi Roshini* who has been the accountant of the appellants who prepared the document [V-3], she states that she has prepared the said document for the purpose of understanding the manner in which the interest has been calculated in the document [V-2]. In her evidence she states that she has prepared the said document [V-3] based on the document [V-2] and the entirety of the said document [V-2] has not been included in the document [V-3] (page 8 of her evidence on 2015.03.10). Further, when considering pages 11 to 13 of her evidence on 2015.03.10 it is my view that the contents of the document [V-3] cannot be accepted as it is not a complete document. The learned High Court Judge in his judgment has laid down a detailed analysis on the lack of completeness of the document [V-2].
28. Therefore, in light of the above observations, it is my finding that the respondent company in the instant case has neither

acted contrary to law in charging compound interest nor has the respondent company been unjustly enriched at the expense of the appellants when considering the entirety of the facts and circumstances of the case. The appellants in the instant case have failed to prove the claim in reconvention.

29. Hence, I dismiss the appeal of the claim in reconvention sought by the appellants. The judgment of the learned Judge of the Commercial High Court of *Colombo* is affirmed. I order the respondent be granted the cost of the cause.

The appeal is dismissed.

JUDGE OF THE SUPREME COURT

JUSTICE P. PADMAN SURASENA.

I agree

JUDGE OF THE SUPREME COURT

JUSTICE MAHINDA SAMAYAWARDHENA.

I agree

JUDGE OF THE SUPREME COURT