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

SC CHC Appeal No. 04/13

Case No. H.C. (Civil) 26/2005 (3)

Sheela Wijewardene

No. 7/16, Thalapathpitiya Road,
Udahamulla,

Nugegoda.

PLAINTIFF

-VS-

1. Sarath Kothalawala,

No. 112/7,1/1, Kanadawatta Terrace,

Off Poorwarama Road,

Colombo 05.

2. Rajiv Sebastian

No. 112/7,1/1, Kanadawatta Terrace,

Off Poorwarama Road,

Colombo 05.

DEFENDANTS

AND NOW BETWEEN

Sheela Wijewardene

No. 7/16, Thalapathpitiya Road,
Udahamulla,

Nugegoda.

PLAINTIFF-APPELLANT

-VS-

1. Sarath Kothalawala,
No. 112/7,1/1, Kanadawatta Terrace,
Off Poorwarama Road,
Colombo 05.

2. Rajiv Sebastian
No. 112/7,1/1, Kanadawatta Terrace,
Off Poorwarama Road,
Colombo 05.

DEFENDANTS-RESPONDENTS

Before: Hon. E.A.G.R. Amarasekara, J.
Hon. A.L. Shiran Gooneratne, J.
Hon. Arjuna Obeyesekere, J.

Counsel: Dr. Harsha Cabral, PC with Kushan Illangatillake instructed by V.W. Kularatne Associates for the Plaintiff-Appellant.

Mr. M.S.A. Wadood with Palitha Subasinghe, Tharanga Edirisinghe, Hashane Mallawarachchi, Dulmini Liyanage instructed by S.B. Dissanayake Associates for the 1st Defendant-Respondent.

Argued on: 01.02.2022

Decided on: 23.05.2025

E.A.G.R. Amarasekara, J.

This is an appeal filed by the Plaintiff-Appellant (hereinafter sometimes referred to as the Plaintiff), seeking for reliefs in prayers 'c', 'd', 'e' and 'f' of the original Plaint, in addition to the reliefs that have already been granted by the Judgment of the Commercial High Court of the Western Province

Holden in Colombo dated 30.07.2012. What has been granted as the relief were the injunction prayed for by the Plaintiff and the costs of the action.

The prayers 'c', 'd', 'e' and 'f' in the original Plaint is extracted as follows:

> *"c. Judgment and decree against the Defendants in a sum of Rs. 20 Million or such other sum as Court may find due to the Plaintiff on account of the loss suffered by the Plaintiff as a consequence of the several acts of infringement by the Defendants, together with legal interest from the date hereof until the date of decree and thereafter on the decreetal amount until the payment in full.*
>
> *d. an order to deliver up to the Plaintiff by the Defendants all the infringing material in the possession of the Defendants including all copies of the Audio Compact Discs and the Audio-Visual Work titled 'Sing along with RAJIV SEBASTIAN', 'Viduru Mal' 'Reka Heenen Piyamba' and 'Torana SINHALA Karaoke Vol.2'*
>
> *e. an order to render accounts to the Plaintiff of the profits made by the Defendants attributable to the infringement.*
>
> *f. judgment and decree against the Defendants in such sum as found to be due to the Plaintiff upon taking into account of profits made by the Defendants together with the legal interest thereon."*

The Plaintiff based her Plaint on four causes of action stating that the economic rights belonging to the estate of late Clarance Arthur Somasinghe Wijewardene (hereinafter referred to as "late Clarance Wijewardene") had been infringed by the 1st and 2nd Defendants-Respondents (hereinafter sometimes referred to as the "1st and 2nd Defendants") in relation to the copy rights attached to certain lyrics and music compositions as described in the Plaint and also for the violation of moral rights attached to certain music compositions by distorting the said music compositions as described in the Plaint. When one goes through the body of the Plaint and the prayer and consider them as a whole, it is understood that the position taken up in the Plaint is that the Defendants are jointly liable for the causes of action described therein. Both Defendants first filed a joint answer refuting the claims of the Plaintiff and praying for the dismissal of the Plaintiff's action. However, before the cross examination commenced on the evidence in chief tendered by way of an affidavit, the 2nd Defendant came to a settlement with the Plaintiff. The first

