

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

In the matter of an appeal made in terms of
Section 5 (C) read with Section 5 (A) of the High
Court of the Provinces (Special Provisions) Act
No.19 of 1990 as amended by Act No.54 of 2006.

SC / APPEAL / 190 / 2015

SC / HCCA / LA / 462 / 2014

WP / HCCA / MT / 94 / 09 / F

DC Mount Lavinia: 4573 / 04 / M

1. M.W. Jagath Somathunga,

42/3, Galhena Road,

Gangodavilla,

Nugegoda.

2. Agampodi Diluma Shiromi de Soyza,

42/3, Galhena Road,

Gangodavilla,

Nugegoda.

Carrying out a Business in the name of Asiri
Gardening and Cleaning Services.

PLAINTIFFS

-Vs-

Rosen Enterprises (Pvt) Ltd.,

9/4, Station Road,

Maharagama.

DEFENDANT

AND THEN BETWEEN

Rosen Enterprises (Pvt) Ltd.,

9/4, Station Road,

Maharagama.

DEFENDANT – APPELLANT

-Vs-

1. M.W. Jagath Somathunga,

42/3, Galhena Road,

Gangodavilla,

Nugegoda.

2. Agampodi Diluma Shiromi de

Soyza,

42/3, Galhena Road,

Gangodavilla,

Nugegoda.

Carrying out a Business in the name of Asiri
Gardening and Cleaning Services.

PLAINTIFF – RESPONDENTS

AND NOW BETWEEN

Rosen Enterprises (Pvt) Ltd.,

9/4, Station Road,

Maharagama.

**DEFENDANT – APPELLANT –
APPELLANT**

-Vs-

1. M.W. Jagath Somathunga,

42/3, Galhena Road,

Gangodavilla,

Nugegoda.

2. Agampodi Diluma Shiromi de Soyza,

42/3, Galhena Road,

Gangodavilla,

Nugegoda.

Carrying out a Business in the name of Asiri
Gardening and Cleaning Services.

PLAINTIFF – RESPONDENT –
RESPONDENTS

Before: A.H.M.D. Nawaz, J.
Kumudini Wickremasinghe, J. &
K. Priyantha Fernando, J.

Counsel: Nihal Jayawardene, PC with A.R.P. Bandara for the Defendant – Appellant
– Appellant.

Rohan Sahabandu, PC with S. Senanayake for the Plaintiff – Respondent –
Respondents.

Argued on: 08.07.2024

Decided on: 30.03.2026

A.H.M.D. Nawaz, J.

1. This case turns upon the proper construction and effect of the contractual documents produced in evidence. The Plaintiff – Respondent – Respondents (hereinafter referred to as “the Plaintiff” or “the contractors”), Messrs Asiri Gardening and Cleaning Services, a business carried on by M.W. Jagath Somatunge and Agampodi Diluma Shiromi De Soyza, entered into a contract with the Defendant – Appellant – Appellant (hereinafter referred to as “the Defendant”), Rosen Enterprises (Pvt) Ltd, a company, for the execution of landscaping and gardening work at a hotel owned by the Defendant at Kataragama. The evidence reveals that in the course of performance the Plaintiff

received periodic payments corresponding to the work carried out under the contract. Although the Defendant did not adduce oral evidence, it sought to establish, through documentary material put to the Plaintiff's representative in cross-examination, the fact of such interim payments having been made.

2. There is, therefore, no dispute between the parties as to the periodic payments made in the course of performance of the contract. What has precipitated the institution of this action is the Plaintiff's assertion that a further sum remains outstanding and due. This alleged balance is reflected both in the final letter of demand addressed by the Plaintiff to the Defendant and in the plaint filed in the year 2004.
3. The gravamen of the Defendant's case, however, is that, well prior to the institution of these proceedings, it had effected a full and final settlement of all dues in the sum of Rs. 124,377/=, and that no further sum is due or payable to the Plaintiff. The resolution of the entire controversy before this Court turns upon the effect to be given to document **D12**, a payment voucher dated 15 March 2001, issued by the Defendant, and upon the question whether, on the evidence led, the Defendant has discharged the burden of proving that **D12** constitutes a final and conclusive settlement of all claims by the Plaintiff.
4. Stripped to its essentials, the dispute that falls for determination is whether the Defendant remains liable to the Plaintiff in the sum claimed in the plaint or whether, as contended by the Defendant, the claim stands extinguished by reason of a full and final settlement. To restate the matter with greater precision, the question that arises for determination is whether, as contended by the Defendant, no further sum remains payable to the Plaintiff, or whether, as asserted by the Plaintiff, the Defendant continues to be indebted to the Plaintiff. The resolution of this issue turns upon an examination of the documentary material placed before this Court, which bears upon the respective rights and liabilities of the parties.

