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

Chemisales Holding (Pvt) Ltd.,
21, Wattalpola Road,
Moon Crescent,
Pallimulla, Panadura.
And
45, Industrial Colony,
Nagoda, Kalutara.
Defendant-Respondent-Appellant

SC/APPEAL/148/2019
WP/HCCA/KAL/45/2013/REV
DC PANADURA DR/03/2010

Vs.

People's Bank,
75, Sir Chittampalam A. Gardiner
Mawatha, Colombo 2.
Plaintiff-Petitioner-Respondent

Before: Hon. Justice P. Padman Surasena
Hon. Justice Shiran Gooneratne
Hon. Justice Mahinda Samayawardhena

Counsel: Mahinda Nanayakkara for the Defendant-Respondent-Appellant.
Rasika Dissanayake for the Plaintiff-Petitioner-Respondent.

Argued on: 19.11.2024

Written Submissions:
By the Appellant on 04.09.2020 and 22.01.2025
By the Respondent on 16.02.2021 and 10.02.2025

Decided on: 03.04.2025

Samayawardhena, J.

Factual matrix

The plaintiff, People's Bank, instituted this action against the defendant company by plaint dated 24.05.2010 in the District Court of Panadura, seeking to recover a sum of Rs. 9,801,583.31, together with interest as stated therein, in respect of a temporary overdraft facility obtained by the defendant through current account No. 148-1001-1-7192993 maintained at the Panadura branch of the plaintiff bank in terms of section 4(1) of the Debt Recovery (Special Provisions) Act No. 2 of 1990, as amended by Act No. 9 of 1994.

Having been satisfied with the contents of the affidavit and the annexures filed with the plaint, the District Judge, at the first instance, entered decree *nisi* in terms of section 4(2) of the Act, which was thereafter served on the defendant. The defendant, by way of petition and affidavit, sought either the dissolution of the decree *nisi* or, in the alternative, permission to file an answer. By order dated 13.10.2011, the District Judge decided to grant the defendant an opportunity to file an answer unconditionally.

In the answer, the defendant, while seeking the dismissal of the plaintiff's action, made a claim in reconvention for a sum of Rs. 20 million, alleging that the entire business of the defendant came to a standstill due to the institution of this action. Upon the filing of the replication, the case was fixed for trial.

At the third date of trial, the defendant raised preliminary objections seeking the dismissal of the plaint based on section 30 of the Act. By order dated 08.08.2013, the District Judge upheld these objections and dismissed the plaintiff's action.

Being dissatisfied with the District Court order, the plaintiff filed a revision application before the High Court of Civil Appeal of Kalutara. By judgment dated 27.07.2018, the High Court set aside this order and directed the District Judge to recommence the proceedings from the beginning, requiring the plaintiff to support the application for the decree *nisi* afresh. The defendant filed this appeal with leave obtained against the order of the High Court. This Court granted leave to appeal on the following question of law.

> *Did the High Court of Civil Appeal fail to observe that there is no instrument, agreement or document produced by the plaintiff to support its contention as required by section 4(1) of the Act and therefore the action of the plaintiff has been instituted in violation of the mandatory provisions of the Debt Recovery (Special Provisions) Act No. 2 of 1990 as amended?*

The purpose and scheme of the Act

The Debt Recovery (Special Provisions) Act No. 2 of 1990 was enacted as part of a series of Acts introduced in 1990 to strengthen the economy by expediting recovery of debts. The package of Acts passed by Parliament in 1990 include:

(1) Debt Recovery (Special Provisions) Act, No. 2 of 1990
(2) Mortgage (Amendment) Act, No. 3 of 1990
(3) Recovery of Loans by Banks (Special Provisions) Act, No. 4 of 1990
(4) Registration of Documents (Amendment) Act, No. 5 of 1990
(5) Civil Procedure (Amendment) Act, No. 6 of 1990
(6) Motor Traffic (Amendment) Act, No. 8 of 1990
(7) Agrarian Services (Amendment) Act, No. 9 of 1990
(8) Consumer Credit (Amendment) Act, No. 7 of 1990

(9) National Development Bank of Sri Lanka (Amendment) Act, No. 10 of 1990
(10) Public Servants (Liabilities) (Amendment) Act, No. 11 of 1990
(11) Code of Criminal Procedure (Amendment) Act, No. 12 of 1990
(12) Trust Receipts (Amendment) Act, No. 13 of 1990
(13) Inland Trust Receipts Act, No. 14 of 1990
(14) Credit Information Bureau of Sri Lanka Act, No. 18 of 1990
(15) Inland Revenue (Amendment) Act, No. 22 of 1990
(16) Excise (Amendment) Act, No. 37 of 1990
(17) Banking (Amendment) Act, No. 39 of 1990
(18) Excise (Special Provisions) (Amendment) Act, No. 40 of 1990
(19) Inland Revenue (Amendment) Act, No. 42 of 1990
(20) Turnover Tax (Amendment) Act, No. 43 of 1990
(21) Specified Certificate of Deposits (Tax and Other Concessions) Act, No. 45 of 1990 and
(22) Industrial Promotion Act, No. 46 of 1990.

While a legal framework for recovering debts through ordinary money recovery actions by adopting regular and summary procedure already existed, such proceedings were often unduly protracted, adversely affecting the lending portfolios, solvency, and financial performance of banks. A well-functioning financial system is essential for sustainable economic development, and its stability depends on a reliable mechanism for prompt recovery of debts. The efficient circulation of money, rather than its concentration in the hands of a few, is vital for a stable and thriving economy. In this context, the recovery of debts owed to "lending institutions", plays a pivotal role in ensuring sustainable economic growth.

According to section 2(1) of the Debt Recovery (Special Provisions) Act, a lending institution may, subject to subsection (2), recover a debt due to it by instituting an action in accordance with the procedure prescribed in the

Act. Such an action shall be filed in the District Court within whose jurisdiction the defendant resides, the cause of action arises, or the contract sought to be enforced was made.

Section 2(2) stipulates that the sum alleged to be in default must exceed one hundred and fifty thousand rupees. Furthermore, according to the First Schedule of the High Court of the Provinces (Special Provisions) Act No. 10 of 1996, actions under the Debt Recovery (Special Provisions) Act No. 2 of 1990 cannot be instituted in the Commercial High Court, notwithstanding that the debt exceeds 50 million rupees. In other words, all actions under the Debt Recovery (Special Provisions) Act No. 2 of 1990 shall be instituted in the District Court.

The terms “lending institution” and “debt” are defined in section 30.

> “lending institution” means—
>
> (a) a licensed Commercial Bank within the meaning of the Banking Act, No, 30 of 1988;
> (b) the State Mortgage and Investment Bank established by the State Mortgage and Investment Bank Act, No. 13 of 1975;
> (c) the National Development Bank established by the National Development Bank of Sri Lanka Act, No. 2 of 1979;
> (d) the National Savings Bank established by the National Savings Bank Act, No. 30 of 1971;
> (e) the Development Finance Corporation of Ceylon established by the Development Finance Corporation of Ceylon Act (Chapter 165); and
> (f) a company registered under the Finance Companies Act, No. 78 of 1988, to carry on finance business, and includes a liquidator appointed under the Companies Act, No. 17 of 1982 or any

authority duly appointed, to carry on, or wind up, the business of any bank, corporation or company referred to above.

What is a "debt"?

Under Section 2(1) of the Act, an action may be instituted only for the recovery of a "debt." The term "debt" as defined in section 30 reads as follows:

> *"debt" means a sum of money which is ascertained or capable of being ascertained at the time of the institution of the action, and which is in default, whether the same be secured or not, or owed by any person or persons, jointly or severally or as principal borrower or guarantor or in any other capacity, and alleged by a lending institution to have arisen from a transaction in the course of banking, lending, financial or other allied business activity of that institution, but does not include a sum of money owed under a promise or agreement which is not in writing.*

Accordingly, the essential characteristics of a "debt" under this Act may be identified as follows:

(a) It must be a sum of money that is either ascertained or capable of being ascertained at the time of instituting the action and is in default. It is important to emphasise that even if the sum is not ascertained, the criterion is satisfied as long as it is capable of being ascertained by a simple arithmetic calculation.
(b) The sum to be recovered may be secured or unsecured and may be owed by any person or persons, whether jointly or severally, or in the capacity of a principal borrower, guarantor, or any other capacity.
(c) The sum to be recovered shall have arisen from a transaction in the course of banking, lending, financial or other allied business activity of the lending institution.

(d) However, this does not extend to a sum of money owed under a promise or agreement that is not in writing.

Written promise or agreement

The phrase "*but does not include a sum of money owed under a promise or agreement which is not in writing*" in the definition of "debt" in section 30 of the Act has been subject to various interpretations. It has been observed in the minority judgment in *Kularatne v. People's Bank* [2021] 2 Sri LR 474 at 513-514 and *Chandrasekera v. Indian Overseas Bank* (SC/APPEAL/48/2021, SC Minutes of 23.01.2024 at pages 13-16) that the definition of "debt" in section 30, which states that "*debt...does not include a sum of money owed under a promise or agreement which is not in writing*", makes it mandatory that an action under this Act must be based on a written promise or agreement. The logical extension of this interpretation is that it is mandatory for the plaintiff to file the written promise or agreement with the plaint for the District Court to be clothed with the jurisdiction to proceed under this Act.

Let me pause for a moment to state that it is the wrong question to ask whether it is mandatory for the plaintiff to file a written promise or agreement with the plaint. The right question to ask is: What are the documents that should be filed by the plaintiff with the plaint in terms of the Act? I will address this in the next subtopic.