settlement was not properly adhered by the 2nd Defendant but the Plaintiff and the 2nd Defendant re-adjusted the terms and entered into a settlement, among other things, to pay Rs.2 million including the Rs. 500,000/- that had already been paid, while admitting the said intellectual property rights of late Clarance Wijewardene. Meanwhile, the 1st Defendant moved to amend the answer which was objected by the Plaintiff. However, the High Court allowed the amendment and accordingly an amended answer was filed by the 1st Defendant. The said decision to allow the amended answer had not been challenged in appeal.

Based on the consolidated admissions and issues, case was fixed for trial on 07 admissions and 44 issues. After the trial, the learned High Court Judge answered the issues and through such answers, decided that the intellectual property rights, namely the impugned economic rights and moral rights as pleaded in the Plaint, belongs to the late Clarance Wijewardane's estate and those rights have been infringed but granted only two reliefs in favour of the Plaintiff, namely the injunction that had been prayed for and costs of the action against the 1st Defendant, but refused to grant aforementioned reliefs contained in prayers 'c', 'd', 'e' and 'f' of the prayer to the Plaint.

The 1st Defendant did not appeal against the Judgment of the High Court which found infringements of the intellectual property rights that belongs to the estate of the late Clarance Wijewardene nor, it appears, that he took steps to challenge it in terms of Section 772 of the Civil Procedure Code. Thus, findings relating to the infringements of such rights need not be scrutinized in this Judgment. Thus, what has to be decided in this appeal is that, after finding that alleged infringements had occurred, whether the learned High Court Judge was correct to decide not to grant the reliefs as prayed for in prayer 'c', 'd', 'e', and 'f 'of the Plaint.

Firstly, I prefer to consider the refusal of prayer 'c' mentioned above:

What is quoted below from the Judgment of the learned High Court Judge explicates the reasons adduced by the learned High Court Judge for his refusal to grant the said reliefs.

"*The Court is not inclined to order the 1" defendant to pay compensation/damages to the plaintiff for violation of the copyrights of the late Mr. Clarance Wijewardena* ***in the unique facts and circumstances of this case, especially in view of the Agreements marked 1D4, 1D5, and 1D6 entered into between the 1st and 2nd defendants,*** *whereby the 2nd defendant singlehandedly accepted all the liabilities arising out of those Agreements, and particularly the knowledge both*

the plaintiff and the 2nd defendant had about those Agreements and the defence taken up by the 1" defendant, when the plaintiff and the 2nd defendant decided to settle the case conditionally" (vide page 702 of the brief).{emphasis by me}

It must be noted that the Plaintiff was not a party to the said Agreements marked 1D4, 1D5 and 1D6, and they were agreements between the 1st and the 2nd Defendant where, among other things, the 2nd Defendant had represented to the 1st Defendant that he was the owner of the works set forth in them, including subject matters of the instant action, and further had agreed to indemnify and hold the 1st Defendant harmless against any loss, liability, damages or judgments in respect of the production , reproduction or distribution etc. of the said works that may be arisen due to the breach of the said representation.

The learned Counsel for the Plaintiff has brought to the attention of Court that the 1st Defendant had not preferred an appeal from the said Judgment of the learned High Court Judge and accordingly, the said findings of the learned High Court Judge remain unassailed as to the wrongdoing of the 1st Defendant regarding the alleged infringements of the intellectual property rights, and thus, it is argued that in the aforesaid circumstances, a flagrant violation of the rights belonging to the estate of the late Clarance Wijewardene by the 1st Defendant had been established and accordingly, the Plaintiff is in law entitled for an award of damages. In this regard, the Court's attention has been invited to the following passage from **Lionel Bently and Brad Sherman**, **'Intellectual Property Law' (Indian Edition)** at p. 1023.

"*The most common remedy for infringement of intellectual property rights is an award of damages. The damages recoverable are the same as with other torts: the aim is to restore the victim to the position he or she would have been in if no wrong had been committed: it does not aim to punish the defendant*."

