

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

In the matter of an appeal against the Judgment of the Commercial High Court of Colombo in terms of sections 5 and 6 of the High Court of the Provinces (Special Provisions) Act No. 10 of 1996 as amended read with Chapter LVIII of the Civil Procedure Code.

SC (CHC) APPEAL 46/2017

Commercial High Court

Case No. HC/Civil/ 285/2020/MR

Freight Links International (Private) Limited

Level 07, Access Towers 278,

Union Place, Colombo 02.

Plaintiff

Vs.

M.J.N.J. Fernando

No. 290, Thoduwawa North,

Thoduwawa.

Carrying on registered business under the name, Style and firm of Deshan International Imports And Exports.

Defendant

AND NOW BETWEEN

M.J.N.J. Fernando

No. 290, Thoduwawa North,

Thoduwawa.

Carrying on registered business under the name, Style and firm of Deshan International Imports And Exports.

Defendant-Appellant

Vs.

Freight Links International (Private) Limited

Level 07, Access Towers 278,

Union Place, Colombo 02.

Plaintiff- Respondent

**BEFORE : P. PADMAN SURASENA J.
JANAK DE SILVA J.
ACHALA WENGAPPULI J.**

COUNSEL : Aruna Pathirana Arachchi with Mrs. Inoka Weerakkodi
for the Defendant-Appellant.

Chandaka Jayasundara, PC with Mr. Rehan Almeida for the
Plaintiff-Respondent.

ARGUED &

DECIDED : 17-01-2024.

P. PADMAN SURASENA, J.

This appeal has been fixed for argument in today's list of cases. When this case was called in Court, Ms. Inoka Weerakkodi Attorney-at-Law made an application for the postponement of the argument on the basis of a difficulty of the Counsel, who is due to appear for the Defendant-Appellant in Court today.

Ms. Inoka Weerakkodi, Attorney-at-Law specially made this application in the capacity of the Instructing Attorney, claiming that she is the Instructing Attorney for the Defendant-Appellant.

On the subsequent questioning by Court also, she continued to maintain the fact that she is the Instructing Attorney on record for the Defendant-Appellant.

However, we have perused the documents in the brief and found that it is not Ms. Inoka Weerakkodi, Attorney-at-Law who is the Instructing Attorney on record for the Defendant-Appellant but, one Ms. Shermila Muthalif, Attorney-at-Law who has filed the proxy dated 11-07-2023 which was filed in Court on the same date.

Therefore, said Ms. Shermila Muthalif must stand as the Instructing Attorney on record for the Defendant-Appellant.

When the Court brought this to the notice of Ms. Inoka Weerakkodi Attorney-at-Law, she thereafter admitted that she is not the Instructing Attorney on record for the Defendant-Appellant.

Therefore, submissions made by Ms. Inoka Weerakkodi, Attorney-at-law cannot be accepted as a submission on which we should act.

The application for a postponement made by Ms. Inoka Weerakkodi, claiming to be the Instructing Attorney on record for the Defendant-Appellant, was on the basis that Mr. Aruna Pathirana Arachchi has been retained to appear as the Counsel today for the Defendant-Appellant and said Mr. Aruna Pathirana Arachchi is unable to appear before the Court today owing to a personal difficulty. However, we observe that Mr. Aruna Pathirana Arachchi has never appeared for the Defendant-Appellant as the Counsel before.

There is no material before us to satisfy ourselves that said Mr. Aruna Pathirana Arachchi is the Counsel for the Defendant-Appellant. We are also not satisfied that a proper application for postponement is before Court as the submission made by Ms. Inoka Weerakkodi Attorney-at-Law has now been held to be a submission on which we cannot act.

We have found that Ms. Inoka Weerakkodi has no status in this case, which she has now admitted.

In these circumstances, we have neither a basis to grant a postponement in this case nor a basis to entertain the submissions made by Ms. Inoka Weerakkody Attorney-at-Law. Therefore, we refuse to grant a postponement in this case.

We proceeded to hear the submissions made by Mr. Chandaka Jayasundara, PC appearing for the Plaintiff-Respondent and concluded the argument of this case.

The Plaintiff-Respondent has filed this case to recover a specified sum of money due to the Plaintiff-Respondent, from the Defendant-Appellant, on account of forwarding some goods by air freight for and on behalf of the Defendant-Appellant.

The case for the Plaintiff-Respondent is that the Defendant-Appellant has failed to make payment for the afore-said forwarding.

The payment claimed in this case by the Plaintiff-Respondent is Rs. 6,458,175.33. Although the Defendant-Appellant has filed an answer, we observe that in the said answer, the Defendant-Appellant has not specifically denied his liability to make the afore-said payment, but had taken certain other positions particularly with regard to a question of setting off, the afore-said due amount of money with the cost for some damage caused to the goods he had previously forwarded through the Plaintiff-Respondent.

We observe that the issues raised in the case relating to the liability of payment by the Defendant-Appellant to pay the sum claimed by the Plaintiff-Respondent revolve around the question whether the claim of the Plaintiff-Respondent must be set off with the afore-said cost for the damage caused to the goods, the Defendant-Appellant had previously forwarded through the Plaintiff-Respondent.

However, we note that in the document marked **X 7** in the trial, the Defendant-Appellant has admitted his liability to pay Rs. 6,458,175.33.

We also observe that the Defendant-Appellant has given evidence on his behalf in the trial. The Defendant-Appellant under cross-examination, has admitted the fact that some of the cheques he had tendered to the Plaintiff-Respondent as the payment for the claimed amount have been dishonored. In his evidence, the Defendant-Appellant does not provide any acceptable explanation for that.

We have perused the Judgment dated 09-05-2017 pronounced by the learned Commercial High Court Judge. We find that the learned Commercial High Court Judge has correctly analyzed the evidence adduced by both parties in the trial before coming to the correct conclusion in favour of the Plaintiff-Respondent in this case. We are unable to find any basis to interfere with this judgment.

For the above reasons, the Defendant-Appellant is not entitled to succeed with this appeal. We decide to affirm the judgment dated 09-05-2017 pronounced by

the learned Commercial High Court Judge and proceed to dismiss this appeal with costs. The Defendant-Appellant must pay a cost of Rs. one million (Rs. 1,000,000/=) to the Plaintiff-Respondent.

Appeal dismissed with costs of Rs. 01 million.

JUDGE OF THE SUPREME COURT.

JANAK DE SILVA J.

I agree

JUDGE OF THE SUPREME COURT.

ACHALA WENGAPPULI J.

I agree

JUDGE OF THE SUPREME COURT.

AG/-