The aforementioned interpretation is primarily based on the Supreme Court Determination in connection with some amendments proposed to this Act in the year 2003 [SC Special Determination No. 23/2003 on Debt Recovery (Special Provisions)(Amendment) Bill of 2003] where it had been stated in connection with "*debt...does not include a sum of money owed under a promise or agreement which is not in writing*", that "*the special procedure could be resorted to only in instances where there is a written promise or*

agreement on the basis of which the sum is claimed." The implication of this observation in the special determination is that, if there is no written promise or agreement, an action under the Debt Recovery (Special Provisions) Act cannot be filed.

In this regard, let me first state the following. The aforesaid Bill, brought in 2003, has not become law as an Act of Parliament. In *Ukwatte v. DFCC Bank* [2004] 1 Sri LR 164, Sripavan J. (as His Lordship then was) stated at 167 that in Supreme Court Special Determinations what is examined by the Supreme Court is the constitutionality of a Bill and not the constitutionality of the provisions contained in an Act already in force. The constitutional jurisdiction of the Supreme Court is distinct and different from the appellate jurisdiction it exercises. Supreme Court Special Determinations have no binding effect as they are advisory in character.

If this Court were to hold that the special procedure under the Debt Recovery (Special Provisions) Act applies only where there is a written promise or agreement, such an interpretation would be inconsistent with section 4(1) of the Act, which requires the plaintiff to file with the plaint the "*instrument, agreement or document sued upon, or relied on by the institution*". The term "or" is a coordinating conjunction used to present alternatives. The words "instrument" and "document" in section 4(1) cannot be rendered meaningless and redundant. The legislature does not employ words in vain, and every word in a statute must be given meaning. A written agreement and a document are not the same. All written agreements are documents but all documents are not written agreements. Therefore, the proposition that an action under this Act can only be filed on a written promise or agreement is not acceptable.

If the intention of the legislature were to restrict the institution of actions under this Act solely to cases where there is a written promise or agreement, the legislature, in section 4(1), instead of stating that the plaintiff shall file

with the plaint the "instrument, agreement or document sued upon, or relied on by the institution", could have stated that the plaintiff shall file with the plaint the "written promise or agreement sued upon or relied on by the institution".

Similarly, in the definition of "debt" under section 30, instead of stating that "*…and alleged by a lending institution to have arisen from a transaction in the course of banking, lending, financial or other allied business activity of that institution, but does not include a sum of money owed under a promise or agreement which is not in writing*", the legislature could have stated, "*…and alleged by a lending institution to have arisen from a written promise or agreement in the course of banking, lending, financial or other allied business activity of that institution.*"

This was acknowledged by the minority judgment in *Kularatne v. People's Bank* (supra) at page 515 when it was stated that "*Thus, if there is no written instrument, agreement or document sued upon or relied on by the institution, a lending institution is not entitled in law to institute action under the procedure stipulated in the Debt Recovery Act to recover a debt due to the institution.*"

It is clear that the purpose of excluding "*a sum of money owed under a promise or agreement which is not in writing*" under section 30 of the Act is to insist on tangible proof of the debt by documentary evidence.

Although the special determination states that "*the special procedure could be resorted to only in instances where there is a written promise or agreement on the basis of which the sum is claimed*", the Court immediately thereafter clarifies the rationale for the insistence of written promise or agreement. It states, unless there is a written promise or agreement, "*The resulting position is that the court would not have any written evidence of the*

commitment on the part of the debtor when it issues decree nisi in the first instance."

Accordingly, if there is written evidence of the commitment on the part of the debtor, the Court can entertain the action. As stated above, section 4(1) allows an action to be filed based on an "*instrument, agreement* ***or*** *document sued upon, or relied on by the institution*". An instrument, written agreement or document sued upon or relied on would provide "*written evidence of the commitment on the part of the debtor when it issues decree nisi in the first instance.*"

There is no conflict between section 4(1) and the definition of "debt" in section 30. Those two sections are complementary and must be read together.

The primary function of the Court in interpreting statutes is to ascertain the intention of the legislature and the objective of the legislation, and to give effect to them in accordance with established principles of statutory interpretation. In the instant case, the legislative intent and objective are clear: the expeditious recovery of debts owed to lending institutions, thereby facilitating overall economic improvement for the greater benefit of society. Hence it is the duty of the Court to give effect to this legislative intent.

In the House of Lords case of *R v. Secretary of State for Health ex parte Quintavalle (on behalf of Pro-Life Alliance)* [2003] UKHL 138, Lord Bingham stated:

> *The basic task of the court is to ascertain and give effect to the true meaning of what Parliament has said in the enactment to be construed. But that is not to say that attention should be confined and a literal interpretation given to the particular provisions which give rise to difficulty. Such an approach not only encourages immense prolixity in drafting, since the draftsman will feel obliged to provide expressly for*

> *every contingency which may possibly arise. It may also (under the banner of loyalty to the will of Parliament) lead to the frustration of that will, because undue concentration on the minutiae of the enactment may lead the court to neglect the purpose which Parliament intended to achieve when it enacted the statute. Every statute other than a pure consolidating statute is, after all, enacted to make some change, or address some problem, or remove some blemish, or effect some improvement in the national life. The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So the controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment.*

Harmonious construction is employed to resolve apparent inconsistencies or contradictions within the same law. It rests on the principle that every statute is enacted with a distinct purpose and intention and should, therefore, be interpreted as a cohesive whole.

In *Sultana Begum v. Prem Chand Jain* AIR 1997 SC 1006, it was held:

> *[T]he rule of interpretation requires that while interpreting two inconsistent, or, obviously repugnant provisions of an Act, the courts should make an effort to so interpret the provisions as to harmonise them so that the purpose of the Act may be given effect to and both the provisions may be allowed to operate without rendering either of them otiose.*

In the case of *Project Blue Sky Inc. v. Australian Broadcasting Authority* [1998] HCA 28, McHugh, Gummow, Kirby and Hayne JJ (Chief Justice Brennan wrote a separate judgment) stated at para 70:

> *A legislative instrument must be construed on the prima facie basis that its provisions are intended to give effect to harmonious*

> *goals. Where conflict appears to arise from the language of particular provisions, the conflict must be alleviated, so far as possible, by adjusting the meaning of the competing provisions to achieve that result which will best give effect to the purpose and language of those provisions while maintaining the unity of all the statutory provisions.*

In *Rajavarothiam Sampanthan and Others v. The Attorney General and Others* (SC/FR/351-356, 358-361/2018, SC Minutes of 13.12.2018) at 61 it was held:

> *The next principle of interpretation which should be mentioned is that, where there is more than one provision in a statute which deal with the same subject and differing constructions of the provisions are advanced, the Court must seek to interpret and apply the several provisions harmoniously and read the statute as a whole. That rule of harmonious interpretation crystallises the good sense that all the provisions of a statute must be taken into account and be made to work together and cohesively enable the statute to achieve its purpose.*

Chief Justice Goddard in *Barns v. Jarvis* [1953] 1 All ER 1061 at 1063 stated "*One has to apply a certain amount of common sense in construing statutes and to bear in mind the object of the Act*".

It is on this basis that a series of cases has held that an "overdraft" falls within the definition of "debt" under section 30, read with section 4(1) of the Act, notwithstanding the absence of a written agreement in a single document.

In *Kularatne v. People's Bank* (supra) the majority judgment at pages 480-481 held:

> *The term 'debt' as defined above [section 30 of the Act] is very wide and covers many situations, the material factor being that the sum of*

money should be 'ascertainable' at the time of institution of the action and alleged by a lending institution to have arisen from 'a banking, lending, financial or other allied business activity' of the institution. This term 'debt' has been considered by the Appellate Courts on many an instance and given a wide meaning to include 'overdrafts' and 'guarantees' as well.

In Kiran Atapattu v. Pan Asia Bank Ltd [2005] 2 Sri LR 276 at 279, the Court of Appeal held whether one calls the sum borrowed 'an overdraft or a loan' if it is capable of being ascertained it falls within the meaning of 'debt' under section 30 of the Debt Recovery (Special Provisions) Act preponing the theory that what is material is the sum being capable of being ascertained at the time of institution of the case.

Similarly, in Dharmaratne v. People's Bank [2003] 3 Sri LR 307, a case filed under the Debt Recovery Act, the Court of Appeal held that an 'overdraft' falls within the definition of 'debt' as the overdraft arises from a transaction relating to banking. In that case the contention of appellant, that the 'overdraft' was not a 'debt' or a 'loan' was rejected by the Court of Appeal.

In Eassuwaran and others v. Bank of Ceylon [2006] 1 Sri LR 365, a case decided by this Court, Raja Fernando, J. (with S.N. Silva, C.J. and Thilakawardena, J. agreeing) held that a 'guarantee' provided by the appellants falls within the definition of 'debt' and a lending institution could have recourse to the provisions of the Debt Recovery (Special Provisions) Act No. 2 of 1990 as amended. In this case the contention that the provisions of the Act apply only to a 'fixed term loan' and not to any 'credit or overdraft facility' and that if the 'debt' was a 'credit facility or an overdraft facility', the provisions of the Debt Recovery (Special Provisions) Act No. 2 of 1990 as amended does not apply was overruled by this Court.

> *Thus, from the above referred judicial decisions, it is amply clear that an 'overdraft' falls within the four corners of the Act subject to the other prerequisites therein being fulfilled.*

When an action is instituted in relation to a temporary overdraft, what is the "instrument, agreement or document sued upon or relied on" by the plaintiff? Primarily, the issued cheques and the statement of account. Additionally, there may be several other supporting documents.

