

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

S.C. CHC Appeal 06/2011
CHC 16/2005 (1)

In the matter of an Application for an Appeal under Section 5 of the High Court of the Provinces (Special Provisions) Act No. 10 of 1966 and read with Article 154P of the Constitution of the Republic of Sri Lanka.

Commercial Leasing Company Ltd.,
No. 68, Bauddhaloka Mawatha,
Colombo 4.
And formerly of Commercial House
No. 21, Bristol Street,
Colombo 1.

PLAINTIFF

Vs.

1. Naurunna Badalge Princy Sujatha
Prince Radio & Electricals
No. 67, Akuressa Road,
Weligama.
2. Indrajith Bandula Dickson Jayasinghe
974/1, Sri Sumangala Mawatha,
Ratmalana.
3. Liyana Gunawardhana Sunil
Litiyamulla
Pitidura,
Weligama.

DEFENDANTS

AND NOW BETWEEN

1. Naurunna Badalge Princy Sujatha
Prince Radio & Electricals
No. 67, Akuressa Road,
Weligama.
2. Indrajith Bandula Dickson Jayasinghe
974/1, Sri Sumangala Mawatha,
Ratmalana.

DEFENDANT-APPELLANTS

Vs.

Commercial Leasing Company Ltd.,
No. 68, Bauddhaloka Mawatha,
Colombo 4.

And formerly of Commercial House
No. 21, Bristol Street,
Colombo 1.

PLAINTIFF-RESPONDENT

2. Liyana Gunawardhana Sunil
Litiyamulla
Pitidura,
Weligama.

DEFENDANT-RESPONDENT

BEFORE:

S.E. Wanasundera P.C., Acting C.J.
B. P. Aluwihare P.C., J.
Anil Gooneratne J.

COUNSEL:

W. Dayaratne P.C., with Achala Srimal Perera
for Defendant-Appellants

Hiran M.C de Alwis with Heshan Thambimuttu
For Plaintiff-Respondent

ARGUED ON: 27.03.2017

DECIDED ON: 26.05.2017

GOONERATNE J.

This is a direct appeal to the Supreme Court. Action was filed on a Lease Agreement (Financial Lease) concerning vehicle bearing No. 251-0858 (P1) Plaintiff-Respondent's position was that the above agreement was breached by the 7th Defendant-Appellant and Plaintiff-Respondent, continues to be the owner of the vehicle. 1st Defendant failed and neglected to pay the lease rental, in terms of the Lease Agreement, and the agreement was accordingly terminated (P2). By an indenture of guarantee, and an indemnity of 10.02.2003 the Defendants are inter alia jointly and severally liable. By Letter of Demand dated 05.08.2004, Plaintiff demanded from the 1st Defendant a sum of Rs. 3,278,777/65 being the balance sum outstanding. The demand as aforesaid was not challenged by the Defendants-Respondents. A statement of account (P3) had been produced at the trial. A Judgment was sought for the balance amount due on the lease agreement but no claim made on the vehicle.

Defendant-Appellant's position was that the Plaintiff-Respondent's claim was unjust and unreasonable, as the Plaintiff-Respondent had re-possessed the bus bearing No. G2-9646 which was kept as security. Parties proceeded to trial on 23 issues. 5 admissions were recorded. It was recorded as admitted, paragraph 1-4 of the plaint and documents P1 to P2 and P5 filed along with the plaint. The signatures in P1, P2 & P5 were admitted. It was admitted that 2nd and 3rd Defendants were the guarantors in respect of the agreement P3. It is also admitted that the 1st Defendant-Appellant undertook to pay the sum of Rs. 6,1289/56 as monthly instalments as per the lease agreement.

In a nutshell Plaintiff's witness testified that Defendants failed and neglected to pay the lease rental as per the agreement. Therefore the lease had been duly terminated (P2). In terms of the agreement a sum of Rs. 3,278, 777/65 is due and owing being the balance outstanding. The Letter of Demand was not challenged by the Defendant. By a guarantee and an indemnity of 10.02..2003 the 2nd and 3rd Defendants agreed jointly and severally to the several conditions as pleaded in paragraph 18 of the plaint.

This is a very straight forward case although the learned President's Counsel for Defendant-Appellant took some time to conclude his submissions. This agreement is described as a financial lease. The lessee failed and neglected to pay the balance sum due as per the Lease Agreement. Plaintiff was the owner

of the vehicle in question. 1st Defendant-Appellant did not reply and respond to the Letter of Demand I see no legal basis to interfere with the Judgment of the learned High Court Judge. I affirm the Judgment and dismiss this appeal with costs.

Appeal dismissed.

JUDGE OF THE SUPREME COURT

S.W. Wanasundera P.C. J.

I agree.

Acting Chief Justice

B.P. Aluwihare P.C., J.

I agree.

JUDGE OF THE SUPREME COURT