

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

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

Plaintiff

Vs.

SC. CHC. Appeal No. 06/2003

HC. (Civil) 141/99(1)

Ceylinco Insurance Company Limited
2nd Floor, 15 A, Alfred Place,
Colombo 3.
Formerly of
2nd Floor, Ceylinco House,
No. 69, Janadhipathi Mawatha,
Colombo 1.

Defendant

And Now

In the matter of an Appeal preferred under and in terms of Section 754 of the Civil Procedure Code read together with Section 5 of the High Court of the Provinces (Special Provisions) Act No. 10 of 1996.

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

Plaintiff-Appellant

Vs.

Ceylinco Insurance Company Limited
2nd Floor, 15 A, Alfred Place,
Colombo 3.
Formerly of
2nd Floor, Ceylinco House,
No. 69, Janadhipathi Mawatha,
Colombo 1.

Defendant-Respondent

BEFORE : **Eva Wanasundera, PC. Acting CJ.**
Upaly Abeyrathne, J. &
Anil Gooneratne, J.

COUNSEL : Kushan D' Alwis PC. with Ayendra Wickramasekera for the
Plaintiff-Appellant.
K. Kanag-Iswaran,PC. with L. Jeyakumar for the Defendant-
Respondent.

ARGUED ON : **16.10.2015**

DECIDED ON : **11 .02.2016**

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Eva Wanasundera, PC.J.

This is an appeal preferred under and in terms of Section 754 of the Civil Procedure Code read together with Section 5 of the High Court of the Provinces (Special Provinces) Act No. 10 of 1996.

The High Court (Civil) of the Western Province holden in Colombo (hereinafter referred to as the Commercial High Court of Colombo) heard and decided this case under Case No. HC (Civil) 141/99(1) The judgment was delivered on 10.10.2002 dismissing the plaint with costs. The Plaintiff has appealed to this Court by way of the Petition of Appeal dated 04.12.2002 praying to set aside the judgment of the Commercial High Court dated 10.10.2002 and enter judgment in favour of the Plaintiff-Appellant in a sum of Rs.69,508,854/- with legal interest from the date of the plaint until the date of the decree and thereafter further interest on the aggregate amount until payment in full with costs of suit.

The facts pertinent to this case are very important. In summary I wish to lay down the facts as follows: An International Company by the name "BAT International" entered into a contract with the Road Development Authority of Sri Lanka (hereinafter referred

to as 'RDA') to do the work regarding road rehabilitation, under contract No. "WB. 3/3-Road Works" with the heading "Rehabilitation and Maintenance of the Third Road Project;" Under this contract, the RDA made an advance payment of Rs.69,508,854/- to the said BAT International. In this contract there was a clause, which required the contractor to furnish to RDA an advance payment Guarantee from **a recognized financial institution of Sri Lanka**. It is under Clause 60.7 that the contractor BAT International requested the Peoples' Bank, the Plaintiff-Appellant to issue an Advance Payment Guarantee in favour of RDA, in a sum of Rs.69,508,854/-. The Peoples' Bank issued the same on 19.02.1996 under Advance Payment Guarantee No. 1001/96. At the request of the Contractor BAT International, the said Guarantee was duly extended from time to time until 25.03.1998. I observe that this Advance Guarantee Bond 1001/96 was issued by the Peoples' Bank because in the contract "WB. 3/3- Road Works", RDA demanded from contractor BAT International that the guarantee should be made by a **recognized financial institution of Sri Lanka**, which they did by having identified the Peoples' bank as a recognized Financial Institution in Sri Lanka.

In turn, as the usual practice in Commercial transactions are such, the Peoples' Bank (Plaintiff- Appellant) directed the contractor, BAT International, to enter into a **Counter-Indemnity /Guarantee Bond to the same value** with another recognized financial/Insurance institution in Sri Lanka for the **purpose of indemnifying** the Peoples' Bank (Plaintiff-Appellant) for the said sum of money. The Counter- Indemnity Guarantee Bond was taken for the sole purpose of "indemnifying the Peoples' Bank for Rs.69,508,854/- **in the event** of the Peoples' Bank being called upon to pay on the Advance Payment Guarantee when the BAT International fails to do the work and thereafter to reimburse the Peoples' Bank the said sum of money paid on the Guarantee Bond 1001/96. It is simply understood, if I may say, that when BAT International does not comply with the terms of the contract with RDA, RDA can encash the guarantee bond for Rs.69,508,854/- and recover what is due to RDA. Then Peoples' Bank can turn to the Counter-Indemnity/Guarantee Bond and get reimbursed.

So, BAT International decided to get the Counter-Indemnity/Guarantee Bond from Ceylinco Insurance Company Ltd. and the Counter-Indemnity/Guarantee Bond No. COAB/805 was entered into between BAT International and Ceylinco Insurance Co. Ltd.

on 16.02.1996 for Rs.69,508,854/-. It's validity was extended, at the request of BAT International till 16.04.1998.

Then, BAT International had defaulted on the contract. RDA on 18.3.1998 demanded payment of Rs.69,508,854/- from Peoples' Bank in compliance with the Guarantee Bond No. 1001/96. However, BAT International instituted action in the Commercial High Court in case No. HC Civil 50/98(1) against Peoples' Bank and at the commencement obtained an enjoining order restraining Peoples' Bank from paying any money to RDA on the Guarantee Bond 1001/96. The end of that case was an order dated 10.05.1999 refusing to grant the BAT International an interim injunction and BAT International thereafter withdrew the action. As a result, Peoples' Bank could act legally and correctly in compliance with Guarantee Bond 1001/96. So, the Peoples' Bank on 25.05.1999 paid to the RDA the said sum of money Rs.69,508,854/-. Before this commenced, the Peoples' Bank, acting on the Counter- Guarantee Bond No. COAB/805, demanded from the Ceylinco Insurance Co. Ltd. on 18.03.1998 the sum of Rs.69,508,854/-. But due to the case filed by BAT International as aforesaid and due to the enjoining order, Peoples' Bank could not pay the money legally and correctly which was due to the RDA. At the end of the case, Peoples' Bank correctly paid the money to RDA on 25.05.1999.