In *Kularatne's* case (supra), which involved a temporary overdraft facility, the first question of law raised by the defendant-appellant before this Court was that no instrument, agreement or document sued upon had been annexed to the plaint, in violation of section 4(1) of the Act. This question was answered against the defendant by the majority judgment stating at page 486 that, "*In the instant appeal, it is apparent that the provisions in section 4(1) of the Act were adhered to by the plaintiff bank. To the plaint filed before the District Court was annexed an affidavit, a decree nisi, required stamps, two cheques and a statement of the defendant's current account.*"

In *Eagle Breweries Ltd v. People's Bank* [2008] 2 Sri LR 199, the Court held that while a cheque and a statement of account may not individually fall within the meaning of "instrument" or "agreement", as they do not independently establish a contractual relationship between two parties, they may, when considered together, constitute a "document" that embodies the terms of such a contract. Somawansa J. at page 205 stated: "*My considered view is that a cheque drawn from a Bank and a statement of account from a Bank would come within the ambit of a document in terms of section 4(1) of Act No. 2 of 1990.*"

As held by this Court in *Bank of Ceylon v. Aswedduma Tea Manufactures (Pvt) Ltd* [2017] 1 Sri LR 150, when a bank files a regular action on an overdraft facility, the case is not based on the cheques but on the overdraft

facility. Therefore, the presentment of all cheques is not an indispensable requirement. The issuance of cheques by the customer and their subsequent payment by the bank constitute a contract based on the principle of offer and acceptance.

However, I must make it clear that this interpretation should never be taken to mean that a financial institution can merely annex some documents to the plaint and obtain a decree *nisi* as a matter of course when instituting an action under the Debt Recovery (Special Provisions) Act. Before issuing the decree *nisi*, the Court shall *inter alia* be satisfied on a *prima facie* basis that the documents are properly stamped if required by law, are not suspicious, are not barred by prescription, and that the sum claimed is lawfully due to the institution. If the Court is satisfied that the plaintiff is entitled only to a portion of the sum claimed, it may issue a decree *nisi* limited to that amount. If the Court finds that the plaintiff is not entitled to any sum, it need not enter a decree *nisi*. I must emphasise that both the financial institution and the Court must act with responsibility. While financial institutions must not institute actions under this Act irresponsibly, the Court must also exercise caution in determining the sum for which the decree *nisi* is issued. At the stage of considering the issuance of a decree *nisi*, as at the stage of seeking leave to appear and show cause, the Court does not adjudicate the main case on its merits. Once a decree *nisi* is issued, the role of the Court at the end of the inquiry is confined to deciding whether to make the decree *nisi* absolute in whole or in part and not whether the plaintiff is entitled to the sum originally claimed in the prayer to the plaint.

Hence, it is not correct to state that an action under the Debt Recovery (Special Provisions) Act No. 2 of 1990 cannot be filed in the absence of a written promise or agreement. If there exists an “instrument, written agreement or document sued upon or relied on by the institution” which

provides "written evidence of the commitment on the part of the debtor", the Court can entertain an action under this Act, provided that the plaintiff satisfies the other prerequisites stipulated therein.

What shall the plaintiff file with the plaint?

Section 3 provides that an action under this Act shall be instituted by presenting a plaint in the form prescribed by the Civil Procedure Code. Section 4(1) sets out the documents that the plaintiff shall file along with the plaint.

> *The institution suing shall on presenting the plaint, file with the plaint an affidavit to the effect that the sum claimed is lawfully due to the institution from the defendant, a draft decree nisi, the requisite stamps for the decree nisi and for service thereof and shall in addition, file in court, such number of copies of the plaint, affidavit, instrument, agreement or document sued upon, or relied on by the institution, as is equal to the number of defendants in the action.*

According to section 4(1), the plaintiff lending institution shall file the following with the plaint:

(a) an affidavit to the effect that the sum claimed is lawfully due to the institution from the defendant;
(b) a draft decree *nisi* with the requisite stamps for the decree *nisi* and for service thereof;
(c) the instrument, agreement or document sued upon, or relied on by the plaintiff;
(d) such number of copies of the plaint, affidavit, instrument, agreement or document sued upon or relied on, as is equal to the number of defendants in the action.

Under section 4(1), the plaintiff is required to file "*an affidavit to the effect that the sum claimed is lawfully due to the institution from the defendant*". However, this does not mean that the exact words "lawfully due" must appear verbatim in the affidavit. What the section requires of the plaintiff is to file "an affidavit to the effect that the sum claimed is lawfully due to the institution from the defendant". If the facts sworn or affirmed to in the various averments of the affidavit satisfy the Court that the sum is lawfully due to the plaintiff, the absence of exact words "lawfully due" shall not be a ground to reject the plaint. (*Ramanayake v. Sampath Bank* [1993] 1 Sri LR 145, *Metal Packing Ltd v. Sampath Bank Ltd* [2008] 1 Sri LR 356)

According to section 4(4), the affidavit to be filed by the institution shall be made by a principal officer with personal knowledge of the facts of the cause of action. Such officer shall be liable to be examined as to the subject matter thereof at the discretion of the judge.

Section 4(1) mandates the plaintiff to present with the plaint the "instrument, agreement or document sued upon, or relied on". Nonetheless, a closer scrutiny of section 4(1) reveals that the filing of the "instrument, agreement or document sued upon, or relied on" is an additional requirement, not the primary one. The main requirement is the affidavit accompanying the plaint, affirming that the sum claimed is lawfully due, along with the draft decree *nisi* with the requisite stamps. Then the latter part of section 4(1) states that the plaintiff "shall in addition" file in Court copies of the plaint, affidavit, instrument, agreement or document sued upon or relied on. I must emphasise that my observation in this regard does not mean that filing copies of the instrument, agreement or document sued upon or relied on is optional. The use of the word "shall" makes it mandatory for the plaintiff to file at least copies of the instrument, agreement or document sued upon or relied on with the plaint.

Before section 4(1) was amended by Act No. 9 of 1994, the plaintiff was required to tender the original instrument, agreement or document sued upon or relied on by the plaintiff. However, after the said amendment, it is sufficient to file copies of them with the plaint.

This is further confirmed by section 8, as amended, which provides that, at the stage of support, the Court may direct the plaintiff to produce the original documents for its perusal and return.

> *In any proceedings under this Act, the court may order that the Original of the instrument, agreement or other document copies of which were filed with the plaint or on which the action is founded be made available for examination by the court when the action is supported in court and such instrument, agreement or document, thereafter, notwithstanding anything to the contrary in the Civil Procedure Code (Chapter 103) shall be returned to the plaintiff after such examination.*

When shall the Court enter decree *nisi* against the defendant?

The plaintiff can support the application for decree *nisi*, *ex parte*. Section 4(2) sets out the matters the Court shall consider when determining whether decree *nisi* shall be entered.

> *If any instrument, agreement or document is produced to court and the same appears to the court to be properly stamped (where such instrument, agreement or document is required by law to be stamped) and not to be open to suspicion by reason of any alteration or erasure or other matter on the face of it, and not to be barred by prescription, the court being satisfied of the contents contained in the affidavit referred to in subsection (4), shall enter a decree nisi in the form set out in the First Schedule to this Act in a sum not exceeding the sum prayed for in the plaint together with interest up to the date of payment and such costs as the court may allow at the time at making the decree nisi*

> *together with such other relief prayed for by the institution as to the court may seem meet and the decree nisi shall be served on the defendant in the manner hereinafter specified.*

According to section 4(2), when determining whether decree *nisi* shall be entered, the Court shall consider whether:

(a) the instrument, agreement or document produced with the plaint is properly stamped, if required by law;
(b) it is open to suspicion due to any alteration, erasure or other irregularity on its face; and
(c) the claim for the recovery of debt is barred by prescription.

If the Court is satisfied that those requirements are met, it shall then examine the contents of the affidavit filed by a principal officer of the lending institution, as required by section 4(1) read with section 4(4) of the Act.

Debt recoverable including interest

According to section 4(2), decree *nisi* shall be entered for a sum not exceeding the amount prayed for in the plaint, together with interest up to the date of payment and such costs as the Court may allow at the time of entering decree *nisi*, along with any other relief sought by the institution as the Court deems appropriate.

Although section 5 of the Civil Law Ordinance states that the amount recoverable on account of interest or arrears of interest shall in no case exceed the principal, section 21 of this Act reads as follows:

> *Notwithstanding anything to the contrary in this Act or any other law, an institution may recover as interest in an action instituted under this Act, a sum of money in excess of the sum of money calculated as principal, in such action.*

Section 22 states:

> *No sum of money which constitutes a penalty for default in payment, or delay in payment, of a debt shall be recoverable in an action instituted for the recovery of such debt, in terms of the procedure laid by this Act.*

Section 23 states:

> *In an action instituted under this Act the court shall in the decree nisi, order interest agreed upon between the parties up to the date of decree nisi, and interest at the same rate on the aggregate sum of the decree nisi from the date of decree nisi until the date of payment in full. In the event of the parties not having agreed upon, the rate of interest, the court shall in the decree nisi order interest at the market rate from the date of institution of action up to the date of decree nisi and thereafter on the aggregate sum of the decree nisi from the date of decree nisi until the date of payment in full.*

Adjustment of action

If the amount claimed in the plaint includes a sum that cannot be recovered under this Act, what should the Court do? Such inclusion does not render the plaintiff's action bad in law *ab initio*. If the amount claimed includes a sum that cannot be recovered under the Act, the Court shall disallow the recovery of that portion while allowing the recovery of the remaining portion lawfully due under the provisions of the Act.

