

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

***In the matter of an Appeal under and in
terms of Section 5(1) of the High Court of
the Provinces (Special Provisions) Act
No.10 of 1996 read together with Chapter
LVIII of the Civil Procedure Code, from the
Judgement of the Hon. Commercial High
Court of Colombo dated 30/01/2018.***

Sri Lanka Savings Bank Limited,
No. 265, Ward Place,
Colombo 07.

SC (CHC) APPEAL 26/2018

HC (Civil) no. 418/2011/MR

PLAINTIFF

Vs

1. Property Finance and Investment (Pvt) Ltd,
M and M Center, 2nd Floor,
No. 341/5, Kotte Road,
Welikada, Rajagiriya.

2. Medagodage Thusitha Wijayasena

3. Ganegoda Liyanage Don Swarna

Wijayasena,

Both of No.32/1, Barnes Place, Colombo 7

DEFENDANTS

AND NOW BETWEEN

1. Property Finance and Investment (Pvt) Ltd,
M and M Center, 2nd Floor,
No. 341/5, Kotte Road,
Welikada, Rajagiriya.

2. Medagodage Thusitha Wijayasena

3. Ganegoda Liyanage Don Swarna
Wijayasena,
Both of No.32/1, Barnes Place, Colombo 7

DEFENDANTS-APPELLANTS

Vs

Sri Lanka Savings Bank Limited,
No. 265, Ward Place,
Colombo 07.

PLAINTIFF-RESPONDENT

BEFORE

**: S. THURAIRAJA, PC, J
A.L. SHIRAN GOONERATNE, J,
K. PRIYANTHA FERNANDO, J.**

COUNSEL

**: Maura Gunawansha, PC with Prasanna Panawenna
for the Defendants-Appellants instructed by S.G.A.
Gunasekara**

Kamal Dissanayake with Sureni Amaratunga and
Hasara Mathraarachchi for the Plaintiff-Respondent
Instructed by Hiranti Abeywickrema.

WRITTEN SUBMISSIONS : Written submissions on behalf of the Defendants-
Appellants on 10th August 2023.

ARGUED ON : 16th January 2024

DECIDED ON : 09th August 2024

S. THURAIRAJA, PC, J.

1. The instant case is an appeal preferred to the Supreme Court by the Defendants-Appellants against the Judgement of the Commercial High Court holden in Colombo dated 30th January 2018. The 1st Defendant-Appellant, namely Property Finance and Investment (private) limited (hereinafter sometimes referred to as the "1st Appellant Company") is a Company incorporated under the Companies Act No.07 of 2007. The 2nd Defendant-Appellant, namely Medagodage Thusitha Wijayasena, (hereinafter sometimes referred to as the "2nd Appellant") is the Managing Director of the 1st Appellant Company. The 3rd Defendant-Appellant namely Ganagodage Liyanage Don Swarna Wijayasena (hereinafter sometimes referred to as the "3rd Appellant") is the wife of the 2nd Defendant, and a Director of the 1st Defendant Company (1st, 2nd and 3rd Appellants hereinafter sometimes jointly referred to as "the Appellants"). The matrix of this case is based on two causes of action arisen against the Appellants for the recovery of a Term Loan of Rupees Six Million (Rs.6,000,000) with 17.5% interest per annum under the first cause of action, and a Short-Term Loan of Rupees Eleven Million (Rs.11,000,000) with 17.5% interest per annum under the second cause of action, both which have been granted by Pramuka Savings and Development Bank (hereinafter referred to as the "Pramuka Bank") which was subsequently acquired by

the Plaintiff-Respondent namely Sri Lanka Savings Bank Limited (hereinafter sometimes referred to as the "Respondent Bank") to the Appellants. The said Pramuka Bank, on 1st October 2007 was taken over by the Monetary board of Central Bank of Sri Lanka (CBSL) due to mismanagement and vested under the Respondent Bank, who is a fully state owned licensed specialized bank under the Banking Act No. 30 of 1998, which inter alia provides financial facilities to its customers in its scope of business.

2. Being aggrieved by the Judgment of the Commercial High Court, the Appellants by way of Petition of Appeal dated 27th March 2018 preferred an appeal to the Supreme Court and submitted herein the grounds of appeal listed under paragraph 8(a)-(t), which in the opinion of this Court was overly abundant and lacked precision. Thereby, on 05th July 2023, the Counsel for both parties were directed to file a joint motion setting out the questions of law mutually agreed upon. The Counsel in accordance with the directions of the Supreme Court filed by way of motion dated 07th July 2023 the following questions of law, which have been provided below.

"(i) Did the Learned Judge of the Commercial High Court of Colombo err by failing to appreciate that the purported statements/documents marked as "P7", "P8", "P9", "P10", "P14" and "P15" were erroneous, incorrect, and irregular, and therefore, could not have been relied on in evidence and/or were they not of any cogent probative value?