It is also noted that this is not an action to enforce those three agreements and even the 1st Defendant could not have made a claim in reconvention in this case against the 2nd Defendant even if the 2nd Defendant remained as a party without being released due to the settlement between the 2nd defendant and the Plaintiff since claim in reconvention can be made only against the Plaintiff as claim in reconvention are made in the answer in reply to the Plaint. A claim in reconvention has to be a claim that can be adjusted or set off with the claim in the Plaint- vide Section 75 of the Civil Procedure Code and **Silva Vs Perera** 17 N L R 206. This does not mean that when they were

marked in evidence, the Court cannot consider them as evidential materials in coming to a decision to do justice. Aforesaid three agreements were tendered along with affidavit evidence of the 1st Defendant tendered as evidence-in-chief of his evidence and the only objection was based on that they were photocopies thus subject to tendering the originals-vide proceedings dated 15.11.2011. Originals were shown on 11.05.2012- vide proceedings dated 11.05.2012.

Even though the Counsel for the Plaintiffs state that 1st Defendant was found liable for the flagrant violation of the intellectual property rights of the estate of late Clarance Wijewardene, the said three agreements marked in evidence indicate that it was the 2nd Defendant who misrepresented and deceived the 1st Respondent to cause the infringements. However, the Plaintiff entered into a settlement with the 2nd Defendant for a lesser amount than she has claimed as damages in the Plaint but proceeded against the 1st Defendant to claim the whole amount.

As per Section 22 of the Intellectual Property Act of 2003, the High Court hearing the case has power to grant damages for infringements including the infringements of moral rights. Section 21 of the 1979 Act similarly recognized this power of Court to grant damages for infringements including infringements of moral rights – Vide **Director, Department of Fisheries and Aquatic Resources and Three Others v. C. Aloy. W. Fernando and Five Others**. [Cabral's IP Law Reports (Volume II) 1010 at 1037].

Section 14 of the Civil Procedure Code which is quoted below is s also important in this regard.

"*All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative, in respect of the same cause of action. And judgment may be given against such one or more of the Defendants as may be found to be liable,* ***according to their respective liabilities****, without any amendment*." (emphasis by me)

Aforementioned Section, as Counsel of the Plaintiff also submits, empowers the Court to grant judgment against individual Defendants based on their respective liabilities, irrespective of whether the action had been instituted against defendants for them to be liable jointly, severally or in the alternative. Thus, even though, the Plaint in the case at hand has alleged joint liability of the Defendants, the Court has the discretion to give judgment according to their respective liabilities.

It is true that the decision of the learned High Court Judge not to grant relief by way of damages and/or compensation to the Plaintiff has referred to the three (3) Agreements mentioned above,

marked as 1D4,1D5 and 1D6. As said before, they had been entered into between the 1st Defendant and the 2nd Defendant, and the 2nd Defendant had represented himself to be the owner of the impugned works, which had been found by the High Court as works on which the intellectual property rights belong to the estate of late Clarance Wijewardene exists. As said before, the Plaintiff was not a party to the said Agreements marked as '1D4', '1D5' and '1D6'.

In this regard, while referring to **Viscount Haldane LC in Dunlop Pneumatic Tyre Co. Ltd. v Selfridge and Co. Ltd.** [1915] AC 847, HL, the learned Counsel for the Plaintiff contends that;

- The principle of privity of contract dictates that a contract creates rights and imposes obligations only between the parties thereto.
- Only a person who is a party to a contract can sue on it and a stranger to a contract cannot enforce the contract.
- For a person, with whom a contract not under seal has been made, is to be able to enforce it, consideration must have been given by him to the promisor or to some other person at the promisor's request. However, a principal not named in the contract may sue upon it if the promisee really contracted as his agent. But again, in order to entitle him so to sue, he must have given consideration either personally or through the promisee, acting as his agent in giving it.