5. On or about 31 March 2000, the parties entered into a written agreement (**P1**) whereby the Plaintiff undertook to carry out landscaping and gardening work at the Defendant's hotel at Kataragama for a contract sum of Rs. 945,100/=. The agreement contained provisions specifying the scope of work, time schedule, specifications, and supervision. Additionally, clause 1 of the agreement provided that the contract documents included the Contractor's Tender dated 20 March 2000, the drawings, and the specifications. Clause 12 vested in the Defendant the right to order any additional work, which would thereafter be invoiced by the contractor in accordance with the priced bill of quantities.
6. In the course of performance of the contract, the Defendant made a mobilisation advance payment of Rs. 330,785/= to the Plaintiff. The Plaintiff thereafter carried out work under the contract and rendered periodic invoices to the Defendant. The Defendant made payments against these invoices, which are evidenced by documents **D1 to D11**. The Plaintiff acknowledges receipt of all payments evidenced by **D1 to D11**. The total payments received by the Plaintiff as admitted in his own document **P8** amounted to Rs. 990,115.97/=: a sum that already exceeded the original contract figure of Rs. 945,100/=:
7. In addition to the contractual work, the Plaintiff claimed to have carried out additional work to the value of Rs. 712,477/=: The Plaintiff's final claim was set out in document **P8**, an invoice summary prepared by the Plaintiff's own accountant. **P8** showed a total amount due of Rs. 1,657,577/=: from which credit was given for all payments received, namely Rs. 990,115.97/=: leaving a balance claimed of Rs. 667,461.03/=:
8. On 19 April 2001, a letter of demand was sent on behalf of the Plaintiff by Attorney-at-Law P.H. Sumith Nandana De Silva demanding payment of Rs. 309,408.20/=: A further letter of demand was sent on 20 July 2001 by Attorney-at-Law Chandrani Dayaratne demanding Rs. 340,193.20/=: On 8 August 2001, the same Attorney-at-Law sent a corrected letter of demand revising the claim to Rs.

640,193.20/=. To neither of these letters of demand did the Defendant see fit to respond.

9. On 9 August 2004, the Plaintiff instituted action in the District Court claiming a sum of Rs. 640,193.20/=. An amended plaint was thereafter filed on 25 November 2001 maintaining the same claim. The Defendant, in its answer, denied liability and asserted, inter alia, that it had no contract with the Plaintiff, that no authorisation had been given for additional work, and that all dues had been fully settled.
10. At the trial before the learned District Judge, one of the directors of the Plaintiff Company gave evidence on behalf of the Plaintiff and produced documents **P1** to **P12**. It is of critical significance that none of these documents were objected to by the Defendant. The effect of the absence of any objection is that not only the documents themselves but also their contents must be treated as proved. In particular, document **P8**, which disclosed the Plaintiff's final claim and the payments received, went into evidence as proved without challenge as to its contents.
11. The Defendant, though entering an appearance and filing an answer, chose not to call any witness. Despite this election to remain silent, the Defendant cross-examined the Plaintiff's witness and, in the course of that cross-examination, tendered documents **D1 to D12**. Documents **D1 to D11** evidenced payments made by the Defendant to the Plaintiff, and these sums were duly acknowledged by the Plaintiff. There is, accordingly, no dispute in relation to the payments evidenced by **D1 to D11**.
12. Document **D12** stands in an entirely different position. **D12** is a payment voucher dated 15 March 2001 issued by Rosen Enterprises (Pvt) Ltd, showing a payment of Rs. 124,377/= to Asiri Gardening and Cleaning Services. On its face, the voucher

contains a notation to the effect that this sum represents “*being final payment*” for the above work done. There is also an endorsement on the reverse of **D12** bearing the signature of the Defendant and a notation to the effect that the payment was the final payment.

13. **D12** was objected to by the Plaintiff and was accordingly marked subject to proof. The Plaintiff’s witness specifically and unequivocally stated in evidence that when **D12** was handed over to the Plaintiff, the words “final payment” were not present on the document. In other words, the evidence of the Plaintiff’s witness was that the notation “final payment” constituted an interpolation, i.e., a subsequent addition made to the document after it had come into existence and after the Plaintiff had received and signed for the payment of Rs. 124,377/=. The Plaintiff accepted receiving the sum of Rs. 124,377/= but denied that this sum was accepted as a full and final settlement of all dues.
14. There is yet a further and telling circumstance that attends document **D12**. The endorsement on the reverse asserting that this was the “final payment” bears the signature of the Defendant’s own representative. Conspicuously absent from that endorsement is the signature of the Plaintiff or any authorised representative of the Plaintiff. If indeed a payment in the sum of Rs. 124,377/= was being accepted by the Plaintiff as constituting full and final settlement of all dues under the contract, one would reasonably expect the document recording such settlement to bear the signature of the Plaintiff. The fact that only the Defendant’s signature appears on the reverse endorsement, without the Plaintiff’s counter-signature, lends considerable support to the Plaintiff’s testimony that the “final payment” notation was not present when the document was delivered to the Plaintiff.
15. Additionally, a careful examination of the reverse of **D12** reveals that the Defendant’s own Invoice Summary shows the total amount of work done as Rs. 1,025,800.30/= which is a figure substantially in excess of the original contract

sum of Rs. 945,100/=. This is a matter of the greatest significance, to which this Court shall return in the analysis below.