(ii) Did the Learned Judge of the Commercial High Court of Colombo err by failing to duly and properly assess and/or evaluate the documentary evidence place before the said Court?"

3. Prior to delving into the factual and legal assessment of the instant case, for ease of reference, I have identified and listed below the documents in suit which have been referred to in the first question of law below namely P7", "P8", "P9", "P10", "P14" and "P15".

- P7 is the Customer Loan Details of the 1st Appellant Company, which stipulates the Loan amount of Rs.6 million, print date 18th September 2012, and includes a certification by the General Manager of the Respondent Bank.
- P8 and P9 indicate the Debit and Credit entries of the 1st Appellant Company in relation to the loan facilities to the accounts maintained for the purpose of the loan facilities, print date 12th September 2012.
- P10 is the Statement of accounts Rs. 6 million (manually prepared) dated 28th April 2009 for the purpose of preparing letter of demand.
- P14 is the Customer loan Details of the 1st Appellant Company, which provides the Loan amount of Rs.11.5 million, print date 18th September 2012.
- P15 is the Statement of accounts Rs. 11.5 million (manually prepared) dated 28th April 2009 for the purpose of preparing letter of demand.

Facts in Brief

4. The Respondent Bank averred that the 1st Appellant Company requested for a loan facility of sum of Rupees Seventeen Million Five hundred thousand (Rs. 17,500,000/-) from for the Respondent Bank¹ and accordingly entered into a Facilities Agreement.² In response, the Respondent Bank provided two loan facilities valued at Rupees Six Million (Rs. 6,000,000/-), and Rupees Eleven Million five hundred thousand (Rs. 11,500,000/-) to the 1st Appellant Company. However, it is the contention of the Respondent Bank the 1st Appellant Company had failed to settle the said money in total, wherein the 1st Appellant Company are liable to pay a total sum of Rupees Thirteen Million Three-hundred and eighteen thousand three-hundred and ninety-six rupees and cents eighty-six (Rs. 13,318,396.86), and Rupees Twenty-five Million Five-hundred and nine thousand one-hundred and thirty-seven rupees and cents twenty-one (Rs. 25,509,137.21) together with 17.5% interest upon

¹ Letter of Request dated 04th April 2002 marked “P4”, pg. 148 of the Supreme Court brief

² Facilities Agreement Form dated 05th April 2002 marked P5, pg. 149 of the Supreme Court brief

the said capital sums of Rupees Six Million (Rs. 6,000,000/-), and Rupees Eleven Million five hundred thousand (Rs. 11,500,000/-) respectively. Further, it was averred by the Respondent Bank that the 2nd and 3rd Appellants had entered into a Guarantee Bond³ pursuant to which they are jointly liable to pay the moneys due from the 1st Appellant Company to the Respondent Bank. The Respondent Bank stated that although it demanded the Appellants to pay and settle the moneys due,⁴ they have failed and neglected to pay and settle the same and accordingly, the Respondent Bank is entitled for a judgment and a decree as prayed for in the prayer to the Plaint for the recovery of the total moneys due.

5. The Appellants in its answer contend that the Plaintiff cannot maintain this action on the purported stance that this action is prescribed. It was further contended that the 2nd and 3rd Appellants maintained close relations and are shareholders of the said Pramuka Bank, now vested upon the Respondent Bank. The Appellants averred that the internal climate of the said Pramuka Bank was such that it was on the verge of collapsing. To mitigate any such detriments thereby, the management of the said Pramuka Bank requested the 2nd and 3rd Appellants to sign several documents to ascertain and establish the stability of the bank in the eyes of third parties. However, the Appellants' position was that while the 2nd and 3rd Appellants had in fact signed said documents, especially documents marked A6,⁵ A9,⁶ and A12,⁷ no consideration had passed to, nor had any incentives been received by the Appellants as stipulated in the said instruments. Therefore, the contention of the Appellants was that

³ Guarantee Bond marked as "P17", pg. 178 of the Supreme Court brief

⁴ Letters of Demand marked as "P11" and "P16" found on pgs. 170 and 177 respectively of the Supreme Court brief

⁵ Loan Agreement Form dated 05th April 2002, Loan Value Rs.6 million, also document marked "P6"

⁶ Loan Agreement Form dated 05th April 2002, Loan Value Rs.11 million, also document marked "P13"

⁷ Guarantee Bond dated 29th December 1997, pg. 103 of the Supreme Court brief, also document marked "P17"

documents signed were not enforceable in law and thus are not liable to pay the moneys claimed by the Respondent Bank.