Hence the learned Counsel for the Plaintiff endeavored to indicate that the Plaintiff had nothing to do with the said agreements and was not in a position to enforce it but the obligation created by those agreements are between the 1st and the 2nd Defendants. This Court also accept that the Plaintiff was not a party to the said contracts and there for not a person who can enforce those contracts and those contracts have created obligations only between the 1st Defendant and the 2nd Defendant. However, what has to be looked into is whether the refusal of reliefs prayed for through prayers ‘c’, ‘d’, ‘e’, and ‘f’ of the Plaint can be attributed to a misconception or forgetfulness of the principles relating to privity of contract or some other ground that may have a legal or justifiable basis.

It must be noted that an amended answer was allowed by the High Court even after the first date fixed for trial and the reason recorded for the permission to amendment was the conduct of the 2nd Defendant who first filed a joint answer with the 1st Defendant and thereafter came to a settlement

with the Plaintiff leaving out the 1st Defendant while there was an undertaking, as per the said agreements, to indemnify and hold harmless the 1st Defendant from any liabilities that may arise – vide Order dated 08.07.2009. The said Order specifically states that the said amendment is vital as the said amendment would decide whether the 1st Defendant is liable to pay damages to the Plaintiff as prayed for in the Plaint. By the amended answer, among other things, after revealing the existence of the said three agreements, the 1st Defendant had averred that if there is any money to be recovered by the Plaintiff, it should be recovered from the 2nd Defendant and not from the 1st Defendant, and at the end had prayed to dismiss the Plaintiff's action. If the learned High Court Judge misconceived the facts and law and thought that the Plaintiff should have enforced the said three agreements without proceedings against the 1st Defendant, the result would have been the dismissal of the action against the 1st Defendant. Anyhow, the Judgment was not to dismiss the action against the 1st Defendant. In fact, it is against the 1st Defendant and the prayer for injunction has been granted along with costs of the action in favour of the Plaintiff. In my view, nothing is mentioned in the reasoning of the learned High Court Judge in the impugn judgment to indicate that refusal to grant reliefs prayed in prayer 'c', 'd', 'e', and 'f' was due to a misconception of the principles relating to privity of contract or forgetfulness of said principles as contended by the Counsel of the Plaintiff. Then, a question arises whether there was any legal or justifiable basis for this refusal other than that.

What the learned High Court Judge has stated is that the Court is not inclined to order the 1st Defendant to pay compensation/damages to the Plaintiff for violation of the copyrights of the late Clarance Wijewardena in the unique facts and circumstances of this case, especially in view of the Agreements marked 1D4, 1D5, and 1D6 entered into between the 1st and 2nd Defendants, whereby the 2nd Defendant singlehandedly accepted all the liabilities arising out of those Agreements. At one place, the learned High Court judge considers the possible unenforceability of the aforesaid three agreements and in another place, Court's inability to order further compensation to be paid by the 2nd Defendant due to the settlement. Thus, it is indicated that the learned High Court Judge considered evidence before the Court, especially the three agreements and decided that it is not proper to decide that the monetary liability should be imposed on the 1st Defendant and it is what should have been imposed on the 2nd Defendant, if the 2nd Defendant continued to be a party. Though, it is not stated by clear words, there is an indication that if the 2nd Defendant remained a Defendant without settling the matter with the Plaintiff to get himself discharged from the

proceedings, the liability to monetary claims, namely damages and or compensation etc. should have been imposed on the 2nd Defendant using the Court's discretion. In my view, this could have been done if the 2nd Defendant remained a party to the action in terms of the aforequoted Section 14 of the Civil Procedure Code even if the Plaint had been filed alleging joint liability as explained above since the said section contemplates a judgment to be given according to the respective liabilities of the Defendants. Merely because the Plaintiff entered into a settlement with one of the Defendants, taking away the Courts ability to use discretion on the respective liabilities as contemplated by aforesaid Section 14 on the said Defendant who entered into a settlement, the Court should not impose the said liability that could have been imposed on the one who entered into settlement with the Plaintiff on the remaining Defendant or Defendants. The discretion that the Court has in terms of Section 14 of the Civil procedure Code to decide respective liabilities should not be affected owing to any settlement entered between the Plaintiff and one or some of the Defendants.