In terms of section 22, read with the proviso to section 6(3) of the Act, the Court may adjust the amount at the stage of making the decree *nisi* absolute. This issue was considered in *Car Mart Ltd v. Pan Asia Bank Ltd* [2004] 3 Sri LR 56, where Amaratunga J. stated at page 59:

> *If the defendant at the end of the case satisfies court that a sum of money is not legally due from him or a sum not legally recoverable from him (such as the sum referred to in section 22) the court has power to make adjustments to the decree nisi before making it absolute. If the court has no such power it would lead to an injustice.*
>
> *The decree nisi entered by court is in VIII parts. The court has granted leave to the defendants to appear and defend after depositing a sum of Rs. 6,100,000/- in court. After depositing this sum it is open to the defendants to show that penal interest is included in the sums claimed by the plaintiff Bank. Then the court has the power under section 6(3) proviso read with section 22 to exclude the sum sought to be recovered as a penalty from the decree absolute.*

The proviso to section 6(3) reads as follows:

> *Provided that a decree nisi, if it consists of separate parts, may be discharged in part and made absolute in part and nothing herein enacted shall prevent any order being made by consent of the plaintiff and the defendant on the footing of the decree nisi.*

The proviso to section 6(3) grants the Court flexibility in making the decree *nisi* absolute. It allows the Court to:

(a) discharge the decree *nisi* in part while making the remaining part absolute, and
(b) issue any order on the decree *nisi* with the consent of both the plaintiff and the defendant.

Such an adjustment is also possible on the first date the defendant appears before the Court following the service of the decree *nisi*. Section 12 provides for this:

> *Where the defendant appears in court in response to the decree nisi and does not contest the decree nisi but admits liability and prays to liquidate the debt in instalments, the court shall with the approval of both parties to the action, minute the fact on the record and thereafter make the decree absolute. Such settlement shall operate as a stay of execution of proceeding unless the defendant acts in breach of any of the terms of settlement, in which event the institution shall be entitled to execute the decree.*

This provision ensures an efficient resolution by allowing the defendant to settle the debt in instalments while preserving the plaintiff's right to enforce the decree upon non-compliance. It strikes a balance between facilitating repayment and maintaining the integrity of the debt recovery process.

Service of the decree *nisi*

Detailed provisions were introduced by Act No. 9 of 1994 regarding the service of decree *nisi* on the defendant, as this is an area often exploited by defendants to prolong litigation by evading service. In essence, service is effected by registered post to the address provided by the defendant to the lending institution. The Court, however, has the discretion to order service through the defendant's employer, the head of the department, a process officer by personal service, or by substituted service.

> *5(1) The decree nisi shall subject to the provisions of section 5B, be ordinarily served on the defendant by registered post at the address given by the defendant to the institution as the address to which process may be served on him.*
>
> *(2)(a) Where the defendant is a public officer, the court may at its discretion, in addition to sending the decree nisi to the defendant by registered post, also forward a copy of the decree nisi, in duplicate, by registered post to the head of the department in which the defendant*

is employed, and it shall be the duty of such head of department to cause a copy of the decree nisi to be served personally on the defendant, and to return the other copy of the decree nisi to the court forthwith, with either an acknowledgement of receipt of the decree nisi by the defendant or with a statement of service of the decree nisi endorsed thereon and signed by the person effecting the service and countersigned by the head of the department if the head of the department has not himself effected the service.

(3) Where the defendant is not a public officer and is in the employment of another person, the court may at its discretion, in addition to sending the decree nisi by registered post to the defendant also forward a copy of the decree nisi in duplicate to the employer of the defendant at his usual place of business or, where the employer is a company or corporation, to any secretary, manager or other like officer of the company or corporation, and it shall be the duty of such employer or officer, as the case may be, to cause a copy of the decree nisi to be served personally on the defendant and to return the other copy of the decree nisi to the court forthwith, with either an acknowledgement of receipt of such decree nisi by the defendant or with a statement of service of the decree nisi endorsed thereon and signed by the person effecting the service and counter signed by the employer of the defendant if such employer has not himself effected the service.

(4) In this section "head of department" -

> *(a) when used with reference to a member of any unit of the Sri Lanka Army, Navy or Air Force, means the Commanding Officer of that unit;*
>
> *(b) when used with reference to a person employed in a Provincial Council means the Secretary of that Provincial Council;*

(c) when used with reference to a person employed in Provincial Public Service means the head of the department in which such person, is employed;

(d) when used with reference to a person employed in a local authority, if the local authority is a Municipal Council means the Municipal Commissioner of the Council; and if the local authority is an Urban Council or a Pradeshiya Sabha, means the Chairman of that Council or Sabha;

(e) when used with reference to any other public officer, means the head of the department of Government in which such person is employed.

5A(1) Where a decree nisi is served by registered post on any defendant under sub-section (1) of section 5 the Advice of Delivery of the registered letter in which the decree is sent, shall be sufficient proof of the service of such decree nisi on the defendant.

(2) Where a decree nisi is served on a defendant under subsection (2) or (3) of section 5, an acknowledgement of the receipt of the decree nisi by the defendant or a statement of the service endorsed on the duplicate of the decree nisi shall be sufficient proof of the service of such decree nisi on the defendant.

(3) Where the court is satisfied that decree nisi has been sent to the defendant by registered post but no advice of delivery has been obtained in respect thereof, it shall authorise the Fiscal or any other officer authorized by court in that behalf to affix the decree nisi to some conspicuous part of the house in which the defendant ordinarily resides or in the case of a company or corporation to the usual place of business or office of such company or corporation and in such case the decree nisi shall be deemed to have been duly served on the defendant.

(4) Where the court is satisfied that decree nisi has been sent to the defendant by registered post under subsection (2) or (3) of section 5 but no acknowledgment of receipt by the defendant or statement of service on the defendant has been received in respect thereof it shall authorise the Fiscal or other officer authorized by court in that behalf to affix the decree nisi to some conspicuous part of the house in which the defendant ordinarily resides, and in such case, the decree nisi shall be deemed to have been duly served on the defendant.

5B(1) The court may, on application being made in that behalf immediately after decree nisi is entered, and its discretion, order that in lieu of serving the decree nisi by registered post, the decree nisi be served by tendering or delivering the same on the defendant personally through a process officer.

(2) If the service referred to in subsection (1) cannot by the exercise of due diligence be effected, the process officer shall affix the decree nisi to some conspicuous part of the house in which the defendant ordinarily resides or in the case of a corporation or company, to the usual place of business or office of such corporation or company, and in every such case the decree nisi shall be deemed to have been duly served on the defendant.

(3) It shall be the duty of the process officer, on decree nisi being served on the defendant or any other person on his behalf, to require the signature or the thumb impression or both of such defendant or person to be made to an acknowledgement of the service of the decree nisi, on the original.

(4) The process officer shall return the precept to court setting out in detail the manner, the person, place and other particulars relating to the identity of the person on whom, the date on which, and the time at

which, the decree nisi was served and also state in the report, whether the person on whom it was served placed his signature or thumb impression or both, or refused to place the signature or thumb impression or both, on the original, in acknowledgment of such service.

(5) Refusal to place the signature or thumb impression or both, as the case may be, on the original shall not invalidate the service of the decree nisi.

(6) For the purpose of this section—

"process officer" means the Fiscal Official of the court of Fiscal of a court of like jurisdiction within the local limits of whose jurisdiction the decree nisi is served or any officer specially authorized in exceptional circumstances by court to serve the decree nisi or any process officer of a court or Grama Niladhari or a private process server;

"private process server" means a person employed by an Attorney-at-law or any institution, and who is registered as a private process server by the Fiscal under any written law.

5C Where a decree nisi is ordered to be served personally through a process officer, such decree nisi may be served in any part of Sri Lanka provided that where a decree nisi is required to be served outside the local limits of the jurisdiction of the court issuing the same, the decree nisi shall be forwarded by such court to the court within whose jurisdiction the defendant is believed to be residing, and it shall be the duty of the last mentioned court to cause the decree nisi to be duly served on the defendant in accordance with the provisions of this Act.

Once the decree *nisi* is served, the defendant cannot appear in Court on the returnable date merely to request a further date to show cause. He shall make the application in writing seeking leave to appear and show cause

against the decree *nisi* on the first date itself. The original section 4(3), which stated "*The day to be inserted in the decree nisi as the day for the defendant's appearance and showing cause, if any, against it shall be as early a day as can conveniently be named, regard being had to the distance from the defendant's residence to the court*", was amended by Act No. 9 of 1994 by adding thereafter "*and no further time shall be given to the defendant by court thereafter for appearing and showing cause against such decree nisi*", thereby manifesting the intention of the legislature not to grant extension of time.

Section 4(3), as presently constituted, reads as follows:

> *The day to be inserted in the decree nisi as the day for the defendant's appearance and showing cause, if any, against it shall be as early a day as can conveniently be named, regard being had to the distance from the defendant's residence to the court, and no further time shall be given to the defendant by court thereafter for appearing and showing cause against such decree nisi.*

District Judges must be mindful of this requirement when fixing a returnable date for the decree *nisi* and ensure that the decree *nisi* is served on the defendant without delay.

Leave to appear and show cause

According to section 6(1), in an action instituted under the Debt Recovery (Special Provisions) Act, the defendant cannot appear and show cause against the decree *nisi* unless he obtains leave from the Court to do so.

> *In an action instituted under this Act the defendant shall not appear or show cause against the decree nisi unless he obtains leave from the court to appear and show cause.*

The conditions upon which leave to appear and show cause shall be granted are set out in section 6(2), which reads as follows:

> *The court shall upon the filing by the defendant of an application for leave to appear and show cause supported by affidavit which shall deal specifically with the plaintiff's claim and state clearly and concisely what the defence to the claim is and what facts are relied upon to support it, and after giving the defendant an opportunity of being heard, grant leave to appear and show cause against the decree nisi, either*
>
> *(a) upon the defendant paying into court the sum mentioned in the decree nisi; or*
> *(b) upon the defendant furnishing such security as to the court may appear reasonable and sufficient for satisfying the sum mentioned in the decree nisi in the event of it being made absolute; or*
> *(c) upon the court being satisfied on the contents of the affidavit filed, that they disclose a defence which is prima facie sustainable and on such terms as to security, framing and recording of issues, or otherwise as the court thinks fit.*

The granting of leave to appear and show cause is not automatic. In the first place, the defendant shall file an application supported by affidavit in which he shall:

(a) deal specifically with the plaintiff's claim;
(b) state clearly and concisely what the defence to the claim is and;
(c) what facts are relied upon to support it.