Analysis

6. In considering the questions of law before this Court, the pivotal issue to be addressed is the admissibility of the evidence submitted, particularly the documents marked P7, P8, P9, P10, P14 and P15, in accordance with the provisions of the Evidence Ordinance. Having thoroughly perused the facts and circumstances of the instant case, the Appellants' position rests on three tiers. First and initially, the Appellants raise the preliminary objection of prescription, submitting that the loan facilities have been rendered unto the Defendants in April 2002, whereas the application was made to the Commercial High Court on 23rd September 2011, thereby the present action was prescribed by nine years.⁸ Second, the Defendants deny any such loan transactions to have occurred owing to the lack of legally enforceable evidence which the Defendant attributes to having been defrauded by Pramuka Bank, subsequently vested in Respondent. Third, the documents marked P7, P8, P9, P10, P14 and P15 are inadmissible as documentary evidence since they do not qualify as "certified copies" nor do they qualify as Banker's books within the meaning of sections 90A and 90C of the Evidence Ordinance.
7. In addressing the first tier, the preliminary objection of prescription raised before the High Court was adequately considered and dismissed by the Learned High Court Judge in the following manner.⁹

“විත්තිකරුවන් විසින් ඉදිරිපත් කරන ලද ඊළඟ විත්තිවාචකය වූයේ පැමිණිල්ලේ නඩුව බැඳූ බැල්මටම කාලාවරෝධී ඇති බවය. ණය මුදලක්

⁸ Paragraph 2, Answer of the Defendants dated 15th March 2012, pg. 79 of the Supreme Court brief

⁹ Pg. 5, Judgement of the Commercial High Court dated 30th January 2018, pg.25 of the Supreme Court brief

පැමිණිලිකරුගෙන් විත්තිකරුවන් ලබා නොගත් බවට ස්ථාවරයක් විත්තිය විසින් ගනු ලබන්නේ නම් පැමිණිල්ලේ නඩු නිමිත්ත කාලාවරෝධීච් ඇති බවට විත්තිවාචකයක් ගත නොහැක. එසේ ගැනීමට නම් 1 වන විත්තිකරු පැමිණිලිකරුගෙන් ණය මුදල ලබාගත් බව පිළිගත යුතුය. කෙසේ වුවද පැමිණිලිකරු සහ 1 වන විත්තිකරු අතර ඇති වූ ගිවිසුම් වල සහ අප කරයෙහි කාලාවරෝධී විත්තිවාචකය නොගන්නා බවට විත්තිකරුවන් එකඟ වී ඇත. එබැවින් කාලාවරෝධී විත්තිවාචකය ඉදිරිපත් කිරීමට විත්තිකරුවන්ට නොහැක.”

“The next defence raised by the defendants is that the plaintiff's claim is prima facie barred by prescription. If the defendants maintain that they have not obtained a loan from the plaintiff, they cannot assert that the cause of action has become prescribed. To raise such a defence, the 1st defendant would need to admit to having received a loan from the plaintiff. However, the defendants have conceded that the defence of prescription does not apply to the agreements between the plaintiff and the 1st defendant, as well as to the guarantee. Therefore, the defendants cannot rely on the defence of prescription in this case.”

8. With the Preliminary objection dismissed, the triumvirate stance of the Appellants has depleted to consist of two tiers, which form the foundation for the questions of law before this Court and have been expounded on below in turn.
9. In addressing the second tier, the submission of the Appellants at the High Court are as follows; The 1st and 2nd Appellants were customers of Pramuka Bank. From time to time, when Pramuka Bank was facing financial difficulties, Mr. Rohan Perera, its chairman, who was a personal friend of the 2nd Appellant and his family, would request the 2nd Appellant and/or the 3rd Appellant and/or the 1st Appellant company, as a gesture of support, to sign and/or initial various documents, inclusive of security documents pertaining to banking facilities. The Appellants were informed that these documents would be used for the purpose of showing that Pramuka Bank was

financially stable. The Appellants did not receive any incentive from Pramuka Bank nor from Mr. Rohan Perera for signing any such documents. The documents were usually blank printed forms and the Appellants never read their contents, neither were its contents ever read out and explained to the Appellants. The Appellants signed the said documents in good faith based solely on their good relationship with Mr. Rohan Perera, and the trust and confidence they had in him. The Appellants were assured that signing the said documents was not illegal and that the said documents would never be acted on by Pramuka Bank. The documents marked P4, P5, P6, P13 and P17 are some of the documents signed/initialled by the Defendants at various times in the circumstances set out above. The Appellants never read the said documents prior to signing the same and nor were their contents read out and explained to them. The Appellants were thus ignorant of the true nature and character of the said documents. Had the 2nd Appellant been aware that the said documents P4, P5, P6, P13 and P17 were contractually binding, as an experienced businessman, he would have wanted their contents explained to the Appellants and he would not have agreed to Clause 13 of the said documents P4, P5 and P13 and Clause 21 of the said document P17 which state that the defence of prescription is abandoned.¹⁰

10. A concise reiteration of the above is that the 2nd and 3rd Appellants while admitting having signed the documents marked P4, P5, P6, P13 and P17, claim that there was no intention to obtain such a loan facility. The documents were signed only as gesture of support to the Chairman of Pramuka Bank to assert its financial stability, and consequently that the Appellants have been defrauded by Pramuka Bank who had got them to sign blank documents without being read and explained its content and legal effect.

