

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

S.C. (CHC) Appeal No. 31A/2003
H.C (Civil) Case No. 120/98(1)

Seylan Bank Limited
No. 33, Sir Baron Jayathilake Mawatha,
Colombo 1.
Presently at Ceylinco - Seylan Towers
No. 90, Galle Road,
Colombo 03.

PLAINTIFF

Vs.

1. Cosmacorale Patabendige Ali Asker
Anver Cadir
2. Abdul Majeed Faleel Jiffry

Both carrying on business in Partnership
Under the name, style and firm of
Island Operators of
No. 37, Nikape Road,
Dehiwela.

Presently of No. 20, Main Street,
Dehiowita.

DEFENDANTS

AND NOW

Seylan Bank Limited
No. 33, Sir Baron Jayathilake Mawatha,
Colombo 1.
Presently at Ceylinco - Seylan Towers
No. 90, Galle Road,
Colombo 03.

PLAINTIFF-APPELLANT

Vs.

1. Cosmacorale Patabendige Ali Asker
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2. Abdul Majeed Faleel Jiffry

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No. 37, Nikape Road,
Dehiwela.

Presently of No. 20, Main Street,
Dehiowita.

DEFENDANTS-RESPONDENTS

BEFORE:

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

COUNSEL:

S. R. de Livera instructed by De Livera Associates
For the Plaintiff-Appellant

Defendants-Respondents are absent and unrepresented

ARGUED ON: 10.02.2016

DECIDED ON: 08.03.2016

GOONERATNE J.

Plaintiff-Appellant Bank filed action against two Defendant-Respondents on or about 25th September 1998, based on two causes of action. On the first cause of action, People's Bank lent and advanced overdraft facilities to the 1st & 2nd Defendants in a sum of Rs. 463,964/84. (pleaded in paragraph 4-10 of plaint) The Defendant-Respondents thereafter requested for a term loan facility of Rs.2 million on or about 21.10.1992 (2nd cause of action). Learned High Court Judge entered judgment in favour of the Plaintiff-Respondent Bank only in terms of sub paragraphs (a) and (c) of the prayer to the plaint. Appellant's complaint in this appeal is that based on the 2nd cause of action the High Court Judge had not granted relief to the Plaintiff-Appellant Bank on the sums of money due on the 2nd cause of action. i.e on the term loan of Rs. 2 million. (pleaded in paragraphs 11-18 of plaint) This is the only point to be considered in this appeal.

I would prefer to note the following extract from the Judgment of the learned High Court Judge which gives some indication as to what he had to

state about the 2nd cause of action. In the Judgment dated 26.09.2003 (Pg. 8/9 folios 364 & 365). It is stated as follows:

“The aforesaid two loans have been granted to the defendants by crediting the current account of the defendants marked “P1”. The plaintiff’s witness said that as shown in “P1 (xxxii)” the plaintiff has credited Rs. 2 million to the defendants’ current account on 22.10.1992 which is the Term Loan referred to in “P3”.

The plaintiff’s witness said the defendants have failed and neglected to pay the overdraft and loan facilities as promised.

The plaintiff’s witness said, by 1992 October overdraft had gone up to Rs. 2 million and thereafter the overdraft had been rescheduled and a Rs. 2 million loan had been granted and as a result the overdraft had been reduced to Rs. 88,217.93. (Vide proceedings dated 16.05.1992 at pages 21 and 22). This position is reflected in “P1 (xxxii)”. On 21.10.1992 the aforesaid loan of Rs. 2 million had been granted and credited to the defendants’ account.

Accordingly, it appears to me that the overdraft facility and the loan of Rs. 2 million have been combined or amalgamated as one loan”.

Whatever stated above the material placed before this court indicates that the Defendant had not repaid any money in settlement of the term loan. The two causes of action are based on two separate transactions. One was money lent and advanced as an overdraft facility which fell into arrears. The other was a term loan. The banking business very often permit rescheduling of loans granted to clients. That is to encourage them to settle the loans offered from the bank which also give the clients more time to adjust that business and repay the bank on the sums due to the bank. To reschedule a loan, seems to me,

to buy some time to settle and whatever done in the process is no gift but yet another facility and repayment would follow.

It is apparent that the Plaintiff Bank pleaded in their plaint two causes of action. That is the overdraft facility and the other is the term loan. The traditional method for banks to grant loans would be the overdraft facility which is a direct line of credit and operates through current accounts. The interest due would be charged on the outstanding sum borrowed. To a client it may be somewhat cheaper as there is regular fluctuation of the account depending on borrowings and sums debited from the customer provided money is available in the account. The alternative to an overdraft facility is the term loan. It is only an alternative but in this instance both facilities are provided. In this case the bank may reserve the right to claim repayment on demand, and the repayment could spread over several years. The repayment method will obviously benefit the client's cash flow.

The above would be just a few methods in which the bank deals with their clients. I do not wish to discuss in this judgment all other facilities, which does not come within the ambit of this case. As such I would understand the case in hand as discussed above. Therefore I am reluctantly compelled to observe that the overdraft facility and the term loan are not combined or

amalgamated as one loan but two separate transactions and two separate loan agreements liable to be settled in favour of the Plaintiff-Bank. The trial Judge in his judgment states that two loans were granted, but I find it difficult to understand as to how the two became one. The Banks are not charitable institutions to lend money and not insist on repayment of loans.

I have to gather from the remarks made by the learned High Court Judge that the rupees 2 million term loan, had also been credited to the debtors' account, from which account the overdraft facility operates. It is also stated by the said High Court Judge that with the granting of the Rs. 2 million term loan the overdraft had been reduced to Rs. 88,217/93. It may be so. But the 2 million term loan being another separate transaction remains as a loan and not charity extended by the bank to the debtor, even if it was given to overcome the debtors' difficulties of settlement of the overdraft facility. As such debtors' liability to repay the term loan remains with interest.

In all the above facts and circumstances the Plaintiff-Bank would be entitled to claim the sums of money due on the 2nd cause of action, based solely on the term loan granted to the Defendants. Therefore I allow this appeal as per

prayer 'b' of the plaint, which sums of money are in default and due and owing to the Plaintiff-Appellant-Bank.

Appeal allowed with costs.

JUDGE OF THE SUPREME COURT

S. E. Wanasundera P.C., J.

I agree

JUDGE OF THE SUPREME COURT

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

I agree.

JUDGE OF THE SUPREME COURT