On the other hand, if there is a doubt as to why a Court acted in a certain manner, if it can be referrable to a provision of law or a legal basis, in my view it has to be presumed that it was so happened due to that legal basis. What the Plaintiff has done was, before the Court decide the respective liabilities of the Defendants, to enter into a settlement with 2nd Defendant. The Plaintiff must face the consequences of such a settlement as Section 408 of the Civil Procedure Code provides for adjustment of actions wholly or in part and once the decree is passed it becomes final between the parties. Referring to **Mack v. Perera** 33 NLR 179 at 180-181 it is pointed out when money is paid, it is to be applied according to the expressed will of the payer, not of the receiver. As such, it is argued that there is nothing in the settlement between the Plaintiff and the 2nd Defendant to show that the payment made by the 2nd Defendant was also intended to release the 1st Defendant from his liability regarding the infringements. Factually this may be correct but it is also clear that the 2nd Defendant's payment was made to relieve the 2nd Defendant from his liabilities of the alleged infringements. Thus, what was settled there was the liability that may come upon the 2nd Defendant, if the case is continued against him. In other words, if the case was continued against him, what may be decided as his respective liability in terms of Section 14 of the Civil Procedure Code by the Judge has been settled for an agreed value by the parties to the settlement. Decision of the respective liability falls within the judgment of the Judge on evidence available to him. As explained above, it appears that the learned High Court Judge decided

respective liability with regard to prayer ‘c’, ‘d’, ‘e’, and ‘f’ should not fall on the 1st Defendant as per the evidence available but should fall on the 2nd Defendant. Thus, this Court does not see that the decision to not grant prayer ‘c’ which contemplates the compensation or damages against the 1st Defendant was not based on a misconception or the forgetfulness of the principles relating to privity of contracts as urged by the Counsel for the Plaintiff but a decision taken on available evidence in deciding respective liabilities in terms of Section 14 of the Civil Procedure Code which is within the power of the High Court and also the task of the High Court in judgment. //

On the other hand, the learned High Court Judge could have observed that it is unreasonable to impose the liability for damages or compensation on the 1st Defendant as per evidence revealed by the said agreements, it was the 2nd Defendant who misrepresented and deceived the 1st Defendant as to the ownership of the intellectual property rights in issue and got the 1st Defendant to take part in the infringements and the 1st Defendant was merely instrumental in the infringing act due to said misrepresentation, and as such the liabilities with regard to damages and compensation should fall on the 2nd Defendant. I do not think it was an unreasonable view on the part of the learned High Court Judge. That seems to be the reason, the learned High Court Judge had stated that due to the unique facts and circumstances of this case especially in view of the said agreements he was not inclined to grant relief relating to compensation and damages. It must also be mentioned here that, as per Section 22 (2) (b) of the Intellectual Property Act, where the infringer did not know or had no reasonable cause to know that he was engaged in infringing activity, the court may limit damages to the profits or to pre-established damages. It is also noted what has been prayed as damages is Rs. 20 million which has to be proved as against the statutory damage of which the maximum limit is Rs. 10 million.

It is also contended on behalf of the Plaintiff that, under and in terms of the said Agreements marked as '1D4', 'ID5' and '1D6', any obligation on the part of the 2nd Defendant to indemnify arises only in favour of the 1st Defendant and conditional upon any loss, liability, damage or judgment occurring to or being granted against the 1st Defendant. Hence, it is further contended that due to the determination of the learned High Court Judge not to grant relief by way of damages and/or compensation to the Plaintiff against the 1st Defendant, no liability has arisen on the part of the 1st Defendant, in the first instance, in respect of the said acts of infringement of copyright belonging to the estate of late Clarance Wijewardene committed by the 1st Defendant, and

consequently, no liability has arisen on the part of the 2nd Defendant also under and in terms of the said Agreements marked as '1D4', '1D5' and '1D6' in respect thereof. It is also argued that the above situation had resulted in extinguishing the liability of both the 1st Defendant and the 2nd Defendant in respect of the said acts of infringement of copyright belonging to the estate of late Clarance Wijewardene committed by the 1st Defendant. It is the position of the Counsel of the Plaintiff that, had the learned High Court Judge been pleased to grant relief by way of damages and/or compensation to the Plaintiff against the 1st Defendant in respect of the acts of infringement of copyright belonging to the estate of late Clarance Wijewardene committed by the 1st Defendant, under and in terms of the said Agreements marked as '1D4', '1D5' and 'ID6', the 1st Defendant would have become entitled to call upon the 2nd Defendant to satisfy such Judgment made against the 1st Defendant in favour of the Plaintiff or recover losses and damages occasioned to him pursuant to such Judgement.