¹⁰ Written submissions of the Defendants-Appellants submitted to the Commercial High Court on 08th November 2017, reiterated in the Written Submissions dated 10th August 2023

11. While the documents marked P4, P5, P6, P13 and P17 have not been challenged in the present suit, for the purpose of enhancing factual comprehension of the instant case, I have provided a brief description of the said documents. P4 is a Letter of request by the 1st Appellant Company dated 04th April 2002 requesting for one, a Fluctuating Loan line of Rupees Thirty-five Million (Rs. 35, 000,000/-), and two, a Term Loan facility of Rupees Seventeen Million five hundred thousand (Rs.17, 500,000/-). This letter was addressed to the Deputy General Manager of Pramuka bank and signed by the 2nd Appellant as the Director of the 1st Appellant Company. Further, this letter was forwarded under the letter head of the 1st Appellant Company. In perusing the contents of the said letter, it is apparent that the Appellants wish to obtain the said facilities to settle some of their bank liabilities with the Pramuka Bank. P5 is a facilities agreement form dated 05th April 2002 which identifies 1st Appellant Company as the Borrowing party for several loan facilities stated herein along with conditions thereof. The said form was for a Rupees Thirty-five Million (Rs. 35, 000,000/-) as fluctuating line loan facilities, and Rupees Six Million (Rs. 6,000, 000/-) and Rupees eleven million five hundred thousand (Rs. 11, 500,000/-) as short-term loans. P6 and P13 are Loan Agreement forms for the short-term loans of Rupees Six Million (Rs. 6, 000, 000/-) and Rupees eleven million five hundred thousand (Rs. 11, 500,000/-) respectively, signed by the 2nd and 3rd Appellants on behalf of the 1st Appellant Company, the proceeds of both loans to be credited to the respective accounts in the name of the 1st Appellant Company at the Respondent Bank. P17 Guarantee signed by 2nd and 3rd Appellants on behalf of the 1st Appellant Company.
12. The Learned High Court Judge having considered the above submissions of the Appellants stated as follows.

“ප්‍රමුඛ බැංකුව විසින් බැංකුවෙහි මූල්‍ය ස්ථාවර භාවය පෙන්වීම සඳහා
ණය පහසුකම් පුද්ගලයන්ට ලබාදෙන බව බොරුවට හැඟවීමට ලේඛනය
වලට අත්සන් ගත් බවට විත්තිය විසින් පවසනු ලබන කරුණ කිසිසේත්ම
පිළිගත නොහැක. 2 වන විත්තිකරුගෙන් හරස් ප්‍රශ්න නගමින් ලකුණු

කොට ඉදිරිපත් කරන ලද පැ.20 දරන අභියාචනාධිකරණ තීන්දුව පරිදි 2 සහ 3 විත්තිකරුවන් ව්‍යාපාරික ලෝකයේ ඉදිරියෙන්ම සිටින විශාල ව්‍යාපාරිකයන් වේ. ඔවුන් ඇත්තවශයෙන්ම එම තීන්දුවේ සඳහන් අයුරින් කැන්ඩි සිටි සෙන්ටර් නම් විශාල ව්‍යාපාරයේ අයිතිකරුවන් බව පෙනේ. එම තීන්දුවේ සඳහන් පරිදි 2 සහ 3 විත්තිකරුවන් සෙලාන් බැංකුවෙන් රුපියල් මිලියන දෙදස අසූපහක මුදලක් ණයට ගෙන හෝ ගෙවීමට නියමිතව තිබී ඇත. එවැනි ව්‍යාපාරිකයන් ව්‍යාපාරික ලෝකයේ නවකයින් මෙන් එලෙස ලේඛන වලට අත්සන් තබන ලදැයි පිළිගත නොහැක. තවද උත්තරයේ 9 (ඇ) ඡේදයේ අවසාන කොටසේ සඳහන් වනුයේ බැංකු පහසුකම්වලට සම්බන්ධ සුරැකුම් ලේඛන වලටද එලෙස ඇතුළත් වූ බවය. ගනුදෙනුකරුවන් නොමග යැවීමට ව්‍යාජ ලේඛනවලට අත්සන් තැබුවේ නම්, ඇප කර වලට අත්සන් තැබීමෙන් ප්‍රමුඛ බැංකුවේ මූල්‍ය ස්ථාවරය කෙසේ පෙන්නිය හැකිද?”