I observe that BAT International tried to stop RDA claiming the money from Peoples' Bank by filing a case in which it failed. BAT International knew that if it had failed to perform correctly on the contract, as a result, the money advanced by RDA to BAT International for work to be done, had to go back to RDA on the 1st Guarantee Bond with the Peoples' Bank. The Peoples' Bank paid the money to RDA on behalf of BAT International.

Thereafter the Peoples' Bank in turn made a demand on Ceylinco Insurance Co. Ltd. on the Counter-Indemnity/Guarantee Bond No. COAB/805 on 14.06.1999. Ceylinco Insurance Co. Ltd. denied liability on the said bond on 01.07.1999. Then the Peoples' Bank filed action in the Commercial High Court against Ceylinco Insurance Co. Ltd. under HC. Civil No. 141/99(1) on 07.12.1999.

The trial was taken up on 14 issues; 1st to 11th were raised by the Plaintiff-Appellant, Peoples' Bank and 12th to 14th were raised by the Defendant-Respondent, Ceylinco Insurance Co. Ltd. The Learned High Court Judge delivered judgment on 10.10.2002. I have gone through the whole judgment. The Learned High Court Judge has considered only one document P3 which he has highlighted and read as the subject matter, of this case. He has set aside the document P4 stating that "it has nothing to do with P3", quoting the evidence given by the only witness of the Plaintiff, Peoples' Bank. He seems to have taken P3 on its face value only. He has not looked at it as what it really is, or how it has come into being or why such a document was signed by the parties, etc. which the Plaintiff had tried hard to point out by having marked 20 documents, P1 to P20. The Defendant, Ceylinco Insurance had not called any witnesses.

Document P3, is a document the Ceylinco Insurance Co. Ltd. (Defendant-Respondent) has issued to the Peoples' Bank (Plaintiff-Appellant). It is a printed form where blanks are filled in type-written letters. In the 1st paragraph of this document, the name of the contractor is mentioned as 'BAT International' correctly. The number being COAB/805 indicates that it is a 'Counter-Advance Guarantee-Bond' and not a normal Advance Guarantee Bond. I observe that it refers to a contract. Both parties were aware of this contract which was signed between the BAT International and the Road Development Authority. The employer was RDA and the contractor was BAT International. Yet, I believe this form which is a printed form, not quite suitable for Counter Advance Indemnity/Guarantee Bonds had wrongly placed the word "Employer" within brackets after "Peoples' Bank, Corporate Branch, Colombo". It has created a seemingly absurd situation. This bond was issued to be valid from 16.02.96 to 16.2.98. It was twice extended by P5 and P9 which amply demonstrates and confirms that P3 is a Counter Indemnity Advance Guarantee Bond between Ceylinco Insurance Co. Ltd. and the Peoples' Bank. I hold that P3 should have been read with P4, P5 and P9 to feel the meaning properly.

The Defendant Ceylinco Insurance Co. Ltd. had made out a case to say that P3 is a 'contract' by itself and because the Peoples' Bank had not directly paid any money to the Ceylinco Insurance Co. Ltd. according to this document, P3, the Peoples' Bank cannot claim any money due to it from the Ceylinco Insurance Co. Ltd.

I observe that the Defendant-Respondent Ceylinco Insurance Ltd. had tried its level best to hide the true nature of document P3 taking undue advantage of the bond being printed in the wrong form. I find that it is a very dishonest act by the Defendant-Respondent since it is a document given by the Defendant-Respondent itself to the Plaintiff-Appellant. P3 is a document which was initiated, printed and blanks filled by Ceylinco Insurance Ltd. When P1 to P23 are taken together it is crystal clear that not only P3, P4, P5 and P9 are inter-related documents but even other documents are inter-related. P3 cannot by any means be taken alone and considered and interpreted by itself on the face of the document.

I have gone through the written submissions filed by the Appellant dated 08.07.2011, 22.11.2013, and 06.11.2015 as well as written submission filed by the Respondents dated 08.07.2011 and 06.11.2015.

I am of the view that any Court is entitled to look at the surrounding circumstances in order to identify the scope and object of the guarantee bonds just as much as it would be entitled to look at the factual matrix as an aid to the interpretation of any other commercial agreement. The Court should always seek to construe the document in such a way as to reflect what may fairly be inferred to have been the objective, intention and understanding of the parties.

In this matter it is quite clear that the parties, Plaintiff-Appellant and Defendant-Respondent knew the objective which was the counter indemnity sought and granted by P3. No party should be allowed to take advantage of mistakes done by that party itself and avoid responsibility.

The High Court Judge has totally gone wrong in having construed the document P3 only on the answers given by the witness of the Plaintiff under cross-examination and on the face value of the document. It is a very narrow way of looking at the problems before the Court. He had failed to see that P3 was an on-demand guarantee encashable on demand within 30 days which is a short period. He had not given his mind to the failure on the part of the Defendant-Respondent in not having led any oral or documentary evidence before this Court. He had first treated it as a document and

interpreted it on the words contained on the face of it which gives an absurd meaning to the document.

I set aside the judgment of the Commercial High Court and grant reliefs to the Plaintiff-Appellant as prayed for in the Plaint. Appeal is allowed with costs.

Judge of the Supreme Court

Upaly Abeyratne, J.

I agree.

Judge of the Supreme Court

Anil Gooneratne, J.

I agree.

Judge of the Supreme Court