

IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI

LANKA.

In the matter of an appeal in terms of Section 754 (1) of the Civil Procedure Code read with Section 5 of the High Court of the Provinces (Special Provisions) Act No. 10 of 1996.

SC (CHC) APPEAL NO. 74/2013

HC/CIVIL/412/2009/MR

Pan Asia Banking Corporation PLC
No. 450, Galle Road,
Colombo 03.

and having a branch office and/or a place of business called and known as the "Nugegoda Branch" at No.165A, High Level Road, Nugegoda.

PLAINTIFF

-Vs-

1. N. S. Gunaratne & Company (Pvt) Ltd.
of No. 101, Nawala Road, Nugegoda.
2. Udawattage Don Nalin Srilal Gunaratne
of No. 20/1A, Moragasmulla Road,
Rajagiriya.
3. Roshanie Ayoma Gunaratne
of No. 20/1A, Moragasmulla Road,
Rajagiriya.

DEFENDANTS

AND NOW BETWEEN

1. N. S. Gunaratne & Company (Pvt) Ltd.
of No. 101, Nawala Road, Nugegoda.
2. Udawattage Don Nalin Srilal Gunaratne

of No. 20/1A, Moragasmulla Road,
Rajagiriya.

3. Roshanie Ayoma Gunaratne
of No. 20/1A, Moragasmulla Road,
Rajagiriya.

DEFENDANT-APPELLANTS

-Vs-

Pan Asia Banking Corporation PLC
No. 450, Galle Road,
Colombo 03.

and having a branch office and/or a place
of business called and known as the
"Nugegoda Branch" at No.165A, High Level
Road, Nugegoda.

PLAINTIFF-RESPONDENT

BEFORE : **P. PADMAN SURASENA, J.**
YASANTHA KODAGODA, PC, J. &
A. L. SHIRAN GOONERATNE, J.

COUNSEL : Rohan Sahabandu PC with Chathurika Elvitigala
and Ms. S. Senanayake for the Defendant-Appellants.

Varuna Senadhira with Irfan Batcha instructed by Eroshini de
Silva for the Plaintiff-Respondent Bank.

ARGUED &

DECIDED ON: 16-11-2023.

P. PADMAN SURASENA, J.

Court heard the submissions of the learned President's Counsel for the Defendant-Appellants and the submissions of the learned Counsel for the Plaintiff-Respondent Bank and concluded the argument of this case.

The Plaintiff Bank has instituted this action in the Commercial High Court of Western Province (Holden in Colombo) against the three Defendants mentioned in the caption, to recover from them jointly and severally a sum of Rs. 5,130,648.56, together with legal interest until the completion of the payment in full.

The 1st Defendant which is a company is the principal borrower. The 2nd and 3rd Defendants are the sole Directors of the 1st Defendant Company who stood to guarantee the repayment of the said sum of money borrowed by the 1st Defendant from the Plaintiff Bank. It is a notable feature that the 2nd and 3rd Defendants are husband and wife. All three Defendants had filed a joint Answer praying for the dismissal of the Plaintiff's action.

After the conclusion of the trial, the learned Judge of the Commercial High Court by his judgment dated 28-08-2012, has held that the Plaintiff is entitled to all the relief as prayed for in the prayers to the Plaint against the Defendants and directed that the decree be entered accordingly. Being aggrieved by the said judgment pronounced by the Commercial High Court, all three Defendants lodged the instant appeal to this Court.

In the course of the hearing of this appeal before us, the Defendants did not dispute the fact that the Plaintiff Bank has credited a sum of Rs. 5,687,000.00 to the 1st Defendant's Current Account. The Statement of Accounts pertaining to the term loan relevant to the instant action has been produced in the trial marked **P 3** and the relevant entry therein has been produced marked **P 3(a)**.

In the course of the hearing, the primary argument advanced by the Defendants is that no physical transfer of cash from the Plaintiff Bank to the 1st Defendant had taken place. The Defendants also sought to argue that the documents relevant to the granting of the relevant term loan facility were blank when they signed them.

However, we observe that the Defendants had not been successful in challenging these positions in the trial. We note that the process of borrowing by the 1st Defendant had been as per the letter of offer produced in the trial marked **P 1**. We also find that the Statement of Account pertaining to the term loan (**P 3**) and the relevant entry therein [**P 3(a)**] have successfully proved in the trial the fact that the Plaintiff Bank has credited a sum of Rs. 5,687,000.00 to the 1st Defendant's Current Account.

Moreover, it could be seen that the 1st Defendant had proceeded to repay several installments subsequent to the receipt of the relevant term loan facility. This is borne out of the loan account statement produced in the trial marked **P 4**. In our view, in light of the facts and circumstances of this case, repayment of several installments is a clear proof not only of the fact that the 1st Defendant had obtained the relevant term loan facility from the Plaintiff, but also the fact that the Defendants' liability to repay the sum borrowed.

In view of the above as well as in view of the other factual circumstances in this case, we see no basis as to why the Defendants should succeed in this appeal.

Having perused the judgment of the learned Commercial High Court Judge, we observe that the learned Commercial High Court Judge has evaluated the evidence adduced by both parties, analyzed and duly considered the documents produced in the trial before coming to the correct conclusion in the case.

We have no basis to interfere with the conclusion reached by the learned Commercial High Court Judge. We proceed to dismiss this appeal but without costs.

JUDGE OF THE SUPREME COURT

YASANTHA KODAGODA, PC, J.

I agree.

JUDGE OF THE SUPREME COURT

ACHALA WENGAPPULI, J.

I agree.

JUDGE OF THE SUPREME COURT.

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