“The claim made by the defendants that Pramuka Bank obtained signatures to documents to falsely imply that they provide loan facilities for the people to demonstrate the financial stability of the bank is unacceptable. According to the Court of Appeal judgment marked P 20, submitted during the cross-examination of the 2nd Defendant, the 2nd and 3rd defendants are prominent businessmen in the business world. It appears that they are indeed the owners of the large business known as Kandy City Centre, as indicated in the said judgment. The judgment also states that the 2nd and 3rd defendants have borrowed or owe Seylan Bank a sum of Two Thousand Eighty-Five Million Rupees. It is not admissible that such established businessmen would engage in placing signatures in a manner typical of less experienced businessmen. Furthermore, as noted in the last part of paragraph 9(c) of the answer, The signatories were included in the securities related to banking services. If signatures are placed on fraudulent documents to mislead customers,

how can the financial stability of Pramuka Bank be illustrated by signing onto guarantees.”

13. A Company cannot take a defence of ignorance, especially in an instance where the 2nd Appellant claims as follows.¹¹

“(b) I am the Chairman and Managing Director of the 1st Defendant Company and have at all times been in control of the 1st Defendant Company

(c) The 3rd Defendant-Appellant is my wife and also a Director of the 1st Defendant Company

(d) I have been engaged in business activities for about 35 years. I am also the Chairman and Managing Director of Property Finance and Investment Kandy (Private) limited, which operates the Kandy City Centre, the leading commercial and shopping complex in Kandy”

14. I concur with the findings of the Learned High Court Judge that such a defence of ignorance as raised by the appellants is frivolous and ludicrous, or as the Learned High Court Judge refers to as “හාස්‍යජනකය” (Ridiculous/Hilarious). Even if the Appellants contend that these documents were signed as a symbolic gesture in good faith, it strains credulity to suggest ignorance of their contents or legal implications. It is counterintuitive to posit that documents pivotal to affirming the financial stability of Pramuka Bank were inherently invalid under the law. Hence, such a defence is bereft of merit.

15. Now I turn to the third tier with regards to the admissibility of the documents marked P7, P8, P9, P10, P14 and P15 at the High Court. It is the submission of the Appellants that the abovesaid documents do not qualify as “certified copies” within the purview of section 90A of the Evidence Ordinance. In expounding on their stance, the

¹¹ Affidavit para 1

Appellants assert that the documents marked "P10" and "P15" are not true copies of entries of the Respondent Bank's books but are handwritten forms prepared with the aid of entries of the banker's books, and further, that the documents marked "P7", "P8", "P9", and "P14" cannot be considered as certified copies as the purported certificate by the General Manager was insufficient to meet the requirements of section 90A of the Evidence Ordinance.¹² In furthering its stance, the Appellants religiously rely on sections 90A and 90C of the Evidence Ordinance and two cases namely **Chandra Gunasekara v. Peoples' Bank**¹³ and **Agostinu v. Kumaraswamy**.¹⁴

16. In this juncture, it will be beneficial to refer to the provisions of the Evidence Ordinance aforementioned, which have been reproduced below for convenience. **Section 90C** of the **Evidence Ordinance** provides as follows with regards to the admissibility of evidence of banker's books.

"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."

17. **Sections 90A** of the **Evidence Ordinance**¹⁵ provides for the definition of "certified copy" in the context of the aforementioned provision, as follows.

"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

¹² Written submissions of Appellants dated 10th August 2023

¹³ SC Appeal 43/2012 decided on 11/10/2019

¹⁴ 59 NLR 132

¹⁵ As amended by Act No.6 of 2021

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."

[Emphasis added]

18. In ***Agostinu v. Kumaraswamy***,¹⁶ it was affirmed that in compliance with the Evidence Ordinance the only way of proving entries in a banker's book is by either producing the original or certified copies of the entries therein as prescribed by section 90C of the Evidence Ordinance. Accordingly, His Lordship Basnayake CJ held as follows.

"The document produced is not a certified copy of the entries in the banker's book; but a statement prepared with the aid of those entries certified by the accountant of the bank. Objection was taken at the trial to the production of the statement in question; but the learned trial Judge over-ruled it. We are of opinion that he is wrong. Section 90C of the Evidence Ordinance does not apply to the statements produced."

19. Upon an initial reading of the findings of the Court in ***Agostinu v. Kumaraswamy***, it is understandable how one might be led astray to assume that any document

¹⁶ 59 NLR 132

falling short of an official certification by bank seal and excludes auxiliary statements prepared by the bank to attest or verify the entries in the original books. However, it is pertinent to consider the findings in this case in context of its facts and circumstances of the respective case, for which reason I am inclined to agree with the interpretation to the findings in **Agostinu v. Kumaraswamy** as provided by His Lordship Justice Aluwihare in **Chandra Gunasekara v. Peoples' Bank**¹⁷ as has been reproduced below.