In deciding the question of granting leave to appear and show cause, the Court shall thereafter afford the defendant an opportunity to be heard, which is typically done by way of written submissions.

The defence disclosed shall not be a mere defence but shall be one which is "*prima facie* sustainable". This is different from "*prima facie* defence" or "sustainable defence". What is required is "*prima facie* sustainable defence". The term "*prima facie*" is a Latin term which means "at first sight". This means, the Court shall be satisfied that the defence disclosed is sustainable at first sight, not after the trial.

In cases filed under Debt Recovery (Special Provisions) Act, there is no place for technical objections, bare denials, evasive defences, or other vague and imprecise responses, designed to prolong the proceedings. The Act has been designed for speedy disposal of cases in the interests of trade and commerce. In terms of section 6(2), the defendant "*shall deal specifically with the plaintiff's claim and state clearly and concisely what the defence to the claim is and what facts are relied upon to support it*". This provision imposes a legal obligation on the defendant to engage directly and substantively with the plaintiff's claim, addressing it on its merits, not on technical grounds. The defence must be articulated with clarity and precision, specifying not only the nature of the defence but also the particular facts upon which it is based, thereby demonstrating its *prima facie* sustainability.

In *Kiran Atapattu v. Pan Asia Bank Ltd* [2005] 2 Sri LR 276 at 283, while dismissing the application, Wimalachandra J. stated:

> *The section 6(2) of the Debt Recovery (Special Provisions) Act provides for the affidavit of the defendant to deal specifically with the plaintiff's claim on its merits. In the instant case the defendant has relied on technical objections and not revealed his defence, if he has any, to the claim made by the plaintiff. He has taken refuge mostly on the technical objections set out in his affidavit. The defendant has not set up any plausible defence relating to a triable issue.*

If the defence is not *prima facie* sustainable, can the Court make the decree *nisi* absolute?

If the Court decides that the defence is not *prima facie* sustainable, the Court cannot make the decree *nisi* absolute. In such circumstances, the Court cannot act under section 6(2)(c) but shall proceed under section 6(2)(a) and allow the defendant to appear and show cause by depositing the entire sum mentioned in the decree *nisi*. However, depending on the nature of the defence, the Court may proceed under section 6(2)(b) and allow the defendant to appear and show cause by furnishing security. If the Court proceeds under section 6(2)(b), the security ordered shall not be nominal but "*reasonable and sufficient for satisfying the sum mentioned in the decree nisi in the event of it being made absolute*".

This conclusion that the Court cannot immediately make the decree *nisi* absolute, even if the defence is not *prima facie* sustainable, is justified on several grounds.

In the first place, what section 6(2) states is that "*The court shall upon the filing of the defendant of an application for leave to appear and show cause supported by affidavit....grant leave to appear and show cause against the decree nisi*", by directing the defendant (a) to deposit the entire sum; or (b) to furnish reasonable and sufficient security; or (c) to furnish security or otherwise as the Court thinks fit. The District Judge shall select one of the three alternatives. Making the decree *nisi* absolute is not one of them.

At the stage of seeking leave to appear and show cause, while the Court seriously considers whether a *prima facie* sustainable defence exists, it does not necessarily adjudicate the main case on its merits.

One may wonder why the Court should grant the defendant an opportunity to defend the plaintiff's case if the defendant fails to satisfy the Court at the leave stage that he has a *prima facie* sustainable defence. When something

is obvious, we tend to refuse to afford a fair hearing stating that hearing makes no difference as the end result would be the same. This is a misguided notion. A fair hearing could uncover critical insights and perspectives that were not initially apparent. Megarry J. in *John v. Rees* [1970] Ch 345 at 402 elucidated this point as follows:

> *As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow, were not; of unanswerable charges which, in the event, were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by discussion, suffered a change.*

If the defendant deposits the sum stated in the decree *nisi* in Court as a precondition to contesting the claim of the lending institution, there is no reason for the Court to make the decree *nisi* absolute without affording an opportunity to the defendant to show cause.

In *Ramanathan v. Fernando* (1930) 31 NLR 495 at 498, Garvin A.C.J. held:

> *It is the right of every person against whom an action is instituted to appear and, unless he admits the claim, to file his answer. For the purpose of expediting the recovery of claims of the nature specified in section 703 by discouraging frivolous, vexatious, and purely dilatory defences, the Legislature has in such cases curtailed this right by the requirement that a defendant shall not be admitted to defend the action until he has first obtained leave.*

In reference to this dictum, in the case of *Sebastian v. Kumarajeewa* (1977) 80 NLR 264 at 268, Gunasekera J. stated:

> *If the Defendant merely deposits the full sum claimed without offering any explanation, he can as of right file his Answer (Ramanathan v.*

> *Fernando). And so if the Judge rejects the defence totally he cannot proceed ex parte but must still give the Defendant an opportunity of exercising the right he has in law to deposit the full sum claimed and file his Answer.*

Section 6(3) reads as follows: "*Where the defendant either fails to appear and show cause or having appeared, his application to show cause is refused, the court shall make the decree nisi absolute.*"

The decree *nisi* shall only be made absolute at the stage of leave, if the defendant (a) having been served the decree *nisi* fails to appear and show cause; or (b) having appeared, his application to show cause is refused. The refusal under (b) above does not include refusal on the ground of non-disclosure of a *prima facie* sustainable defence. An application to show cause may be refused on various grounds, such as failure to file a proper application seeking to show cause or failure to comply with the conditions imposed by Court as a precondition to show cause.

In *Seylan Bank PLC v. Farook* [2021] 3 Sri LR 1, Jayawardena J. took the same view when he stated at page 20:

> *If the defendant fails to appear in court upon service of the decree nisi, or having appeared, his application for leave to appear and show cause is refused by court for non-compliance with the requirements set out in section 6(2) of the said Act, or because the defendant did not fulfill the conditions imposed by the court in the order made under section 6(2) of the said Act, the court shall make the decree nisi absolute under section 6(3) of the said Act.*

Section 6(2) and 6(3) are complementary and must be read together, not in isolation. There is no internal conflict between these provisions with regard to the making of the decree *nisi* absolute at the stage of granting leave.

Is the Court necessarily obliged to grant leave to appear and show cause unconditionally if it is satisfied that the defence is *prima facie* sustainable?

In *Kularatne v. People's Bank* (supra) at 493, the majority took the view that "*The Act does not permit unconditional leave to appear. Leave to appear is always subject to conditions. The least being furnishing security as the court thinks fit.*" Conversely, in *Seylan Bank PLC v. Farook* (supra) at page 17, the Court held that "*the phrase 'or otherwise as the court thinks fit' should be interpreted to enable the court to make an appropriate order as it thinks fit, including an order granting leave to appear and show cause against the decree nisi without the defendant furnishing any security*." In *Chandrasekera v. Indian Overseas Bank* (supra) at page 31, the Court, whilst admitting that "*It is not mandatory to impose security*", nevertheless held that "*The words, 'otherwise as the court thinks fit' cannot be read to mean that the District Court is empowered to grant leave with no terms or conditions whatsoever*". The Court held that "*The use of the words, 'on such terms' applies to 'security, framing and recording of issues, or otherwise as the court thinks fit' and therefore terms or conditions must be imposed when granting leave*".

Prior to the amendment by Act No. 9 of 1994, section 6(2)(c) read as "*The court shall upon the application of the defendant give leave to appear and show cause against the decree nisi…upon affidavits satisfactory to the court that there is an issue or a question in dispute which ought to be tried*". In that backdrop, it was held in *Ramanayake v. Sampath Bank* (supra) at page 152 that "*Leave may be granted unconditionally under section 6(2)(c) where the court is satisfied that the defendant's affidavit raises an issue or question which ought to be tried.*"

After the amendment by Act No. 9 of 1994, section 6(2)(c) presently reads as "*The court shall upon the application of the defendant give leave to appear*

and show cause against the decree nisi…upon the court being satisfied on the contents of the affidavit filed, that they disclose a defence which is prima facie sustainable ***and*** *on such terms as to security, framing and recording of issues,* ***or*** *otherwise as the court thinks fit.*"

The phrase in section 6(2)(c) of the Debt Recovery (Special Provisions) Act, "*on such terms as to security, framing and recording of issues, or otherwise as the court thinks fit*" was borrowed from section 706 of the Civil Procedure Code in regard to summary procedure on liquid claims. Section 706 reads as follows: "*The court shall, upon application by the defendant, give leave to appear and to defend the action upon the defendant paying into court the sum mentioned in the summons, or upon affidavits satisfactory to the court which disclose a defence or such facts as would make it incumbent on the holder to prove consideration, or such other facts as the court may deem sufficient to support the application and on such terms as to security, framing, and recording issues, or otherwise, as the court thinks fit.*" In *Ramanayake v. Sampath Bank* (supra) at page 150 it was observed that "*The procedure under this Act is very similar to the summary procedure on liquid claims provided in Chapter 53 (sections 703 to 711) of the Code.*" In *Sebastian v. Kumarajeewa* (supra), this Court, reviewed the previous authorities on the applicability of section 706 regarding ordering security in greater detail. Whilst holding that "*In an application for leave to appear and defend, even if the affidavit of the defendant is satisfactory, the court can exercise its discretion under section 706 and order the defendant to deposit part of the sum claimed in the plaint as a condition to defend the action*", the Court further stated at page 269 that "*Needless to state however is the position, that when the defence outlined is very 'satisfactory' the learned Judge may well exercise his discretion in terms of section 706 and permit the Defendant to appear and defend unconditionally.*"

In my view, if the Court is satisfied that the defence is *prima facie* sustainable, it shall, under section 6(2)(c), grant the defendant leave to appear and show cause, depending on the facts and circumstances of the case, either on such terms as to security or unconditionally. If there is a strong *prima facie* sustainable defence for the defendant, imposing terms and conditions on the defendant to appear and show cause would be irrational. The Court may, in such circumstances, allow the defendant to appear and defend unconditionally.

