

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

In the matter of an Application for Leave
to Appeal under Sec 757 of the Civil
Procedure Code and Section 5C of the
Provinces (Special Provisions)
(Amendment Act) No. 54 of 2006 read
together with Article 127 of the
Constitution.

SC/Appeal No. 159/2014
SC/HCCA/LA/271/2013
HCCA Colombo No. 83/2018
DC Colombo Case No.
21257/MR

Finance and Land Sales Ltd,
No. 15,
Sellamuttu Avenue,
Colombo 03.

Presently Known as
Asia Asset Finance Ltd,
No. 36,
Dudley Senanayake Mawatha,
Colombo -08

Defendant-Appellant

Vs.

Mohammed Ismail Yoosuf Ismail,
No. 17, HijraMawatha,
Henamula,
Panadura

Plaintiff-Respondent

AND NOW BETWEEN

Finance and Land Sales Ltd,
No. 15,
Sellamuttu Avenue,
Colombo 03.

Presently Known as
Asia Asset Finance Ltd,
No. 36,
Dudley Senanayake Mawatha,
Colombo – 08.

Defendant-Appellant-Appellant

Vs.

Mohammed Ismail Yoosuf Ismail,
No. 17, Hijra Mawatha,
Henamula,
Panadura

Plaintiff-Respondent-Respondent

Before : Yasantha Kodagoda, PC, J.
A. L. Shiran Gooneratne, J.
Menaka Wijesundera, J.

Counsel : Nishkan Parathalingam with Upeka Sooriya
Patabandige instructed by Shiranthi Gunawardena
Associates for the Defendant-Appellant-Appellant.

Hejaaz Hisbullah with Shalini Fernando for the
Plaintiff-Respondent-Respondent.

Written
Submissions : Written submissions on behalf of Defendant-
Appellant-Appellant on the 20th of July, 2026.

Written submissions on behalf of the Plaintiff-

Respondent-Respondent on the 25th of March, 2024.

Argued on : 05.06.2026

Decided on : 18.09.2026

MENAKA WIJESUNDERA J.

The instant appeal has been lodged to set aside the judgment dated 5th of June 2013 of the Civil Appellate High Court of Colombo.

The Plaintiff-Respondent-Respondent (hereinafter referred to as the Respondent) filed an action in the District Court against the Defendant-Appellant-Appellant (hereinafter referred to as the Appellant), alleging that the Appellant has illegally taken possession of the vehicle that had been the subject of a lease agreement entered into between the Respondent and the Appellant.

The issue in the instant matter is that the Respondent had alleged that the vehicle he obtained on a lease agreement with the Appellant had been abruptly violated because the Appellant is supposed to have been informed by a letter marked as “**X2**” by one Sarahdeen Lebbe Mohamed Mahilar (hereinafter referred to as “Mohamed Mahilar”) that, in the guarantee bond signed for the lease agreement, one of the guarantors who had signed as Mohamed Mahilar has produced an Identity card on which the details are his but not the photograph.

Therefore, the Respondent has alleged that, upon receipt of the said information, the Appellant, without conducting any inquiry, seized the vehicle which was the subject matter of the lease agreement, thereby, according to the Respondent, causing damage to his reputation and good name in society.

When this matter was taken up before this Court for the purpose of considering the application for leave to appeal on **11.07.2014**, leave was granted on the questions of law set out in paragraph 21 of the Petition filed by the Appellant dated **16.07.2013**, as well as on three additional questions of law recorded in the Journal Entry of the Brief dated **11.07.2014**. The questions of law upon which leave was granted are set out below:

- a. Can a defective Guarantee and Indemnity be enforced before a Court of Law in the Event of default of the Lessee in respect of a Finance Lease Agreement?*

