

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

Seylan Bank Limited,
'Ceylinco Seylan Towers',
No. 90, Galle Road,
Colombo 03.

Case No: SC/APPEAL/54/2021
SC/HCCA/LA/190/2018
(NCP/HCCA/ARP/1097/16/F)

Seylan Bank PLC,
'Seylan Towers',
No. 90, Galle road,
Colombo 03.

District Court of Anuradhapura
Case No: 18691/M

Plaintiff

Vs.

Liyanawaduge Susantha Priyalal
Dharmasiri,
Sri Lak Motor Traders,
No. 26, Main Street,
Anuradhapura.

Defendant

AND

Seylan Bank Limited,
'Ceylinco Seylan Towers',
No. 90, Galle Road,
Colombo 03.

Seylan Bank PLC,
'Seylan Towers',
No. 90, Galle Road,
Colombo 03.

Plaintiff – Appellant

Vs.

Liyanawaduge Susantha Priyalal
Dharmasiri,
Sri Lak Motor Traders,
No. 26, Main Street,
Anuradhapura.

Defendant-Respondent

AND NOW BETWEEN

Liyanawaduge Susantha Priyalal
Dharmasiri,
Sri Lak Motor Traders,
No. 26, Main Street,
Anuradhapura.

Defendant-Respondent-Appellant

Seylan Bank Limited,
'Ceylinco Seylan Towers',
No. 90, Galle road,
Colombo 03.

Seylan Bank PLC,
'Seylan Towers',
No. 90, Galle Road,
Colombo 03.

Plaintiff - Appellant - Respondent

Before : P. Padman Surasena, J.
Menaka Wijesundera J.
Sampath B. Abayakoon, J.

Counsel : Shiraz Hasan for the Defendant-Respondent-Appellant
Anura Ranawaka instructed by Tharindu Dawakella
instructed by Ms. Vayoma A. Paranagama for the Plaintiff-
Appellant-Respondent.

Written

Submissions : Written submissions on behalf of the Defendant -
Respondent - Appellant on 5th August, 2021.
Written submissions on behalf of the Plaintiff - Appellant
- Respondent on 6th October, 2021.

Argued on : 30.01.2025

Decided on : 14.03.2025

MENAKA WIJESUNDERA J.

The instant appeal had been filed to set aside the judgment dated 08.05.2018 of the Civil Appellate High Court of Anuradhapura and the instant matter had been supported for leave on the 29.04.2021 by the learned Counsel for the petitioner

and the Counsel for the respondent also had been heard and leave has been granted by this Court on the following questions of law,

- 1) Did the bank recover the dues on the account no. 670 and 53670 by parate execution as per the resolution?
- 2) In the facts and circumstances of the case, can the bank maintain case no 18691/M in the District Court?

The respondent bank filed action against the appellant for the recovery of a sum of Rs. 3,959,251.50 with the interest accrued, in the District Court of Anuradhapura, where the cause of action had arisen.

The appellant filed his answer urging the original Court to dismiss the said action, and the matter has proceeded to trial. At the trial, the evidence and documents had been led and marked in support of the respondent bank.

The appellant also had given evidence and documents had been marked from V1 to V18.

The learned District Judge in conclusion has held against the respondent bank, stating that the bank has not proved its case, especially pertaining to documents marked from P4 to P8.

The bank being aggrieved by the said judgment had appealed to the Civil Appellate High Court in Anuradhapura and the Civil Appellate High Court had held with the respondent bank stating that the,

- 1) Documents referred to by the learned Trial Judge as P4 has been admitted by the appellant and the other documents referred to as P5 to P7 can be admitted in terms of section 90 of the Civil Procedure Code.
- 2) It had further held that the appellant had failed to respond to the letter of demand sent by the bank and the receipt of the same had been admitted by the appellant in evidence which is the document P8 the postal receipt of the letter of demand sent to the appellant by the bank.
- 3) It had further held that although the respondent had alleged that by the auction of the property of Wijepala the respondent bank had recovered the entirety of the monies due on both the accounts that the respondent had failed to prove its case on any documentary or oral evidence.

The background to this case is that the appellant has had two accounts (Account no. 670 and 53670) in the respondent bank.