The matters the Court shall take into account when deciding whether to issue a decree *nisi* are enumerated in section 4(2). Once this decision is made and the decree *nisi* is issued, there is no provision empowering the Court to dissolve it at the leave stage based on the existence of a strong *prima facie* sustainable defence for the defendant. It needs to be done after the inquiry.

The procedure after leave is granted

Once leave to appear and show cause against the decree *nisi* is granted, the Court shall fix the case for inquiry at the earliest possible date to facilitate its expeditious disposal.

Section 10 of the Act reads as follows:

> *In the court where cases may be instituted under this Act a Special Inquiry Roll shall be kept of such cases in which leave to appear and show cause against the decree nisi has been granted, and it shall be competent for the Judge of such court to order such cases to be set down for hearing on such days as may facilitate their early disposal, any rule or practice of such court to the contrary notwithstanding, and after giving the parties, reasonable notice of the date of inquiry.*

Section 7 of the Act reads as follows:

> *If the defendant appears and leave to appear and show cause is given the provisions of sections 384, 385, 386, 387, 390 and 391 of the Civil Procedure Code (Chapter 101) shall, mutatis mutandis, apply to the trial of the action.*

Section 391 of the Civil Procedure Code reads as follows:

> *On the institution of an application of summary procedure which is not made in, or incidental to, any already pending action, the court shall commence and keep a journal entitled as of the matter of the application, according to the rules prescribed in section 92, and this journal so kept shall be the record of the matter of the application.*

The procedure stipulated in this Act is a special procedure based on summary procedure as opposed to regular procedure. This procedure is a combination of the summary procedure set out in sections 373-391 (Chapter XXIV) and the summary procedure on liquid claims set out in sections 703-711 (Chapter LIII) of the Civil Procedure Code.

Let me now examine sections 384, 385, and 386 of the Civil Procedure Code in detail, as their application presents considerable complexity.

It may be noted that, these provisions of the Civil Procedure Code, shall, *mutatis mutandis* (i.e. with the necessary changes having been made), apply to the proceedings filed under the Debt Recovery (Special Provisions) Act, not in their exact form.

Section 384 of the Civil Procedure Code reads as follows:

> *If on such day both the petitioner and the respondent appear, the proceedings on the matter of the petition shall commence by the respondent in person, or by his registered attorney, stating his objections, if any, to the petitioner's application; and the respondent shall then be entitled to read such affidavits or other documentary*

evidence as may be admissible, or by leave of the court to adduce oral evidence in support of his objections, or to rebut and refute the evidence of the petitioner:

Provided that no affidavit or other documentary evidence shall be so read without express leave of court, unless a copy of the document shall have been served on the petitioner or his registered attorney at least forty eight hours before the day when the matter of the petition comes on to be heard and determined; and the oral evidence shall be taken down in writing by the Judge.

In terms of section 384:

(a) The respondent (the defendant) shall commence the inquiry by stating his objections to the petitioner's (the plaintiff's) application, if any. In other words, the respondent shall commence the inquiry by filing objections in the form of a petition supported by affidavits and other relevant documents.

(b) If this is done, the respondent shall then be entitled to

(i) read such affidavits or other documentary evidence as may be admissible, provided that the copies of the documents have been served on the petitioner at least forty-eight hours before the date of the inquiry. Notwithstanding the non-service of copies as such, the defendant may nevertheless read such affidavits or documentary evidence in Court with the express leave of the Court

or

(ii) by leave of the Court to adduce oral evidence in support of his objections, or to rebut and refute the evidence of the petitioner.

When an action is filed under the Debt Recovery (Special Provisions) Act, the defendant is required by section 6(2) to make an application supported

by affidavits with other documents in order to seek leave to appear and show cause. This can be considered as objections to the plaintiff's application. Hence, there is no necessity to serve copies of them on the plaintiff forty-eight hours before the date of the main inquiry, if those documents had already been served on the plaintiff at the leave inquiry.

It is noteworthy that section 384 uses the phrase "read such affidavits". The provision does not specify from where or how the respondent shall read the affidavits. If the respondent merely reads the affidavits, it does not amount to adducing oral evidence. In such circumstances, the respondent cannot be subjected to cross-examination. Oral evidence can be adduced only under the second limb of section 384, which provides that the respondent is entitled "by leave of the court to adduce oral evidence". I need hardly emphasise that the phrases "read such affidavits" and "adduce oral evidence" are separated by the coordinating conjunction "or", which is used to present alternatives.

One cannot argue that it is unfair to allow the respondent to read the affidavits without being subject to cross-examination, as the same opportunity was granted to the petitioner, who was not subject to cross-examination when he supported the application for the order *nisi* or decree *nisi*, as the case may be.

However, if the respondent chooses to adduce oral evidence in support of his objections or to rebut the evidence of the petitioner, he can be subject to cross-examination. I must stress that the respondent can adduce oral evidence only with the leave of the Court, and not as a matter of right.

Section 385 of the Civil Procedure Code reads as follows:

> *In the event of the respondent stating objections to the application, and not otherwise, and after the respondent's evidence, if any, shall have*

> *been read or given, the petitioner shall be entitled by way of reply to comment upon the respondent's case.*

According to section 385, when the evidence of the respondent is read or given as set out in section 384, the petitioner is entitled, by way of reply, to comment upon the respondent's case. To "comment upon" the respondent's case means that the petitioner has the right to address, critique or respond to the evidence presented by the respondent.

Section 386 of the Civil Procedure Code reads as follows:

> *When the respondent's evidence has been taken, it shall be competent to the court, on the request of the petitioner, to adjourn the matter to enable the petitioner to adduce additional evidence; **or**, if it thinks necessary, it may frame issues of fact between the petitioner and respondent, and adjourn the matter for the trial of these issues by oral testimony. And on the day to which the matter is so adjourned, the additional evidence shall be adduced, and the issues tried in conformity with, as nearly as may be, the rules hereinbefore prescribed for the taking of evidence at the trial of a regular action.*

According to section 386, after the petitioner has commented on the respondent's case, the petitioner may move the Court to allow him to adduce additional evidence. This can be by way of counter affidavits and documents. Alternatively, if the Court deems it necessary (and not otherwise), the Court (not the parties) may frame issues of fact (not of law) and adjourn the case for inquiry to try those issues by oral testimony, in which event the rules governing the taking of evidence at a trial of a regular action shall apply. It may be noted the use of the coordinating conjunction "or" between adjourning the matter to adduce additional evidence and adjourning the matter for the trial of the issues by oral testimony.

The Court fixes the case for the inquiry, not for the trial. What section 386 states is that the Court "*may frame issues of fact between the petitioner and respondent, and adjourn the matter for the trial of these issues by oral testimony*", not to "*adjourn the matter for the trial of the action*". (cf. section 80 of the Civil Procedure Code.) The section does not require a full trial to be conducted following the regular procedure. What the section requires to do is that "*the issues tried in conformity with, as nearly as may be, the rules hereinbefore prescribed for the taking of evidence at the trial of a regular action.*" While the Civil Procedure Code contains numerous provisions governing the trial of a regular action, in an inquiry contemplated under section 386, the rules applicable to a regular action need to be followed, as nearly as may be, only in relation to "the taking of evidence".

As section 387 makes it clear, after the inquiry, the Court delivers a final order, not a judgment. If a full trial is conducted under the regular procedure, the Court pronounces a judgment.

> *387. The court, after the evidence has been duly taken and the petitioner and respondent have been heard either in person or by their respective attorneys-at-law or recognized agents, shall pronounce its final order in the matter of the petition in open court, either at once or on some future day, of which notice shall be given in open court at the termination of the trial.*

In terms of section 19 of the Debt Recovery (Special Provisions) Act, any matter or question of procedure not provided for in this Act the procedure laid down in the Civil Procedure Code in a like matter or question shall be followed by the Court if such procedure is not inconsistent with the provisions of this Act.

In *Bank of Ceylon v. Warnakulasuriya* [2007] 1 Sri LR 33 at 36, Wimalachandra J. stated:

Section 7 of the Debt Recovery (Special Provisions) Act No.2 of 1990 as amended by Act No.9 of 1994 read with sections 384, 385, 386, 387, 390 and 391 of the Civil Procedure Code provides for the procedure after the grant of leave to appear and show cause against the decree nisi. Section 384 of the Civil Procedure Code spells out the manner and the sequence in which the respondent may make his objections and adduce evidence, and section 385 of the Civil Procedure Code provides for the petitioner to reply, so that there cannot arise any dispute on the burden of proof. It is only in the event of the court acting under section 386 of the Civil Procedure Code and, in its discretion, framing issues and adjourning the matter for trial that the rules prescribed in the Civil Procedure Code for the taking of evidence at the trial of a regular action, as nearly as may be become applicable.

I must also add that, since the case is fixed for inquiry and not for trial, the provisions of the law governing the filing of the list of witnesses and documents before the pre-trial or trial will not be applicable, as those provisions are applicable to trials, not for inquiries. However, it is a good practice to file lists of witnesses and documents even in inquiries, as it facilitates the efficient management of proceedings and promotes greater transparency. When the Court decides to frame issues of fact under the second limb of section 386 and adjourns the matter for inquiry, the Court can, of course, direct the parties to file their lists of witnesses and documents before a specific date fixed by the Court for the inquiry, with notice to the opposite party.