- b. Is the Guarantee and Indemnity void ab initio for fraudulent signature?*
- c. Has the Appellant acted with due diligence as required of a Lessor under section 23 of the Finance Leasing Act No. 56 of 2000?*
- d. Has the Defendant acted according to section 23 of Act No. 56 of 2000 aforesaid when it was brought to its notice regarding fraudulent Misrepresentation of the Respondent?*
- e. As the Guarantors are jointly and or severally liable under a Guarantee and Indemnity can it be merely be cured by replacing the Guarantor who disputes his signature without repudiating the Guarantee and Indemnity of the Lease Agreement?*
- f. Does the Guarantor have a right to object to a Guarantee and Indemnity where his name used and signature been forged without his knowledge?*
- g. Can the Appellant be held liable for failure to prosecute the Respondent for forgery?*
- h. Is the Trial judge wrong in placing the burden of Proof on the Defendant?*

Further, the following additional questions of law were raised at the time leave was granted,

- i. Does the judgment of the High Court take into consideration Article 5(1)(c), which stipulates that in the event of an occurrence set out in Article 21 of this lease agreement that the lessee will be deemed to be in breach of the agreement?*
- j. Did the learned Judges of the Civil Appellate High Court misdirect themselves when they failed to take into consideration the position taken up by the Defendant that the Plaintiff had furnished or made representations that were found to be false or incorrect viz of providing a guarantor who provided a false identity and forged*

papers in support of the identity of the guarantor when it was alleged that the guarantor offered was an imposter?

- k. Has the learned Judge of the Civil Appellate Court misdirected themselves when they failed to evaluate the evidence in the case which is supportive of an event as contemplated in Article 5(c) and a misrepresentation made in terms of Article 21(i) of the lease agreement?*

During the pendency of the District Court trial, according to the evidence of the Respondent, the fact that he entered into a lease agreement with the Appellant company has not been disputed. The dispute, however, relates to the guarantee bond, which had been signed by the Respondent's wife and his friend, Mr. M. S. M. S. Faizal, together with a third person, namely, Sarahdeen Lebbe Mohamed Mahilar. The Respondent denies that he brought Mohamed Mahilar to place the signature; the Appellant company had said that it was the Respondent who brought the ID card with the impersonated picture and introduced the signature to the guarantee bond.

Mohamed Mahilar had given evidence on behalf of the Appellant. He had stated that the Respondent had obtained his ID card in order for him to receive some relief from the mosque. He further stated that the Respondent had later informed him that the Identity Card had been misplaced and requested him to visit the police station to lodge a complaint. However, he did not do so and instead had authored the document **X2**.

During cross-examination, Mohamed Mahilar informed the Court that he had not been pleased with the Respondent's purchase of the bus and that this was the reason he had authored the document **X2**. Therefore, the learned District Judge held that witness Mohamed Mahilar is not a reliable witness because he was not consistent in his narrative regarding the facts of the case.

Furthermore, he had decided that if the Appellant is alleging that the Respondent was instrumental in introducing Mohamed Mahilar's signature to the guarantor bond and that he tampered with the ID card of the witness Mohamed Mahilar, it is they who have to place material to substantiate the said position.

The Respondent's position was that he had entered into the lease agreement with the Appellant company and that his wife had signed the guarantor bond together with Mr. M. S. M. S. Faizal, whom, according to the Respondent, he had brought for that purpose, a position which was also supported by his wife. He, however, categorically denied having known Mohamed Mahilar. It was further the

Respondent's position that the Appellant had seized his vehicle upon receipt of the letter from Mohamed Mahilar, without conducting any inquiry into the matters alleged therein.

The only witness to contradict the Respondent had been the author of the said letter, that is, Mohamed Mahilar, who had said in evidence that he wrote the purported letter because he developed a negative feeling towards the Respondent when he bought the impugned bus, which had been the very reason for the trial judge to disbelieve the said witness.

Hence, upon evaluating the material stated above, I am of the opinion that the Appellant had acted purely on the letter written by the above-mentioned Mohamed Mahilar, who in the witness box in the trial court had admitted the reason for writing that letter, which the trial judge, in my opinion, had evaluated correctly.

