

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

Yashodha Holdings (Pvt) Ltd,
455, Galle Road, Colombo-03

Now at,
Room 1, 4th Floor,
282 C, Galle Road, Colombo-03.

Defendant-Appellant

SC CHC Appeal No. 01/2018
HC. (Civil) 90/99 (1)

-Vs-

People's Bank,
No.75, Sir Chittampalam A.Gardiner Mawatha,
Colombo-02

Plaintiff-Respondent

Before: : **P. Padman Surasena J**
Yasantha Kodagoda PC, J
Kumudini Wickremasinghe J

Counsel: : Lakdev Unamboowe for the Defendant-Appellant.
S. A. Parathalingam PC with Kushan D' Alwis PC and
Hiran Jayasinghe for the Plaintiff-Respondent.

Argued

Decided on: 04-12-2023

P. Padman Surasena J

Court heard the submissions of the learned Counsel for the Defendant-Appellant as well as the submissions of the learned President's Counsel for the Plaintiff-Respondent and concluded the argument.

At the outset, the learned Counsel for the Defendant-Appellant drew the attention of Court to

the Motion dated 29-11-2023 through which he had sought permission of Court to tender the Hansard dated 24-09-2003 which contains a record of the Parliamentary proceedings of the said date and the report referred to therein. Except mere seeking of permission of Court, the learned Counsel for the Defendant-Appellant did not make any relevant submission to highlight the presence of any legal provision enabling this Court to consider the said new material that was sought to be adduced through the said Motion.

We are mindful that this is an appeal filed to challenge the final order of the relevant case heard by the Commercial High Court. Therefore, our task is to examine the correctness of the Judgment pronounced by the learned Commercial High Court Judge in this case. We have to do that within the four corners of the brief. We have no reason/basis to grant permission to adduce new material as requested by the Motion dated 29-11-2023 at this stage of the case. Therefore, we decided at the outset to refuse the said Motion.

The Plaintiff-Respondent has instituted this action against the Defendant-Appellant to recover a sum of Rs. 187,294,109/59 with interest, on account of the grant of a short-term loan amounting to Rs. 120 million.

The sole defence taken up by the Defendant-Appellant as per the pleadings is that there is no outstanding amount of money due to the Plaintiff-Respondent from the Defendant-Appellant.

The Plaintiff-Respondent had led the evidence of one witness on its behalf who had produced several documents establishing its case before Court.

In the course of the argument, learned Counsel who appeared for the Defendant-Appellant advanced the argument that the position taken up by the Defendant-Appellant namely the fact that the Plaintiff-Respondent Bank had failed to recover its dues on account of the relevant loan at the correct time from the funds available in several accounts maintained by the Defendant-Appellant in the same Bank. It is the complaint of the learned Counsel for the Defendant-Appellant before this Court that the learned Commercial High Court Judge had failed to consider this aspect of the case.

Perusal of the proceedings relating to cross examination of the Plaintiff-Respondent's witness by the Defendant-Appellant shows that the Defendant-Appellant had failed to take up such a position in the course of the trial. However, it appears that at some stage of the case, this

argument had been advanced before the Commercial High Court through some means. This has prompted the learned Commercial High Court Judge to observe in his Judgment as follows:

" I must say that this is a new position taken up by the Defendant during the course of the trial without such a position being pleaded in the answer and without such an issue being raised at the trial. This is not permissible 1999(3) Sri LR 301."

Having considered the material adduced before us, we find no reason to deviate from the above conclusion arrived at by the learned Commercial High Court Judge.

It appeared to us that the learned Counsel for the Defendant-Appellant had more focussed on some material contained in the amended answer which he had sought to file at some stage before the Commercial High Court. As pointed out by the learned President's Counsel for the Plaintiff-Respondent, we observe that the Commercial High Court had already rejected the said amended answer and there has been no proceedings against that rejection thereafter. Thus, the matter should end there.

For the foregoing reasons, we see no merit in this appeal. Therefore, we proceed to dismiss this appeal with costs.

JUDGE OF THE SUPREME COURT

Yasantha Kodagoda, PC J

I agree.

JUDGE OF THE SUPREME COURT

Kumudini Wickremasinghe J

I agree.

JUDGE OF THE SUPREME COURT

kpm/-