

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

*In the matter of an appeal in terms of  
Section 754 (1) of the Civil Procedure  
Code read with Section 5 of the High  
Court of the Provinces (Special  
Provisions) Act No. 10 of 1996.*

**SC (CHC) APPEAL NO. 32/2014**

CHC (CIVIL) CASE NO. 436/2009/MR

Abans Retail (Pvt) Ltd.

No. 498,

Galle Road,

Colombo 03.

**PLAINTIFF**

**-Vs-**

Peirisge Rohini Fernando

No. 33,

Pallansena,

Kochchikade.

**DEFENDANT**

**NOW BETWEEN**

Abans PLC (PV-5301-PB/PQ)

(Successor to 'Abans Retail (Pvt) Ltd.'  
pursuant to a corporate amalgamation  
with effect from 12-10-2022 under and in  
terms of Sec. 244 (1) (a) of the  
Companies Act No. 07 of 2007)

No. 498,

Galle Road,

Colombo 03.

**PLAINTIFF-APPELLANT**

**-Vs-**

Peirisge Rohini Fernando

No. 33,

Pallanasena,

Kochchikade.

**DEFENDANT-RESPONDENT**

**BEFORE** : **P. PADMAN SURASENA, J.**  
**JANAK DE SILVA, J.**  
**ACHALA WENGAPPULI, J.**

**COUNSEL** : Lasantha Garusinghe with Iresha Alepathgama instructed  
by Dilusha Wimarshana for the Plaintiff-Appellant.

Defendant-Respondent is absent and unrepresented.

**ARGUED ON** : 11-06-2024

**DECIDED ON** : 30-10-2024

**P. PADMAN SURASENA, J.**

The Defendant had been the Seeduwa showroom Manageress of the Plaintiff company from 01-08-2008. According to the Plaint, the Defendant was inter alia involved in sales operations, taking care of the stocks of the showroom, creating and ensuring the servicing of Hire Purchase Accounts, the sale of goods, maintaining proper books of accounts, following company procedures and ensuring that the money collected by the Show Room is duly remitted to the Company Head Office<sup>1</sup>.

When glancing through the several averments in the Plaint, I find it difficult to gather the distinct cause of action or actions upon which the Plaintiff has sued the Defendant in this case. Therefore,

---

<sup>1</sup> Paragraph 4 of Plaint dated 07-09-2009.

let me reproduce below paragraph 05 of the Plaintiff which may be the last resort to understand the Plaintiff's case. It is as follows:

*"Whilst in the Plaintiff's employment the Defendant as the aforesaid approved Dealer and / or showroom Manageress, in violation of her terms of employment defrauded and / or acted fraudulently and / or cheated and / or caused loss and / or damage and / or failed to make payment to the Plaintiff for goods sold and / or maintaining of proper books of account and particularly hire purchase accounts and / or remitting of monies from the showroom to the head office and / or stock shortages and damages and / or issuing of cheques which were dishonoured and / or misappropriation of monies of the company and / or unapproved credit sales and / or accepting stocks for sale and not settling the overdue sale proceeds and / or not following established company procedure."*<sup>2</sup>

Be that as it may, for the purpose of its case, the Plaintiff appears to have relied on the "Approved Dealer Agreement" which has been produced in the trial, marked **P2b**.

The Defendant in the trial has admitted that she was appointed by the Plaintiff company as the Manageress of Seeduwa showroom with effect from 01-08-2008.

There was no dispute between parties that the Plaintiff company, which filed the Plaintiff in this case is **Abans Retail (Pvt) Ltd.** and the Approved Dealer Agreement relied upon by the Plaintiff produced, marked **P2a** and **P2b** are Agreements entered into between **Abans Ltd.** and the Defendant. There was no dispute between the parties that the company **Abans Ltd.** and the company **Abans Retail (Pvt) Ltd.** are two different companies.

According to the Plaintiff, the Plaintiff has stated that the said Approved Dealer Agreements **P2a** and **P2B** were entered into between the Plaintiff and the Defendant. This is factually not correct. The Plaintiff has also failed to prove that there is any nexus between these two companies.

Perusal of the material in the brief, shows to our satisfaction, that the learned Judge of the Commercial High Court has rightly adverted to these facts when holding, that the Plaintiff

---

<sup>2</sup> Paragraph 5 of Plaintiff dated 07-09-2009.

company did not have the locus standi to institute the present action against the Defendant on 07-09-2009. This is because the two documents marked **P5** and **P5(a)** have established that the company Abans Ltd. had transferred its assets and liabilities to Abans Retail (Pvt) Ltd., only with the passing of the resolution by the Board of Directors of Abans Ltd. on 19-11-2009 which is subsequent to the date on which the Plaintiff had instituted this action.

The argument advanced by the Plaintiff before us, was that the afore-stated resolution passed by the Board of Directors of Abans Ltd. had taken effect from 01-04-2008. The learned Counsel for the Plaintiff relied on the following two paragraphs of the said Resolution:

*WHEREAS the Directors having considered it prudent to transfer the retail trade operations carried out by the Company to a separate entity, transferred to Abans Retail (Private) Limited the operations of 'Abans Retail Showrooms' island-wide with effect from 1<sup>st</sup> April 2008, together with all transactions, rights and obligations related to and incidental to the transfer, operation and maintenance of 'Abans Showrooms'.*

- 1. To transfer to Abans Retail (Private) Limited the operations of 'Abans Showrooms' island-wide with effect from 1<sup>st</sup> April 2008, together with all transactions, rights and obligations related to and incidental to the transfer, operation and maintenance of 'Abans Showrooms'.<sup>3</sup>*

However, I observe that the Plaintiff, at the time of filing this action, did not have the locus standi to file the Plaint dated 07-09-2009, against the Defendant on the alleged course of action in the Petition. This is clear because the Plaintiff had not stated any connection between these two companies in the Plaint. I observe that the Defendant had filed her Answer on 05-02-2010. I also observe that it was on 19-01-2010 that the Commercial High Court had given a final date for the Defendant to file an answer, i.e., 05-02-2010. I also observe that it was on 22-12-2012 that the Plaintiff had filed its list of documents and list of Witnesses in Court. It is the said list of documents that the Plaintiff had produced before Court, the afore-stated Resolution dated 19-11-2009 passed by the Board of Directors of Abans Ltd., as the item No. 12 of the list of documents. This clearly shows that this is an afterthought entertained by the Plaintiff, after realizing the shortcoming of the case for the Plaintiff. I observe that by this time the Defendant had already concluded filing her Answer.

---

<sup>3</sup> Page 404 of the Appeal Brief.

Having considered the material produced before Court, I also have no reason to disagree with the conclusions arrived at by the learned Judge of the Commercial High Court on the other facts relevant to the case. However, in view of the conclusion that the Plaintiff did not have requisite Locus Standi to file the instant Plaint against the Defendant at the time it had filed the Plaint, I would not consider in detail the other factual circumstances. Suffice it to say that I don't have any reason to disagree with the other conclusions arrived at by the learned Judge of the Commercial High Court.

In the above circumstances, I proceed to affirm the judgment dated 20-12-2012 pronounced by the Commercial High Court of the Western Province holden in Colombo and dismiss this appeal with costs.

**JUDGE OF THE SUPREME COURT**

**JANAK DE SILVA, J.**

I agree.

**JUDGE OF THE SUPREME COURT**

**ACHALA WENGAPPULI, J.**

I agree.

**JUDGE OF THE SUPREME COURT.**