Applicability of law to the facts of this case

Let me now apply the aforementioned statutory provisions to the facts of the present case in order to determine whether the District Court and the High Court were correct in their decisions and in the decision-making process.

It is abundantly clear that the District Judge completely misunderstood the special procedure applicable to cases filed under this Act. The approach adopted in granting leave to appear and show cause unconditionally was inconsistent with the scheme of the Act. The Court treated the case as one filed under the regular procedure. The parties were allowed to file answer (which included a claim in reconvention of Rs. 20 million), replication, lists of witnesses and documents, and ultimately, the case was fixed for inquiry/trial as a matter of routine. On the third date of trial, the defendant's counsel raised three purported preliminary objections to the maintainability of the plaintiff's action. The District Judge upheld these objections and dismissed the plaintiff's action. This approach was wholly incompatible with the special procedural framework established under the Act.

The Judgment of the High Court setting aside the order of the District Judge with a direction to commence the case all over again from the stage of supporting for decree *nisi* is equally flawed. There is no justification for the High Court to require the plaintiff to support for the decree *nisi* again.

Due to this series of misapplications of the law, it has already taken fifteen years for the plaintiff bank to recover the dues from the defendant. The Act was introduced to expedite the recovery process, but its application now appears to be counterproductive. Had the plaintiff bank filed the action under the regular procedure, the money could have been recovered by now.

What are the three preliminary objections raised by the defendant at the third date of trial, which were upheld by the District Judge?

1. වර්ෂ 1994 අංක 9 දරණ පනතේ සංශෝධිත 1990 ණය ආපසු අය කර ගැනීමේ විශේෂ විධිවිධාන පනතේ 30 වන වගන්තිය ප්‍රකාරව ලිඛිත ලියවිල්ලක් මගින් පොරොන්දුවක් හෝ එකතුවීමක් මත පැමිණිල්ල ඉදිරිපත් කල යුතු වන්නේද?

2. මෙම නඩුවේ පැමිණිල්ල සඳහා එකි 30 වන වගන්තිය අර්ථය ඇතුලත් හෝ වැටෙන ලිඛිත පොරොන්දුවක් හෝ එකතුවීමක් ඉදිරිපත් කර නොමැත්තේද?
3. එකි විසදිය යුතු ප්‍රශ්න දෙකට වග උත්තරකාර පාර්ශවයේ වාසියට පිලිතුරු ලැබෙන්නේ නම් පැමිණිල්ල නිශ්ප්‍රභා විය යුතු වන්නේද?

The District Judge answered them as follows and dismissed the plaintiff's action.

1. නැත.
2. නැත.
3. එසේය.

The term "එකතුවීමක්" has no meaning in this context. These questions lack clarity.

The first and second answers are contradictory. Therefore the third question could not have been answered in the affirmative.

It appears that what was meant by ලිඛිත පොරොන්දුවක් හෝ එකතුවීමක් is a written promise or agreement. I have previously addressed this matter in this judgment. The action does not become bad in law merely because a written promise or agreement is not filed with the plaint. The preliminary objections are unsustainable in law.

The argument advanced before this Court is somewhat different. It is the position of the counsel for the defendant before this Court that the plaintiff did not tender with the plaint an instrument, agreement or document as required by section 4(1) of the Act and therefore the action of the plaintiff has been instituted in violation of the mandatory provisions of the Debt Recovery (Special Provisions) Act No. 2 of 1990. Leave to appeal against the judgment of the High Court was granted to the defendant on that basis. I have previously addressed this matter also in this judgment.

There is no dispute that the plaintiff's case is based on a temporary overdraft facility. A lending institution may institute action under this Act to recover debts arising from an "overdraft", provided that the other statutory requirements are met.

Admittedly, the defendant maintained several current accounts with the Panadura branch of the plaintiff bank. The plaintiff filed this action in respect of the temporary overdraft facility availed by the defendant through the current account No. 148-1-001-1-7192893. The cheques issued by the defendant through this current account were presented with the plaint marked P3(a)-(m). There is no dispute over issuance of those cheques and honouring them by the bank.

According to the duly certified copy of the statement of account presented with the plaint marked P4, the overdraft balance as at 15.02.2010 was Rs. 9,801,583.31.

According to section 90A of the Evidence Ordinance as it presently stands:

> *"bankers' books" include ledgers, day books, cash books, account books, and all other books used in the ordinary business of a bank and includes data stored by electronic, magnetic, optical or other means in an information system in the ordinary course of business of a bank;*
>
> *"certified copy" means a copy of any entry in the books of a bank, together with a certificate written at the foot of such copy that it is a true copy of such entry; that such entry is contained in one of the ordinary books of the bank, and was made in the usual and ordinary course of business; and that such book is still in the custody of the bank, such certificate being dated and subscribed by the principal accountant or manager of the bank with his name and official title and where the bankers' books consist of data stored by electronic, magnetic, optical or other means in an information system, includes a*

> *printout of such data together with an affidavit made in accordance with section 6 of the Evidence (Special Provisions) Act, No. 14 of 1995, or such other document of certification as may be prescribed in terms of any law for the time being in force relating to the tendering of computer evidence before any court or tribunal.*

Section 90C of the Evidence Ordinance reads as follows:

> *Subject to the provisions of this Chapter, a certified copy of any entry in a banker's book shall in all legal proceedings be received as prima facie evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions, and accounts therein recorded in every case where, and to the same extent as the original entry itself is now by law admissible, but not further or otherwise.*

Odgers' Principles of Pleadings and Practice, 18th Edition (1963), page 285-286 states:

> *It is important to distinguish between the legal burden which rests on a party by law to satisfy the court upon the whole of the evidence that he has proved his case and a provisional burden which is raised by the state of the evidence. As the case proceeds, the latter burden frequently shifts from the person on whom it rested at first to his opponent. This occurs whenever a prima facie case has been established on any issue of fact or whenever a rebuttable presumption of law has arisen.*

In terms of section 90A read with 90C of the Evidence Ordinance, the duly certified statement of account of the bank marked P4 shall be received as *prima facie* evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions, and accounts therein recorded to the same extent as the original entry itself. In terms of section 90E of the Evidence Ordinance, a party may make an application to inspect and take

copies of any entries in a banker's book for any of the purposes of such proceeding. I must acknowledge that the application of section 90C is limited to "the existence of such entry" as the original entry itself but not further, and I will leave that matter for a comprehensive discussion in an appropriate future case. (*People's Bank v. Gunasekera* [2019] 1 Sri LR 20 at 33, *Kularatne v. People's Bank* (supra) at page 515) What needs to be stressed for the present purposes is that, in view of section 90A read with 90C of the Evidence Ordinance, the defendant cannot cast doubt on some entries of P4 through written submissions filed in respect of purported preliminary objections to discredit the plaintiff's entire case and seek its dismissal *in limine*.

If the District Judge was not satisfied with some entries of P4, it ought to have been raised as an issue of fact and decided at the inquiry, not as a preliminary question of law. It is evident that the District Judge has been misled on this aspect as well.

> පැ.4 ලෙසට ඉදිරිපත් කර ඇති ලේඛණය ද එම ලේඛණය ගිණුම දෝෂ සහිත ලේඛණයක් බවට විත්තිය සිය ලිඛිත දේශන මගින් පෙන්වා දෙයි. විත්තියෙන් ඒ සම්බන්ධයෙන් පවසන්නේ එකි බැංකු ගිණුමේ අවසාන පිටුවේ වර්ෂ 2009.11.18 වන දින රු: 9,801,583.31 මුදලක් සදහන් වන බවයි. බැංකුවට අදාල මුදල නිශ්චය කර ගැනීමට පදනම වශයෙන් ගෙන ඇත්තේ පැ.4 දරණ ලෙජරයේ අවසාන ගිණුමේ සදහන් වන 2009 -11-18 දිනැති ශේෂය බව ඒ අනුව පැහැදිලි වන අතර එකි පැ.4 ගිණුම් ප්‍රකාශයේ අවසාන පිටුවේ පලවන තිරයේ 2009-07-07 දින වන විට ශේෂය ලෙස දක්වනු ලබන්නේ රු: දසකෝටි හැටනම ලක්ෂ තිස්හයදාස් තුන්සිය හැටතුනයි ශත පනස් හයක මුදලක් වන බවයි. රු: 106,936,363.56 එකි මුදලක් එකතුව පැමිණි ආකාරය ද 2009-11-18 වන විට රු: 9,801,583.31 මුදලක් බවට ශේෂය අඩු වුයේ කෙසේද යන්න සම්බන්ධයෙන් කිසිදු වාර්තාවක්, කිසිදු පිළිගත හැකි ගිණුමක් ලේඛණයේ සදහන් නොවන බැවින් පැ.4 දරණ ගිණුම දෝෂ සහිත ගිණුමක් ලෙසට පෙන්වා දෙයි. ඒ අනුව ද පනතේ 30 වන වගන්තියේ අර්ථයට අනුව ණය මුදල ණයකරු විසින් ගෙවීමට පැහැර හරිනු ලැබූ

මුදල කොතෙක් දැයි නඩුව පවරන අවස්ථාවේදි නිශ්චය වශයෙන් දැන ගැනිමට බැංකුවට හැකි වි නැති බවට පෙන්වා දෙයි.

The defendant has shown some discrepancy about the calculation of amounts reflected on the cheques with the amount claimed by the plaintiff to recover. The District Judge has taken this matter also into account to conclude that there was no sum of money that could be ascertained at the time of the institution of the action. The allegation is that the amount claimed by the plaintiff was less than the sum reflected in the cheques, not more than the sum reflected in the cheques. It appears that the defendant embarked on a fishing expedition, seeking to create doubt in the plaintiff's case, as if this were a criminal proceeding.

