

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

S.C. Appeal 125/2015

SC/HCCA/LA/ 24/2013 (LA)

WP/HCCA/GAMP/44/2013

D.C. Attanagalla Case No. 1253/M

In the matter of an Application for Leave to Appeal against the Judgment dated 03.12.2014 delivered by the Provincial High Court of the Civil Appeals of the Western Province (Holden at Gampaha) in Case No. WP/HCCA/GPH/44/2013 (LA)

Hatton National Bank PLC
No. 479, T.B. Jaya Mawatha,
Colombo 10.

and previously at 481, T.B. Jayah
Mawatha, Colombo 10.

And having and maintaining a branch
office at 22, Kandy Road, Nittambuwa
(previously known as Hatton National
Bank Ltd)

PLAINTIFF

Vs.

1. Sakalasuriya Appuhamilage Upul Aruna
Shantha
Kukulnape,
Pallewela.
2. Senanayake Amarasinghe Mohotti
Appuhamilage Sudath Denzil
No. 64, Kirindiwita.
Gampaha.

3. Subasinghe Dissanayake Appuhamilage
Upul Hemantha Subsasinshge,
No. 74, Marapola,
Veyangoda.

DEFENDANTS

AND BETWEEN

Hatton National Bank PLC
No. 479, T.B. Jaya Mawatha,
Colombo 10.
and previously at 481, T.B. Jayah
Mawatha, Colombo 10.
And having and maintaining a branch
office at 22, Kandy Road, Nittambuwa
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Bank Ltd)

PLAINTIFF-APPELLANT

Vs.

1. Sakalasuriya Appuhamilage Upul Aruna
Shantha
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2. Senanayake Amarasinghe Mohotti
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No. 64, Kirindiwita.
Gampaha.
3. Subasinghe Dissanayake Appuhamilage
Upul Hemantha Subsasinshge,
No. 74, Marapola,
Veyangoda.

DEFENDANT-RESPONDENTS

AND NOW BETWEEN

Senanayake Amarasinghe Mohotti
Appuhamilage Sudath Denzil
No. 64, Kirindiwita.
Gampaha.

**2ND DEFENDANT-RESPONDENT-
APPELLANT**

Hatton National Bank PLC
No. 479, T.B. Jaya Mawatha,
Colombo 10.
and previously at 481, T.B. Jayah
Mawatha, Colombo 10.
And having and maintaining a branch
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PLAINTIFF-APPELLANT-RESPONDENT

Vs.

1. Sakalasuriya Appuhamilage Upul Aruna
Shantha
Kukulnape,
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2. Subasinghe Dissanayake Appuhamilage
Upul Hemantha Subsasinshge,
No. 74, Marapola,
Veyangoda.

**DEFENDANT-RESPONDENT-
RESPONDENTS**

BEFORE:

S.E. Wanasundera P.C., J.
Anil Gooneratne J.
Nalin Perera J.

COUNSEL: Ms. Sudarshani Cooray with Ms. Sithara Jayasundera
For 2nd Defendant-Respondent-Appellant

Viran Fernando for Plaintiff-Appellant-Respondent

ARGUED ON: 04.07.2017

DECIDED ON: 27.07.2017

ANIL GOONERATNE J.

This was an action on a Finance Lease Agreement entered between the Plaintiff-Petitioner-Respondent Bank and the 1st Defendant-Respondent. The 2nd and 3rd Defendants were the guarantors to the above agreement and action was filed in the District Court of Attanagalla. 1st and 3rd Defendant-Respondents did not appear in court and the case was fixed ex-parte against them. The 1st Defendant failed and neglected to pay the regular payment due to the Bank and Plaintiff-Petitioner-Respondent Bank filed action to recover a sum of Rs. 1,578,204/30 and interest thereupon at 36% p.a from 18.12.2008.

It is said that the evidence of the Plaintiff witness was led by the Plaintiff Bank and said Finance Lease Agreement, annexed to the plaint marked 'A' was sought to be marked in court and the counsel for the 2nd Defendant-Respondent objected for same being marked in evidence on the basis that the

said agreement has not been stamped. The learned District Judge by his order of 3.10.2013 upheld the objection of the 2nd Defendant and refused to mark and permit to produce the said lease agreement in evidence. On appeal by the Plaintiff-Respondent to the relevant High Court, the Plaintiff succeeded and the appeal was allowed. The 2nd Defendant-Appellant appealed to the Supreme Court and leave was granted on 21.07.2015 on questions of law referred to in paragraphs 7(a) to (d) of the petition filed of record. The said question read thus:

- (a) Has their Lordships erred in failing to appreciate that upon the plain reading of the words in Gazette Extraordinary Notification. No. 1465/20 Item No.15 in the schedule to the gazette, exempts all Hire Purchase Agreements from stamp duty, except Agreements in relation to vehicles used for travelling;
- (b) Has their Lordships erred in failing to appreciate that term “Private” being excluded from the latter Gazette Notification No. 1465/20 has been done to include all hire purchase agreements within the purview of the instruments required to be stamped;
- (c) Has their Lordships of the Provincial High Court erred in failing to appreciate that the Deputy Commissioner of the Department of Inland Revenue has no authority to interpret a gazette issued by Minister of Finance and state that the term “Motor Vehicles Used for Travelling” does not include Motor Coaches and Lorries” and hence the said letters should not be considered by a Court of Law.
- (d) Has their Lordships erred in failing to appreciate that when there arises a conflict in interpreting the gazette and the matter is before a Court of Law, a public officer should not be allowed to interpret the law and this duty is

vested only with the Court when two conflicting opinions are derived from the words of the legislature and hence this letter should not be considered at all;

The law relating to stamp duty is found in the Stamp Duty Act as Amended and the relevant Gazette Notification. The relevant Sections of the Act in a gist are as follows:

Section 3(1) of Act No. 12 of 2006 permits the Minister to determine the stamp duty payable on “specified instruments”.

Section 4 of the same Act identifies “a lease or hire of any property” as a specified instrument.

Section 5 of the Act also empowers the Minister to “by Order published in the Gazette specify the instruments, which shall be exempt from the payment of stamp duty.”

Section 5 enacts that the Order published in the gazette specify the instrument which are exempt from stamp duty. The subject matter of the suit is a ‘motor coach’.

My attention was drawn by learned counsel for Plaintiff party, of two gazettes. Vide Gazette Extraordinary No. 1439/2 dated 03.04.2006 and later Gazette Extraordinary 1465/20 dated 05.10.2006. Item 15 of Gazette 1465/20 reads as an exemption:

“Any instrument relating to any finance lease executed in respect of any property other than any such finance lease in respect of any motor vehicles used for travelling;”

The Sinhala version reads as follows:

“ගමන් බිමන් සඳහා යොදා ගන්නා මෝටර් වාහන සම්බන්ධයෙන් වන මූල්‍ය කල් බඳු ගිවිසුමක් හැර යම් දේපලක් සම්බන්ධයෙන් ක්‍රියාත්මක කරන ලද මූල්‍ය කල් බඳු ගිවිසුමක් ”

The earlier Gazette Extraordinary No. 1439/2 of 03.04.2006

reads thus:

“A finance lease executed in respect of any property (other than any such finance lease in respect of motor vehicles used for travelling);”

The Sinhala version reads thus:

යම් දේපලක් සම්බන්ධයෙන් ක්‍රියාත්මක කරන ලද මූල්‍ය කල් බඳු ගිවිසුමක් (පුද්ගලික ගමන් බිමන් සඳහා යොදා ගන්නා මෝටර් වාහන සම්බන්ධයෙන් වන මූල්‍ය කල් බඳු ගිවිසුමක් හැර)

The later gazette that was issued should prevail and the English version of the above gazettes are identical. The Sinhala version of Gazette 1439/2 carries an important qualification not explicit in the English version.

However, the Sinhala language version of the Gazette Extraordinary No. 1439/2 dated 03.04.2006 was in the following terms.

The words ‘පුද්ගලික’ has been omitted in Gazette – 1463/20 of 05.10.2006. Does the legislature intend to omit ‘පුද්ගලික’? The later gazette also introduced some changes. Gazette 1439/2 of 03.04.2006 refer to පුද්ගලික ගමන් බිමන්. Thus an instrument which lease a motor vehicle that is used for private travel would be subject to stamp duty.

The omission as stated above may be a deliberate intent of the legislature (Gazette 1465/20). A careful comparison of the two gazette would make one realise of the slight change. The above change as stated above is not the only change. Earlier gazette refer to 20 items that are exempt and the later gazette exempt only 6 items. Therefore the argument that it cannot be said that the gazette issued for the purpose of charging stamp duty on leases of all type of vehicles, may not stand. It is questionable.

N.S. Bindra refer to the case of *Lord Herschell, Bank of England Vs. Vagliano Brothers (1891) AC 107.*

I think the proper course is in the first instance to examine the language of the statute and to ask what is its natural meaning uninfluenced by any considerations derived from the previous state of the law, and not to start with inquiring how the law previously stood, and then, assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear an interpretation in conformity with this view.