*"What was produced in Court in the case of **Agostinu** was a **bare statement, without any certification, and based on some entries which had been certified by the accountant of the bank**. It appears, then, that although the original entries of the bank had been certified by the accountant, **the transcription of those entries that was produced in Court carried no certification**. Basnayake C.J. correctly held that the statement was inadmissible in as much as it is a mandatory requirement under Section 90C, that what is produced in Court should be certified as stipulated in Section 90A of the Evidence Ordinance."*

[Emphasis added]

20. For further clarity, provided below was the certification which was found in the document in question in the case of **Chandra Gunasekara v. Peoples' Bank**, which the Court unanimously agreed as to amounting to a valid certification within the meaning of section 90A of the Evidence Ordinance.

"In the instant case, however, as opposed to the facts of the case of Agostinu, the document marked P9(a) carries a certification to the effect:

"I, Uttumalebbe Ali Mohamed, Chief Manager-Special Assets Unit do hereby certify that the foregoing statement is a true extract of the

¹⁷ SC Appeal 43/2012 decided on 11/10/2019

relevant entries relating to the current account No. 205002 of Wang Lanka Apparels (Pvt) Ltd., No. 86, Sea Beach Road, Colombo 11 as appearing in the books of the People's bank and that such entries are contained in one of the ordinary books of the Bank and were made in the usual or ordinary course of business and that such books are still in the custody of the Bank."

21. Here, the facts provide that it was above witness Mohamed who had both prepared and signed the above certification. Accordingly, such a certification was valid for the document in suit to amount to being a "certified copy" which was admissible as prima facie evidence of the bank entries. In consideration of the above, while the Appellants were right in relying on the above legal provisions and case law, they have failed to correctly interpret the findings in both the cited cases. Further, E.R.S.R. Coomaraswamy¹⁸ succinctly lists out the requirements of section 90A of the Evidence Ordinance as follows.

"In Sri Lanka, "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:

(a) that it is a true copy of such entry;

(b) that such entry is contained in one ,of the ordinary books of the bank;

(c) that it was made in the usual and ordinary course of business; and

(d) that such book is still in the custody of the bank.

Such certificate shall be dated and subscribed by the principal accountant or manager of the bank with his name and official title"

22. Having laid out the legal jurisdiction prevailing in this regard, I now turn to assess the admissibility of the documents in suit in the instant case in light of the above.

¹⁸ "Law of Evidence", Vol II book II, at page 161

23. The document marked "P7" as described above is a customer loan details sheet generated from the computer accounts book and has been certified by the General Manager of the Sri Lanka Savings Bank. The Appellant avers that there is no date provided by the attesting officer. This matter was raised at the trial, with regards to documents marked P7, P9 and P14, and during cross-examination, the Appellant's witness said that there is no provision for the attesting officer to insert a date because the computer will provide the date when it was generated, in this case it is provided as 'Print Date'. The excerpt of the cross-examination report has been provided below along with an approximate translation.

“ප්‍ර: විශේෂයෙන් සාක්ෂිකරු පැ.7, පැ.9, සහ පැ.14 ලේඛන පැමිණිලිකාර සමාගමේ සාමාන්‍යාධිකාරී විසින් අත්සන් කර ඇති බව පෙනී යනවා නේද?”

උ: අත්සන් කරලා තිබෙනවා.

ප්‍ර: නමුත් ඒ සාමාන්‍යාධිකාරී තුමා ඒ ලේඛන තුනේම දිනය යොදලා නැහැ නේද?

උ: සාමාන්‍යයෙන් බැංකු ප්‍රකාශනයකට අත්සන් කරන දිනය නෙවෙයි ගන්නේ. බැංකු ප්‍රකාශනයේ ගනුදෙනු වෙළුම් සිද්ධි ප්‍රකාශිතව තිබෙනවා සටහන් වෙලා කම්පියුටරයෙන්. සහතික කිරීමේදී ප්‍රධානියා අත්සන් කරනවා.

ප්‍ර: දැන් තමන් කියන්නේ ඒ සහතික කරන අවස්ථාවේදී දිනය යොදන්න අවශ්‍ය නැහැ කියලද?

උ:බැංකුවේ පලපුරුද්ද සහතික කරපු පිටපතකදී සහතික කරන දිනය දෙන්නේ නැහැ බැංකු ප්‍රකාශනයකට.

ප්‍ර:සාමාන්‍ය ප්‍රවේශය කියන්නේ තමන් කියන්නේ දිනය දුන්නේ නැහැ?

උ:සාමාන්‍යයෙන් දිනය දුන්නේ නැහැ.”

"Q: Witness, did it specially appear that the documents marked P7, P9, and P14 were signed by the General Manager of the plaintiff company?

A: Signature was placed.

Q: However, the said General Manager did not insert the date in the said three documents, did he?

A: Generally, the signing date is not included on a bank statement. The transactions recorded in the bank statement are entered into the computer system. When attesting, the head signs it.

