

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

In the matter of an appeal in terms of Section 5(2) of the High Court of the Provinces (Special Provisions) Act No 10 of 1996 as amended by High Court of the Provinces (Special Provisions) (Amendment) Act No 54 of 2006.

SC / Appeal /133/2010

SC (HC)CALA 229/2010

WP/HCCA/COL/164/2007(F)

DC. Colombo No. 25831/MR

Saifi Ismail Patel carrying on business under the name and style of “Saifi Trading Company”,
No. 39, New Moor Street,
Colombo 01.

Plaintiff

Vs.

Commercial Bank of Ceylon Limited,
No. 57, Baron Jayathileka Mawatha,
Colombo 1.

Defendant

AND BETWEEN

Commercial Bank of Ceylon Limited,
No. 57, Baron Jayathileka Mawatha,

Colombo 1.

Defendant Appellant

Vs.

Saifi Ismail Patel carrying on business
under the name and style of “Saifi

Trading Company”,

No. 39, New Moor Street,

Colombo 01.

Plaintiff Respondent

AND NOW BETWEEN

Commercial Bank of Ceylon Limited,

No. 57, Baron Jayathileka Mawatha,

Colombo 1.

Defendant Appellant-Appellant

Vs.

Saifi Ismail Patel carrying on business

under the name and style of “Saifi

Trading Company”,

No. 39, New Moor Street,

Colombo 01.

Plaintiff Respondent-Respondent

BEFORE : B. P. ALUWIHARE, PC, J.
 UPALY ABEYRATHNE, J.
 ANIL GOONARATNE, J.

COUNSEL : Harsha Amarasekera PC with Kanchana Peiris for the Defendant Appellant-Appellant
 Geoffrey Alagaratnam PC with Suren Fernando for the Plaintiff Respondent-Respondent

WRITTEN SUBMISSION ON: 29.10.2010 (Defendant Appellant-Appellant)
 27.01.2011 (Plaintiff Respondent-Respondent)

ARGUED ON : 31.05.2016

DECIDED ON : 20.07.2017

UPALY ABEYRATHNE, J.

This is an appeal preferred by the Defendant Appellant-Appellant (hereinafter referred to as the Appellant) from the judgment of the High Court of Civil Appeal of the Western Province holden at Colombo dated 11.06.2010. By the said judgment, the High Court has upheld the judgment of the learned Additional District Judge of Colombo dated 29.03.2007. This court has granted leave on the

following questions of law set out in paragraph 16 (a), (b) and (c) of the petition of appeal dated 21st of July, 2010.

- (a) When does a cause of action accrue to a customer of a Bank for the recovery of monies said to have been erroneously debited by such Bank from such customer's account?
- (b) Is an action filed against a Bank by a customer after the lapse of three years from a date of a such transaction, prescribed?
- (f) Is a Bank obliged to credit a customer's account at the time of the deposit of a cheque into such account, and before the Bank receives monies on such cheque?

The Plaintiff Respondent-Respondent (hereinafter referred to as the Respondent) instituted an action against the Appellant in the District Court of Colombo seeking for a declaration that the Appellant is the trustee who holds a sum of Rs. 2,880,004.50/ in trust for the Respondent and for an order directing the Appellant to pay the Respondent the said sum held in trust together with the interests as prayed for. The Respondent has instituted the said case on the basis that the Appellant had charged the Respondent the aforesaid sum of Rs. 2,880,004.50/- as interest on an overdraft facility afforded by the Appellant Bank to the Respondent Company, in excess of the sum of which the Appellant was entitled to recover from the Respondent.

The Appellant, by his amended answer, has sought for a dismissal of the Respondent's action. Further the Appellant has set out a claim in reconvention for a sum of Rs. 249,935.12 on the basis that the Appellant Bank has undercharged interest on the money due from the Respondent by way of an overdraft in the Respondent's current account.