The account no. 670 was opened in the year 1991 and had obtained a personal loan of Rs. 500,000 by the appellant.

A mortgage bond V1 (at page 376 of the brief) had been signed for this account by the no. 9714 to secure the payment of the personal account because the appellant has defaulted and the total sum due had been accrued to Rs 1,750,000.

Thereafter, on 05.10.1995, this facility has been enhanced to Rs. two million and another bond had been signed by the no. 171 marked and produced as V2 (at page 388 of the brief), and for both these bonds the property belonging to Wijepala Weragoda had been mortgaged because the appellant had extended credit from account 670 to Wijepala.

Therefore, on documents marked as V1 and V2, it is clear that the property mortgaged and later auctioned had been pertaining to the account 670 and not pertaining to this account in the instant case because by the time the auction took place the account pertaining to the instant case has not been opened and in operation.

As the appellant defaulted the repayment, the bank had negotiated to mortgage the property mentioned above and V15 (at page 476 of the brief) had been issued as a result of the said action and it had been with the daughter of Wijepala, but later as the negotiations failed, the bank had passed a resolution to auction the property.

Wijepala Weragoda had filed a land case and had obtained an injunction to prevent the auction but the bank had taken steps to get it vacated and the auction had gone ahead and the bank had recovered the monies pertaining to the account no. 670 and the excess monies had been paid to the surviving spouse of Wijepala Weragoda, who by that time had been deceased.

Thereafter, the appellant had started a business by the name of Sri Lak Motors in the month of September 1995 and had wanted to obtain a loan, which the bank had refused and had suggested an alternative, which had been that the appellant open a business account and obtain a loan (at pages 238-240 of the brief).

Therefore, the appellant had taken steps to do that and had opened a business account by the no. 53670, which is the account pertaining to this case and has obtained a sum of Rs 3,453,000 as per P3.

Thereafter, the appellant has obtained another Rs. 500,000 as per the ledgers P5 and P6.

The position of the appellant is that the outstanding amount pertaining to account no. 53670 had been recovered in the auction of property done pertaining to account no. 670 by the bank.

But the position of the bank is that the auction had been pertaining to account no. 670 and not for the account no. 53670 and that the excess monies recovered by the bank in the auction had been returned to the surviving spouse of Wijepala.

The appellant in his evidence in cross-examination, at pages 250-256, stated that the mortgage was pertaining to the loan obtained for the account 670 and the property mortgaged was Wijepala Weragoda's because he obtained money through the account of the appellant.

He further admits in evidence that the account 53670 had to be opened because the bank refused to give any more money owing to a default payment by him to the bank pertaining to the personal loan he had obtained in account no. 670 (pages 213 to 218 and 256).

The learned Judges in the Civil Appellate High Court had observed that although the appellant claims that the auction had been for both accounts, as per the provisions in section 103 of the Evidence Ordinance, the appellant must prove in evidence that it is so.

The appellant had further alleged that the respondent bank had not been transparent in their dealings with the appellant but the learned Judges of the Civil Appellate High Court had observed that the respondent bank had marked and produced documents from P1 to P8, which had included the loan agreements, the mortgaged bonds, the ledgers and the letter of demand

Therefore, if the appellant needed any more documents, he has to establish his requirement in evidence without merely making allegations.

The Civil Appellate High Court disagreeing with the findings of the trial Judge is justifiable because his conclusion that the respondent bank had not proved documents from P4 to P8 is not correct because those documents had been admitted by the appellant in evidence from pages 213 to 218 of the brief, and P4 to P8 are the documents pertaining to the loan agreements and the ledgers of the account in question.

It is very clear that the appellant has not substantiated his case by oral evidence or on documents. Hence, it is the considered view of this Court that the appellant has not satisfied this Court that the findings of the Civil Appellate High Court is erroneous and contrary to facts and the law.

As such, this Court answers the grounds of appeal raised in the negative for the first and in the affirmative for the second and dismiss the instant appeal and affirm the judgment of Civil Appellate High Court and make no order for costs.

JUDGE OF THE SUPREME COURT

P. Padman Surasena, J.

I agree.

JUDGE OF THE SUPREME COURT

Sampath B. Abayakoon, J.

I agree.

JUDGE OF THE SUPREME COURT