Q: Are you now saying that it is not necessary to insert the date for such attestation?

A: As per the general practice of the bank, a certified bank statement does not include the certifying date.

Q: You are saying that, according to the general procedure, the date is not inserted, aren't you?

A: Generally, the date is not inserted."

24. As per document marked "P7", the customer's name is given as "M/S PROPERTY FINANCE & INVESTMENTS (PVT) LTD., Address No.10/1, Reid Avenue, Colombo 07, Account number is given as : 102012000499 , Loan amount 6,000,000. , Loan open date 05 April 2002, and provides PRINT DATE as 09/18/2012. Document marked "P14" also provides for contents similar to the above except the Account number reads as 102012000502, and the Loan amount as Rupees 11,500,000 and the Loan date as 08 April 2002, PRINT DATE 09/18/2012. Since the date has been provided in the body of the document, I am of the view that it will suffice the date of attestation/certification.

25. With regards to the documents marked P8 and P9 the same objection was raised, additionally the Appellants submit that in the attestation the Bank official had mentioned the name and number of the account, address of the Appellant, and all other details were mentioned correctly but at the attestation in the bottom it is mentioned as "M/S Nihal Brothers", which was not noticed at the trial and never been questioned with witnesses called on behalf of Appellant. This was not raised at the trial court and not even cited in the petition of appeal. This is only taken at the written submission to the Supreme Court. I once again turn to the findings of Justice Aluwihare in **Chandra v. Gunasekara** in relation to the failure of the opposing party to raise contradictory evidence at trial, and am inclined to agree with the following statement.

"I also must point out that the Appellant raised no objection when the document was sought to be admitted in evidence by the Plaintiff Bank, when witness Mohamed testified. Furthermore, every party if it is so desired is afforded an opportunity to have the originals inspected, in terms of Section 90E of the Evidence Ordinance, which right the Appellant could have exercised before the trial Judge.

*I am also of the view that this is a fit instance to apply the principle laid down in the case of **L. Edrick De Silva v L. Chandradasa De Silva, 70 NLR 169**. In the said case (at page 174) Chief Justice H.N.G Fernando held: "But where the plaintiff has in a civil case led evidence sufficient in law to prove a factum probandum, the failure of the defendant to adduce evidence which contradicts it adds a new factor in favour of the plaintiff. There is then an additional "matter before the Court", which the definition in Section 3 of the Evidence Ordinance requires the Court to take into account, namely that the evidence led by the plaintiff is uncontradicted."*

When a party is afforded an opportunity to challenge any evidence produced in Court, and does not exercise that right, it would be reasonable for the Court to infer that the party did not do so, because the party was not capable of challenging the same."

26. Apart from the above facts identified, the certification provided in the documents marked P7, P8, P9, and P14 provides for a certification at the end of each respective document which has been signed by the General Manager of the Respondent Bank, and states as follows in clear compliance with the requirements of section 90A of the Evidence Ordinance.

"I, Edippuli Arachchige Hemappriya Joseph Adrian Weerasekera being the General Manager of Sri Lanka Savings Bank Ltd of No.265, Ward Place, Colombo 07 do hereby certify that the foregoing statement is a true copy of the relevant entries relating to the Loan account No.102012000499 of M/S Property Finance & Investments (Pvt) Ltd as appearing in the books /data of Pramuka Savings and Development Bank and that such entries are contained in one of the ordinary books/data of the bank and were made in usual ordinary course of business and that such books/data are still in the custody of Sri Lanka Savings Bank Ltd. I do here by further certify that there are no other entries in the books of the bank relating to the above account as at date."

27. In light of the above, I find no issue with the admissibility of the documents marked P7, P8, P9 and P14.
28. With regards to the admissibility of the Documents marked P10 and P15, both parties agree that the said documents are manual forms filled by the officials of the Respondent Bank to give instructions to their Attorney at Law to prepare the Letter

of Demand and to proceed with the case. This was properly explained by the plaintiff's witnesses at the trial in the following manner.¹⁹

“ප්‍ර: දැන් සාක්ෂිකරු තවදුරටත් මා තමන්ට පෙන්වනවා පැ.10 ලේඛනය. මේ පැ.10 ලේඛනය කියන්නේ ඒ මිලියන 6, ණය මුදල සම්බන්ධයෙන් සාරාංශයක් කියලා කිව්වොත් හරිද?

උ:පැ.10 ලේඛනයේ සටහන් කරන්නේ නඩු දුන්න සුදුනම් වෙන කොට එන්තර්වාසිය සකස් කරන්න කාර්යාලය ඇතුළේ ඇතුළේ කරගන්නත් සටහනක්. ඒකේ පෙන්වා දෙනවා ඒ දිනයට අවු ස්ටෙන්ඩින්. ඒ කියන්නේ හිග ශේෂයයි. එදාට පොලිය මෙව්වරයි. සම්පූර්ණ ගාන මෙව්වරයි කියලා සටහන් කරලා දෙනවා ඒකට අවශ්‍ය එන්තර්වාසිය සුදුනම් කරගන්න.”