The case proceeded to trial on 30 issues. Issue No 21 has been raised by the Appellant on the basis that the cause of action of the Respondent was prescribed in law. I first deal with the question on prescription.

The Appellant's contention on the prescription was twofold. The Appellant contended on the merits:

- a. that the monies claimed by the Respondent from the Appellant were not due on demand, and thus the Respondent's action was prescribed,
- b. that even if a demand was necessary, such demand was contained in the document P 7 which was more than 3 years before the action was instituted, and therefore the Respondent's action was prescribed.

In the said premise, the learned President Counsel for the Appellant submitted that P 7 is clearly in unequivocal terms a demand for the monies sought for by the Respondent in the present action. By P 7 dated 16.08.1987, the Respondent had demanded the Appellant to pay a sum of Rs. 2,880,004.50 within one month of the date of the said letter. Said sum of money corresponds exactly with the relief prayed for by the Respondent in its plaint of the present case.

I reproduce the said letter P 7 below;

“REGISTERED

16th August 1997

The General Manager,
Commercial Bank of Ceylon Ltd.
City Office,
Colombo 1.

Dear Sir,

Information Ref:- Saifi Trading Company
(M/S. Sarma & Co., Chartered Accounts)
Current Account No. 1503255501 Overdraft Interest.

We refer to our last letter dated 15th November 1996 and we have now received a final report from our Auditors subsequent to their verification of overdraft interest levied by yourselves on our Account No 1503255501.

Their report attached herewith indicates an excess charge of Rs. 2,880,004.50. You are hereby requested to verify the report and refund to us the overcharge amount further together with interest within a month of this letter.

We regret to inform you should fail to refund within a month we shall be reluctantly compelled to seek legal advice to claim together with further costs and damages.

We await your serious and immediate response.

Yours faithfully

SAIFI TRADING COMPANY

Proprietor

Cc to;- The Manager (City Office),
Assistant General Manager (Head Office),
M/S Sarma & CO., (Chartered Accountants),
186, 2/1 Dam Street, Colombo 12.”

In the completeness of the judgment I reproduce below the prayer ‘a’ and ‘b’ to the amended plaint of the said action instituted in the District Court of Colombo;

- a. for judgment for a sum of Rs. 2,880,004.50 together with interests at 26% per annum from 25.11.1999 till decree and for interest on the aggregate sum decreed until payment in full,

- b. as an alternative to 'a'
 - i. for a declaration that the Defendant is a trustee and holds a sum of Rs 2,880,004.50 in trust for the Plaintiff and/or,
 - ii. for an order directing the Defendant to pay to the Plaintiff the sum of Rs. 2,880,004.50 held in trust together with interest at 26% per annum from 25.11.1999 till decree and for interest on the aggregate sum decreed until payment in full and in the event of the Defendant failing to do so for an order directing the Registrar of the court to take appropriate steps.

The Respondent, in the said amended plaint dated 28th of September 2001 has set out three causes of action. With regard to the first cause of action, the Respondent in paragraph 15 of the said amended plaint has averred that by letter dated 16.08.1997 (aforesaid P 7) the Respondent wrote to the Appellant Bank that according to the Auditor's Report there had been an excess charge of Rs. 2,880,004.50. But the Respondent has not averred therein that by the said letter they demanded the Appellant to pay the said sum of Rs. 2,880,004.50.

It is manifest from the paragraphs 16 and 17 of the said amended plaint that subsequent to the discussions held with the Appellant Bank and the clarifications made by them, the Respondent has come to know the fact that his Auditors who prepared the aforesaid report, in preparing the same has not taken in to their consideration certain revisions in interests and rates levied by the Appellant Bank against the Respondent's said account. Also, the Respondent has admitted that he was unaware of such revisions/changes in interest and rates levied by the Appellant Bank against his said account. However, the Respondent has realized the fact that the said Auditors' Report was not prepared according to the revised interest, charges and rates of the Appellant's Bank and the sum demanded from the

Appellant by the said letter dated 16.08.1997 was incorrect and the amount, according to the Appellant's version, would be a sum of Rs. 1,874,392.76.