The Appellant had not placed any material to substantiate the position that the Respondent introduced the signature of Mohamed Mahilar and that he tampered with the ID of the above-mentioned Mohamed Mahilar with independent evidence. However, the Appellant has drawn the attention of this Court to certain inconsistencies in the evidence of the Respondent and his wife, particularly with regard to their knowledge of Mohamed Mahilar and as to who was present at the time of the signing of the lease agreement. I would be remiss if I were not to acknowledge that there are certain inconsistencies in the testimony of the Respondent and his wife. Nevertheless, in my view, such inconsistencies, in themselves, do not go to the crux of the matter, namely, whether the Appellant has adduced sufficient evidence to establish that the Respondent was in breach of the contract.

At the time of the oral submission before this Court, both parties referred to Article 5 (1)(c) and 21(i) of the agreement between the parties. According to Article 5(1)(c), it states that if any of the events under Article 21 of the agreement takes place, the Lessee will be deemed to be in breach of the agreement. The Appellant pointed out to this Court that the Lessee had breached Article 21(i), but I find that the reason for the said submission had been found in the letter marked and produced as **X2**.

But the author of letter **X2**, Mohamed Mahilar, had said in evidence before the Trial Court the reason as to why he had written the said letter. The trial judge had concluded that, considering the said reasoning of the witness and the inaccuracies in his position, he is an unreliable witness. It is well-settled law that a trial judge is in the best position to assess the demeanour and deportment

of a witness, having had the opportunity to observe the witness while giving evidence. Accordingly, findings of fact based on such assessment should not ordinarily be disturbed by an Appellate Court, unless the findings are so perverse or unreasonable that they give rise to a serious doubt as to the trial Judge's proper appreciation of the evidence. This principle was recognised in the case of **Fradd v Brown and Co. Ltd. 20 NLR 282** and subsequently followed in the cases of **Alwis v Fernando (1993) 1 Sri LR 119** and **Mahathun v Attorney General (2015) 1 Sri LR 74**. These authorities were also relied upon by the Respondents in their written submissions.

Therefore, I find that the Appellant had failed to place any evidence to establish that the Respondent had breached the contract. As such, I find no merit in the said submission.

Hence, in my view, the learned trial judge was correct in finding in favour of the Respondent. Although a proper analysis of the evidence is not apparent from the judgment of the Civil Appellate High Court, it nevertheless arrived at the correct conclusion by affirming the findings of the learned trial judge. Hence, I am also compelled to hold that the findings of the trial judge are correct on the evidence placed before him. Accordingly, I affirm the findings of the Civil Appellate High Court.

With regard to the questions of law, I am of the view that the questions of law formulated by the Appellant are too vague and general in nature and, accordingly, do not merit consideration. However, in respect of the additional questions of law formulated by this Court at the time of granting leave, which are reproduced below:

1. *Does the judgment of the High Court take into consideration Article 5(1)(c) which stipulates that in the event of an occurrence set out in Article 21 of this lease agreement that the lessee will be deemed to be in breach of the agreement?*
2. *Did the learned Judges of the Civil Appellate High Court misdirect themselves when they failed to take into consideration the position taken up by the Defendant that the Plaintiff had furnished or made representations that were found to be false or incorrect viz of providing a guarantor who provided a false identity and forged papers in support of the identity of the guarantor when it was alleged that the guarantor offered was an imposter?*

3. *Has the learned Judge of the Civil Appellate Court misdirected themselves when they failed to evaluate the evidence in the case which is supportive of an event as contemplated in Article 5(c) and a misrepresentation made in terms of Article 21(i) of the lease agreement?*

I answer the first question of law in the affirmative and the second and third questions of law in the negative.

Therefore, the instant appeal is hereby dismissed.

JUDGE OF THE SUPREME COURT

Yasantha Kodagoda, PC, J.

I agree.

JUDGE OF THE SUPREME COURT

A. L. Shiran Gooneratne, J.

I agree.

JUDGE OF THE SUPREME COURT