It is true that, if the Court decided to grant damages or compensations against the 1st Defendant, the 1st Defendant may have the possibility to sue the 2nd Defendant to recover it from the 2nd Defendant relying on the said three agreements which may pave way for multiplicity of actions since all those agreements had a clause to indicate that the 2nd Defendant has agreed to indemnify and hold harmless the 1st Defendant. However, as said before, I cannot find that the learned High Court Judge was trying to enforce those agreements when the case after the settlement was between the 1st Defendant and the Plaintiff, who was not a party to said agreements, through his judgment. (Perhaps, enforcement of the said agreements may give the same result but to say that the decision was to enforce the agreements then there should be a finding that the 1st Defendant is liable to pay a certain amount and, as it should be paid by the 2nd Defendant as per the said agreements, it is not going to be recovered from the 1st Defendant). In fact, the learned High Court Judge, at one occasion, as said before, has referred to the possible unenforceability of the said agreements (vide page 14 of the Judgment). Further, the learned High Court Judge at page 15 of the Judgment mentions that, owing to the settlement by the Plaintiff with the 2nd Defendant, inability of the Court to order further compensation to be paid by the 2nd Defendant. This indicates, that if there was no settlement between them, the learned High Court Judge was prepared to impose the liability of paying compensation on the 2nd Defendant based on the evidence led. In fact, the evidence led including the said agreements indicated that it was the 2nd Defendant, who, by misrepresentation as to the ownership of the intellectual property rights, deceptively got the 1st Defendant to commit

the infringing acts as alleged. Thus, it is not wrong to recognize the 2nd Defendant as the one who is really responsible for the compensation to be paid for the infringements. However, being misled by the misrepresentation, by reproduction and distribution etc., the 1st Defendant would have earned a profit but as explained below, no steps have been taken prior to the judgment to call for the accounts and prove such profit to grant any relief in terms of prayer 'f' of the Plaint. Therefore, I cannot find fault with the learned High Judge for not granting relief against the 1st Defendant in terms of prayer 'c' of the Plaint as it was within his power to decide respective liability in terms of Section 14 of the Civil Procedure Code based on evidence. In that backdrop, the contention that the indemnifying the 1st Defendant arises only after the liability of the 1st Defendant is decided does not arise. On the other hand, what has happened was not extinguishing of the liability to pay compensation but the person, who the learned High Court Judge has observed as the person who should be liable to pay the compensation, and the Plaintiff settling that liability for a lesser amount.

Therefore, this Court does not think that this Court should interfere with the decision of the High Court in relation to not granting prayer 'c' as it is based on available evidence and relates to the using of its discretion as to the respective liabilities in terms of Section 14 of the Civil Procedure Code.

However, it appears that the High Court erred in not granting prayer 'd' as prayed for in the Plaint. Even though the Plaint is filed alleging joint liability, what it has been prayed in prayer 'd' is to hand over the infringing material that are in the possession of the Defendants. In deciding the respective liability to deliver them, it cannot be correct to think that the liability to hand over the infringing material with the 1st Defendant is not with him due to the facts revealed through said agreements. As per the said agreements, it was the 1st Defendant who was to reproduce, distributes or duplicate the material containing the works referred to in the agreements. As the infringement was established, I think prayer 'd' should have been granted to the Plaintiff against the 1st Defendant. In that regard, it is my view that the Judgment of the learned High Court Judge should stand amended.