Learned counsel for Plaintiff party also emphasis on another aspect. It was argued that the word ‘පුද්ගලික’ may not make a substantial difference to

the order of the Minister. The simple reading of the gazette appears to state that Finance Leases on vehicles used for travelling would be liable for stamp duty. I would add that 'liable' would mean answerable, or exposed or subject or likely. As such can one state stamp duty would not be chargeable for finance leases on all vehicles but merely for those used for travelling. The simplest of the definition for travelling would be conveyance. Vehicles are used for travelling and not usually for any other purpose. There are no vehicles that are not used for travelling, but may be connected to some other purpose. The English words travelling does not exactly mean the word 'ගමන් බිමන්'. The term ගමන් බිමන් could be distinguished from පුච්චානනය ගමන් බිමන් connected to personal activity. Gazette 1465/05.10.2006 should be interpreted to make Motor Coach which is used for passenger transporting not liable to stamp duty. It is however arguable and a question of interpretation.

In any event Section 33 of the Stamp Ordinance reads thus:

"33 (1) No instrument chargeable with stamp duty shall be received or admitted in evidence by any person having by law or consent of parties authority to receive evidence or registered or authenticated or acted upon by any person or by any officer in a public office or corporation or bank or approved credit agency unless such instrument is duly stamped.

Provided that any such instrument may-

- (a) be admitted in evidence by any person having by law or consent of parties authority to receive evidence; or
- (b) if the stamp duty chargeable on such instrument is one thousand five hundred rupees or less, be acted upon by the Registrar General.

Upon payment of the proper duty with which it is chargeable or the amount required to make up the same and a penalty not exceeding three times the proper duty.”

The Plaintiff party could not have had any notice of the objection taken by 2nd Defendant as the pleadings filed of record does not refer to such an objection. It is essential to give an opportunity to the concerned party to cure such a defect and proceed with such suit. If there is a deficiency of stamping party concerned should be permitted to supply the deficiency. It would amount to an injustice if the concerned party is denied of such a right as the above section contemplates of curing the defect.

In Wickremasinghe and others Vs. The Goodwill Marine Academy (Pvt) Ltd. 2001 (2) SLR 284

“Under the proviso to S. 33(1) such an unstamped bond may be admitted in evidence upon payment of the proper duty or the amount required to make up the same and a penalty not exceeding three times the proper duty”.

Ceylease Financial Services Ltd. Vs. Sriyalatha 2006 (2) SLR 169

“stamp duty should be paid prior to the admission of the relevant instrument. In the circumstances, where an instrument has to be admitted in evidence and if it is not duly stamped, the deficiency has to be cured prior to the instrument being marked in evidence”.

In determining either the general object of the legislature, or the meaning of its language in any particular passage, it is obvious that the intention which appears to be most in accord with convenience, reason, justice and legal principles should in all cases of doubtful significance, be presumed to be true

one. Maxwell on Interpretation of Statute 12th Ed Pg. 199. On General Principles of Interpretation Pg. 28.

If there is nothing to modify, alter or qualify the language which the statute contains, it must be construed in the ordinary and natural meaning of the words and sentences. "The safer and more correct course of dealing with a question of construction is to take the words themselves and arrive if possible at their meaning without, in the first instance, reference to cases".

The duty of court is to expound the law as it stands and to leave the remedy to others. *Suttars Vs. Briggs (1922) AC 1 at 8.*

The relevant gazette or the later one exempts all finance leased executed in respect of any property. The finance leased executed for motor vehicles used for travelling is not exempted. This seems to be the most ordinary simple meaning that could be given to the relevant exemption.

A court is not entitled to read words into an Act of parliament unless clear reasons for it is to be found within the four corners of the Act itself *Vickers Sons & Maxim Ltd. vs. Evans (1910) AC 444 at 445.*

Interpretation of a statute is a matter for a Court of Law. A Deputy Commissioner of the Department of Inland Revenue has given an interpretation to the relevant gazette and this court is not in a position to accept such an interpretation. The learned District Judge correctly disregarded it but not the High Court. I observe that the High Court was in gross error to rely on such an interpretation of the Deputy Commissioner. The relevant provision of the

gazette is very simple and could be given its ordinary meaning, and the words to be understood as it is. I am unable to give any extended meaning.

The questions of law 7(a) to (d) are answered as follows:

(a) yes.

(b) Answered as 'yes' in favour of the 2nd Defendant-Respondent-Appellant.

(c) Yes.

(d) Yes.

Upon a consideration of all the facts and circumstances, I set aside the Order of the High Court. Plaintiff-Respondent Bank is directed to correctly stamp the instrument and produce it in the District Court. Case remitted to District Court. The learned District Judge is directed to go ahead with the trial after receiving the instrument which has to be duly stamped. This appeal is partly allowed as aforesaid, with costs.

Appeal partly allowed.

S.E Wanasundera P.C., J.

I agree.

JUDGE OF THE SUPREME COURT

Nalin Perera J.

I agree

JUDGE OF THE SUPREME COURT

JUDGE OF THE SUPREME COURT