පැමිණිල්ල සමග පැ.1 ලෙසට සලකුණු කොට ඇත්තේ බැංකුව සංස්ථාවක් ලෙසට නීතිගත කල බවට දැක්වෙන ලියවිල්ලකි. ඒ අනුව එය 30 වන වගන්තියේ අර්ථ නිරූපණයට අදාල ලේඛණයක් නොවේ. එසේම පැ. 2 දරණ ලියවිල්ලද මෙම නියෝගයේ ඉහතින් විස්තර කර ඇති ආකාරයට පැමිණිල්ලෙන් පවසන ගිණුමට අදාල එකඟත්වයක් නොවේ. පැමිණිල්ල විසින් පැ.3 (ඒ) සිට පැ.3 (එම්) දක්වා ඉදිරිපත් කර ඇත්තේ විත්තිකාර සමාගම විසින් පැමිණිල්ලේ 3 වන ඡේදයේ සඳහන් ජංගම ගිණුමට අදාල චෙක්පත් බවට අනාවරණය වේ. නමුත් එම චෙක්පත් පිලිබඳව විත්තියෙන් පෙන්වා දෙන්නේ එකි චෙක්පත් වල වටිනාකම ගණනය කිරීමේ දි මුළු මුදල වන්නේ 9,947,452.93 ක් බවයි. පැමිණිල්ල ඉල්ලා සිටින මුදල වන්නේ රු: 9,801,583.31 කි. ඒ මත ද ණය මුදල නිශ්චිත වශයෙන් දැන සිටි තත්වය පනතේ 30 වන වගන්තිය ප්‍රකාරව පැමිණිල්ල වෙතට නොවූ බවට අනාවරණය වෙයි. පැමිණිල්ල ලිඛිත කොන්දේසි ලෙසට විශ්වාසය තබන එම සාධන පත්‍ර අනුව ද පනතේ 30 වන වගන්තිය ප්‍රකාරව අවශ්‍ය නෛතික අවශ්‍යතා මෙහි දි සපුරා නැති බවට පැහැදිලිව පෙනි යයි.

P6 tendered by the plaintiff with the plaint was the resolution passed by the board of directors of the defendant company explicitly acknowledging the overdraft facility obtained through the current account No. 148-1-001-1-7192893. It reads as follows:

> *The board of directors meeting of Chemisales Holding PVT Ltd (the defendant) at No. 45, Industrial Zone, Nagoda, Kalutara, held on 20th June 2009 has proposed and agreed to convert the existing temporary overdraft nearly 8 million in bank AC No. 100117192893 of People's Bank Panadura branch to long term loans as a solution for the current financial crisis in the organization.*

It is significant to note that, by paragraph 9 of the answer, the defendant admitted P6.

The letter of demand sent to the defendant demanding of Rs. 9,801,583.31 was tendered as P7. This was not replied to by the defendant if he was not in agreement with that amount.

Although the failure to reply business letters alone cannot decide the whole case, such failure can certainly be regarded as an item of evidence against the defendant. Depending on the facts and circumstances of the case, it may even amount to an admission of the claims made therein. (*Wickremasinghe v. Devasagayam* (1970) 74 NLR 80 at 93, *Saravanamuttu v. de Mel* (1948) 49 NLR 529, *Colombo Electric Tramways and Lighting Co. Ltd v. Pereira* (1923) 25 NLR 193 at 195, *Seneviratne v. LOLC* [2006] 1 Sri LR 230).

If I may reiterate at the cost of repetition, section 4(1) requires the plaintiff to file with the plaint the "*instrument, agreement or document sued upon, or relied on*". A written agreement is one such document, but it is not the only one. If the plaintiff annexes the instruments or documents sued upon or relied on with the plaint, this satisfies the requirement under section 4(1). In the instant case, the plaintiff has annexed, *inter alia*, the issued cheques marked P3(a)-(m), the duly certified statement of account marked P4, the board resolution marked P6, and the letter of demand marked P7 to the plaint as *instruments and documents sued upon or relied on* to establish its

case. These documents collectively satisfy the requirement under section 4(1) of the Act.

Against this overwhelming evidence, what prompted the District Judge to allow the defendant to show cause unconditionally and ultimately dismiss the plaintiff's action in its entirety? This is primarily due to P2, which was tendered by the plaintiff along with the plaint.

In paragraph 4 of the plaint, the plaintiff bank tendered P2 as the board resolution of the defendant company requesting an overdraft facility from the plaintiff bank. However, the defendant was quick to point out that the said board resolution P2 relates to a different permanent overdraft facility to be obtained through account No. 148-1-001-8-1443446 (which is another current account maintained by the defendant in the same branch). Admittedly, the facility obtained by the defendant for this case is a temporary overdraft facility obtained through current account No. 148-1-001-1-7192893. The defendant overzealously highlighted this discrepancy in an attempt to discredit the plaintiff's entire case, as if it were the most decisive document of the plaintiff's case. Regrettably, the District Judge fell into this error. The District Judge was misled into believing that, due to this discrepancy, there was no ascertainable sum of money at the time the action was instituted, which is inconceivable. It may be recalled that an action under this Act can be filed under section 2(2) for the recovery of a "debt", and according to section 30, "debt" means a sum of money which is ascertained or capable of being ascertained at the time of the institution of the action. The District Judge states:

> මෙම නඩුවට විෂය වී ඇත්තේ අයිරා මුදලක් නොගෙවීම සම්බන්ධ තත්වයකි. ඒ අනුව විත්තිකරු විසින් හිඟ තැබුවා යැයි පවසන අයිරාව පිළිබඳව පනතේ 30 වන වගන්තිය ප්‍රකාරව නඩුව පවරන වෙලාවේදි පැමිණිල්ල විසින් නිශ්චය වශයෙන් දැන ගෙන ඇත්තා වූ නිශ්චය වශයෙන් දැන ගැනිමට පුලුවන් වූ ද ණය මුදලක් විය යුතුයි. ඒ අනුව පැමිණිලිකාර බැංකුව විසින් මෙම අවස්ථාවේ දි අදාල ණය මුදල හෙවත් බැංකු අයිරාව

නිශ්චිත වශයෙන් හඳුනා ගත යුතුව ඇත. මෙම නඩුවට පැමිණිල්ල විසින් ඉදිරිපත් කර ඇති පැ. 2 ලේඛණය වන 2007-01-23 වන දින අධ්‍යක්ෂක මණ්ඩලයේ වාර්තාව දැක්වෙන්නේ මහජන බැංකුවේ පානදුර ශාඛාවේ අංක 148-1001-81-443446 දරණ ගිණුම සම්බන්ධයෙන් වූ ස්ථිර අයිරාවක් සම්බන්ධයෙනි. නමුත් පැමිණිල්ලට අනුව නඩුව පවරා ඇත්තේ 148-1001-1-7192893 දරණ ගිණුම සම්බන්ධයෙනි. ඒ අනුව එකී ගිණුමට අදාලව පැ.2 ලේඛණය පිළිගත හැකි නෛතික වටිනාකමකින් හෙබි ලේඛණයක් නොවේ. මේ අනුව පැහැදිලිවම 30 වන වගන්තියේ මූලික අවශ්‍යතාවයක් වන අය විය යුතු බවට දක්වා ඇති ණය මුදල නඩුව පවරන වෙලාවේ දී පැමිණිල්ල විසින් නිශ්චිතව හඳුනා ගෙන නැත. එසේම නිශ්චිත වශයෙන් දැන ගැනීමට හැකි තත්වයකද පසු වී නැත.

There is no law requiring a board resolution for a bank to grant an overdraft facility to a company. P2 is not a decisive document for the plaintiff to establish its case. If the District Judge thought P2 is not relevant, she could have disregarded that document and examined the other documents to consider whether there is a sum of money which is ascertainable or capable of being ascertained at the time of the institution of the action. Although the District Judge highlighted P2, she failed to address her mind to P6, which is the resolution passed by the board of directors of the defendant company explicitly acknowledging the overdraft facility obtained through the relevant current account.

The defendant admitted the issuance of cheques and payment by the bank but conspicuously failed to explain how the overdrawn amounts were repaid. This is the crux of the matter. The defendant must explain how the overdraft was settled, either in full or in part, rather than advancing convoluted arguments spanning several pages in the written submissions filed before both the District Court and this Court, which do not assist the Court but only serve to obfuscate the issue before the Court. As I have already stated, in actions filed under this Act, defendants cannot raise high-flown technical objections designed to prolong the proceedings to defeat the purpose of the Act.

In my view, based on the facts and circumstances of this case, particularly considering the board resolution marked P6, which is an admitted document, the District Judge manifestly erred in granting the defendant leave to appear and show cause unconditionally. The District Judge should have acted in accordance with section 6(2)(a) or, at the very least, section 6(2)(b), by permitting the defendant to appear and show cause conditionally. After the defendant was granted leave to show cause unconditionally, the procedure followed by the District Judge was clearly flawed. Ultimately, the District Judge erred in allowing the defendant to raise three purported preliminary objections on the third date of trial and then dismissing the plaintiff's action on a vague and legally unsustainable basis.

Conclusion

The question of law on which leave to appeal was granted, namely whether the High Court of Civil Appeal failed to observe that the plaintiff did not produce an instrument, agreement, or document as required by section 4(1) of the Act, is answered in the negative. The order of the District Court dated 08.08.2013 and the judgment of the High Court dated 27.07.2018 are set aside. The District Judge is directed to enter decree absolute forthwith. The defendant shall pay Rs. 2,000,000 (two million) to the plaintiff bank as costs of all three courts incurred over the last fifteen years.

Judge of the Supreme Court

P. Padman Surasena, J.
I agree.

Judge of the Supreme Court

Shiran Gooneratne, J.
I agree.

Judge of the Supreme Court