It must be noted that the prayer 'e' and 'f' in the Plaint are interconnected and included in the Plaint to get the profit earned by the wrong doers using the intellectual property rights of late Clarence Wijewardene to be recovered as it should belong to the estate of the said Clarence Wijewardene as well as the wrong doers should not be allowed to enjoy the profits which they earned through the

wrong doing. However, the sum contemplated in prayer 'f' has to be decided only after perusing the accounts referred to in prayer 'e'. Thus, without leading evidence before the Judgment, a Court cannot decide the sum referred to in prayer 'f' of the plaint. Mere granting of said reliefs in prayer 'e' and 'f' at the final judgment will not serve any effective and useful purpose due to the fact that even a false account may be tendered indicating a loss. As trial is concluded, no opportunity is available for the verification as to the truth of the accounts. Thus, I do not intend to consider whether this Court should interfere with the refusal of the learned High Court Judge to grant said reliefs contemplated in said prayers 'e' and 'f'. Perhaps the provisions contained in Chapter XXXVII of the Civil Procedure Code could have been useful to the Plaintiff if she had used such interlocutory measures for accounts to be taken by the Court. As such measures were not taken to prove any profits prior to the judgment, as said before, the High Court was not in a position to decide the profit to grant relief as per prayer 'f' of the Plaint irrespective of the reason to refuse the said prayers in the Judgment. Hence, this Court does not wish to interfere with the decision of the learned High Court Judge to refuse the reliefs in prayer 'e' and 'f' of the Plaint irrespective of the reason it was refused.

The Counsel for the 1st Defendant has contended that as the action has been filed based on the joint liability, in the circumstances of this case, it is logical and common sensical that no further reliefs can be sought once one of Defendants to a joint action has settled the case with the Plaintiff. This contention might have been based on the English law principles relating to joint liability that judgment against one joint debtor discharge the others, even though the judgment has not been satisfied – see **Weeramantry, The Law of Contracts volume 1 Section 575**. These principles have been followed by our courts where English law applies- vide **Suppiaya Reddiar Vs Mohamed** 39 N L R 459, **Manuel Istaky Vs Sinnatamby** 13 N L R 284. However, our Courts have on certain occasions deviate from applying such rules to avoid injustice – vide **Dias Vs Eastern Hardware Stores Ltd.** 60 N L R 284. However, as per Sections 3 and 4 of the Civil Law Ordinance, matters relating to Intellectual Property has not been identified as an area English law applies. In fact, Intellectual Property could not have been in contemplation when the said Ordinance was enacted. Our Intellectual Property Act is statutory law that has been passed by our legislature. However, it is not a codification of any Roman Dutch law principles but might have influenced by English law and various convention and treaties etc. However, as it is our own statute one cannot argue that English law principles should be strictly apply. On the other hand, even

though it does not codify Roman Dutch Law, one may argue our Common Law principles should be applied to joint liability issues which principles are different from English law as Intellectual Property is not a subject where English law applies as per Civil Law Ordinance. As per Roman Dutch Law principles judgment against one joint debtor does not bar action against others. - vide **Weeramantry, The Law of Contracts Volume 1 Section 563**. However, my view is whether a judgment against one bar the action against the others with joint liability falls within the discretion of the court depending on the facts as Section 14 of the Civil Procedure Code provides for the Court to decide respective liability. It is also contended by the Plaintiff that no objection or issue was raised subsequent to the settlement regarding the continuation of the Action. It is not necessary to discuss that as this Court does not come to the conclusion that action against the 1st Defendant should have been dismissed after the settlement.

In my view, the aforesaid reasons are sufficient to partly allow the Appeal to grant the relief prayed in prayer 'd' of the Plaint in addition to the other reliefs granted by the learned High Court Judge. Thus, the Judgment of the learned High Court Judge should stand amended in accordance with this Judgment. The Plaintiff-Appellant is entitled to the costs of this Appeal.

Appeal partly allowed with costs.

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Judge of the Supreme Court

A.L. Shiran Gooneratne, J.

I agree.

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Judge of the Supreme Court

Arjuna Obeyesekere, J.
I agree.

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Judge of the Supreme Court