“Q: Witness, I am now further showing you the document marked P10. Am I correct in saying that this document marked P10 is a summary of the loan valued at 6 million?”

A: P10 is an internally prepared document used within the office to draft the letter of demand for the purpose of suing. It indicates the outstanding balance as of the relevant date, which represents the amount in arrears. It notes the interest and the full amount as of that date for preparing the letter of demand.”

29. Contrary to the facts and findings of the case **Agostinu v. Kumaraswamy**, the documents marked P10 and P15 would not qualify as “bare statements without certification” as it satisfies the minimum threshold of a certified copy, being signed by the relevant Manager responsible for the recovery of loans along with the date at the foot of the said documents. Further, the said documents were annexed to the Letters of Demand marked as “P11” and “P16”. Therefore, the documents marked

¹⁹ Cross-examination report dated 11th December 2012, Pg.198 of the Supreme Court brief

"P10" and "P15" are also admissible as evidence to verify the existence of the loan transactions which the Appellants vehemently denies.

30. Despite its aggravated denials, it is important to take note of the document marked P22 which was submitted by the 2nd Appellant at the trial whereby he admitted to his signature in the said facsimile. The contents are important, as according to this letter, the Appellant had acknowledged the loan amount and negotiated with the Respondent bank officials for a settlement. "P22" was addressed to the Mr G. S. Perera, Manager Recoveries of Sri Lanka Savings Bank, dated 28th January 2009. It will be helpful to reproduce the contents for easy reference.

*"Mr.G. S. Perera
Manager Recoveries
Sri Lanka Savings Bank Ltd.
110, D S Senanayake Mawatha
Colombo 08*

Dear Sir,

*SETTLEMENT OF LOAN OBTAINED FROM PRAMUKA SAVINGS
&DEVELOPMENT BANK*

I have been given a copy of your letter dated 12th May 2008 through Mr. T. S. Abeynanda. Thank you for sending two officers to my office to discuss the matter mentioned in the said letter.

With regard to the repayment of the loan, please note that since year 2002 I have tried several times to pay it back but I did not get the opportunity. The director supervising of Central Bank at that time could confirm this with proof. Since the opening of the new services bank, Sri Lanka Savings Bank Ltd. I have tried to meet with the General Manager in order to discuss a settlement for the above three times I got

appointments but however due to my busy schedule I could not make it, and I sincerely apologize for same.

However I wish to inform you that somewhere in the middle of next month (February) I plan to come and meet with the GM to discuss as to how I could settle the said matter.

Thanking you

Yours faithfully,

(Illegible Signature)

Thusitha Wijayasena"

31. Until the aforesaid letter marked "P22" was produced in Court, it was the stance of the Appellants that he knows nothing about the loan, and it was just signing of some papers on the request of Mr. Rohan Perera and other officials of Pramuka Bank, and he did not take any money from the Respondent Bank. However, upon perusal of the contents of the letter, it constitutes a formal recognition of the loan facilities granted to the 1st Appellant Company, as it demonstrates purported attempts to settle such loans, thereby rendering the position of the Appellants redundant.

Conclusion

32. The allegations of the Appellants appear to be juxtaposed resulting in the Appellants wanting to have one's cake and eat it too, or more accurately, has eaten too much cake themselves and now denies the existence of the cake itself while having frosting in between its fingers. Having analysed the facts and circumstances of the instant case, it is undoubtedly established that not one, but two loan facilities have been granted to the 1st Appellant Bank and have not been paid back.
33. In addressing the first question of law, I find that the learned Judge of the Commercial High Court of Colombo did not err by failing to appreciate that the purported statements/documents marked as 'P7', 'P8', 'P9', 'P10', 'P14', and 'P15' were

erroneous, incorrect and irregular, and therefore, could have been relied on in evidence. In addressing the second question of law, I find that the learned Judge of the Commercial High Court of Colombo did not err by failing to duly and properly assess and/or evaluate the documentary evidence place before the said Court. In conclusion, I answer both questions of law negatively, and hold in favour of the Respondent Bank.

34. Considering all reasons stated above, I am inclined to disallow the appeal and dismiss the same and hereby affirm the Judgement of the Commercial High Court Judge dated 30th January 2018.
35. The Respondent Bank is thus entitled to the relief as ordered by the Learned Judge of the Commercial High Court, and to recover the cost of litigation from the Appellants.

Appeal dismissed with costs.

JUDGE OF THE SUPREME COURT

A.L. SHIRAN GOONERATNE, J.

I agree.

JUDGE OF THE SUPREME COURT

K. PRIYANTHA FERNANDO, J.

I agree.

JUDGE OF THE SUPREME COURT