In the said premise the Respondent, in paragraph 18 of the said amended plaint has averred that by a letter dated 25.11.1999, demanded the Appellant to pay the Respondent the said lesser sum of Rs. 1,874,392.76 and the Appellant denied any liability.

Having urged so, the Respondent in paragraphs 19 and 20 of the said amended plaint has pleaded that the Appellant has acted contrary to the written agreement in making an excess charge of Rs 2,880,004.50 and therefore a cause of action has arisen for the Respondent to sue the Appellant in order to recover the sum of Rs. 2,880,004.50 together with other relief. Accordingly, the Respondent's said three causes of action in his amended plaint has set out the said sum of Rs. 2,880,004.50, as an amount computed on a wrong basis disregarding the revised interest, charges and rates of the Appellant's Bank.

Witness Vithanage Rathnasiri Perera, Chartered Accountant, Sarma & Co., in his evidence has stated that when a cheque is deposited into an account on the day of the deposit, it was shown in the statement of account that the sum indicated therein is credited to the account, on which basis the said auditors report was prepared. Nevertheless, the computation of interest on the said basis was wrong. This is because the statement shows that there was a credit balance but the bank statement did not show whether the cheques were cleared or uncleared. Hence there was a deficit between the actual balance and the available balance of the account. Hence the computation of interest on the basis of amounts shown in the statement of account was on a wrong basis.

In the circumstances, it is clear from the Respondent's own pleadings and the evidence led at the trial that the Respondent has failed to prove his case, as set out in the said amended plaint, on balance of probability.

The Respondent contended that his case was not prescribed in law since the demand had been made by the said letter dated 25.11.1999 (P 14) and therefore the prescriptive period of the action was to commence from 25.11.1999. The learned counsel for the Respondent submitted on the said basis that the Respondent had demanded the said amount by the said letter dated 25.11.1999 and the Appellant, by a letter dated 23.12.1999, (P 15), had denied the liability for the claim, and that has given rise to the cause of action and hence the action has been instituted well within the period of three years.

As I mentioned above by the said letter dated 25.11.1999 (P 14), the Respondent had demanded only a sum of Rs 1,874,392.76. Although the demand was such, the Respondent has not instituted the instant action to recover the said sum of money as demanded by P 14. The Respondent without filing the action on the said demand, has opted to institute the said action to recover a sum of Rs 2,880,004.50 according to his aforementioned 1st demand made by the letter dated 16.08.1997 (P 7). Accordingly, the period of prescription of the instant action had begun to run from the said date of P 7, i. e. 16.08.1997 and not from the date of P 14, i. e. 25.11.1999.

Although the original plaint bears the date 17.10.2000, the Respondent has filed the action in the District Court of Colombo on 20.10.2000. Thereafter the Respondent has filed an amended plaint dated 28.09.2001. It is crystal clear that since the demand P 7 had been made on 16.08.1997, the

Respondent has failed to institute the action within 03 years from the said date. Hence the Respondent's said three causes of action were prescribed in law.

The learned President Counsel for the Appellant submitted that in instituting an action of this nature, no demand is necessary, as the date of accrual of the cause of action would be the date of each wrongful debit, and not from the date of demand. Since, I have reached the conclusion that the Respondent's action was prescribed in law on the demand itself, it is not necessary to consider the said submissions at this stage.

In the said circumstances, I set aside the judgment of the learned Additional District Judge dated 29.03.2007 and the judgment of the High Court of Civil Appeal dated 11.06.2010. The Respondent's action instituted in the District Court of Colombo is dismissed. The appeal of the Appellant is allowed with costs in all courts.

Appeal allowed.

Judge of the Supreme Court

B. P. ALUWIHARE, PC, J.

I agree.

Judge of the Supreme Court

ANIL GOONARATNE, J.

I agree.

Judge of the Supreme Court