16. The learned District Judge, having carefully perused the documents and the oral evidence led at trial, held that the amount claimed by the Plaintiff was due and that **D12** could not be accepted as constituting a final and conclusive payment. The learned District Judge specifically observed that vital clarifications in respect of **D12** were not forthcoming, given the Defendant's election not to give evidence. The learned District Judge accordingly gave judgment in favour of the Plaintiff.

17. The Defendant preferred an appeal to the Civil Appellate High Court. The Civil Appellate High Court examined the evidence independently, considered the conduct of the Defendant in declining to lead evidence, and found no reason to disturb the findings of the learned District Judge. The Civil Appellate High Court dismissed the appeal. The learned Judges of the Civil Appellate High Court observed, as had the learned District Judge, that the Defendant had not given evidence to clarify the doubts arising from **D12**. The Civil Appellate High Court did not find the District Court judgment unreasonable or perverse. It is to be noted that the Plaintiff's counsel, before the Civil Appellate High Court, fairly and properly conceded that the sum of Rs. 124,377/= evidenced by **D12** had not been given credit for in **P8** and accordingly volunteered to restrict the Plaintiff's claim to Rs. 543,084.03/= (i.e., Rs. 667,461.03/= less Rs. 124,377/=). This concession, made with candour and intellectual honesty, further undermines any suggestion of dishonesty on the part of the Plaintiff.

18. The Defendant then sought and obtained leave of this Court to appeal, leave having been granted only on the question whether any amount remains due from the Defendant to the Plaintiff under the contract. It is this question alone that falls for determination by this Court.

The Effect of D12

19. The pivotal question in this appeal is the effect to be given to document **D12**. The Defendant's entire case rests upon the proposition that **D12** evidences not merely a payment of Rs. 124,377/= but a full and final settlement of all dues between the parties. For this proposition to prevail, the Defendant must establish, on a balance of probability, that the notation "being final payment" was present on **D12** when it was delivered to and received by the Plaintiff, and that the Plaintiff accepted the sum in full and final satisfaction of all claims.
20. The Plaintiff's witness testified, clearly and unequivocally, that when **D12** was handed over, the words "final payment" were not present on the document. This evidence was led before the learned District Judge who had the advantage of observing the demeanour of the witness in the box. The learned District Judge accepted this testimony. The High Court, upon an independent review of the evidence, saw no reason to disturb that finding.
21. This Court, sitting as a second appellate Court, is guided by well-established principle as to its role in relation to concurrent findings of fact by the Courts below. The observations of the Privy Council in *Fredd v. Brown*¹ are particularly instructive. Their Lordships stated that it is rare for a decision of a Judge, so expressed and so explicit upon a point of fact, to be overruled by a Court of Appeal, because Courts of Appeal recognise the advantage that a Judge of first instance has in matters of credibility as compared with any Judge of a Court of Appeal who can only learn from paper or from the narrative of those who were present. Similarly, the House of Lords in *Powell v. Streatham Manor Nursing Home*² affirmed the rule that an appellate Court will not depart from a finding of fact

¹ 20 N.L.R. 282

² [1935] AC 243

where the Judge has had the advantage of seeing the witnesses and observing their demeanour.

22. In the present case there are concurrent findings of fact by both the learned District Judge and the Civil Appellate High Court, both of which proceeded on the footing that the Plaintiff's version of events in relation to **D12** was to be preferred over the Defendant's documentary assertion. The guidelines for the proper approach of appellate Courts in relation to such concurrent findings have been authoritatively laid down by H.N.G. Fernando J. (as he then was) in *Mahavithana v. Commissioner of Inland Revenue*³. His Lordship observed that an appellate Court may reconsider such concurrent findings of fact only where (1) the inference has been drawn on a consideration of inadmissible evidence or after excluding admissible and relevant evidence; (2) the inferences were unsupported by legal evidence; or (3) the facts as found are not rationally possible and are perverse. None of these grounds has been established, or even seriously argued, by the Defendant in the present appeal. The Defendant has not pointed to any inadmissible evidence relied upon, any admissible evidence excluded, any absence of evidentiary support, or any perversity in the reasoning of either Court below. This Court accordingly declines to interfere with the concurrent findings of fact.

The Burden of Proof and the Consequences of the Defendant's Silence

23. The document **D12** was marked subject to proof. A document marked subject to proof does not carry with it any presumption as to the truth of its contents. The party who tenders such a document and relies upon it to establish a fact bears the burden of proving that fact. In the present case, the fact sought to be established by the Defendant through **D12** was that the payment of Rs. 124,377/= was

³ 64 N.L.R. 217

accepted by the Plaintiff as a full and final settlement of all dues. The Defendant bore the burden of proving this fact.

24. The provisions of Section 101 of the Evidence Ordinance are plain. When a person is bound to prove the existence of any fact, the burden of proof lies upon that person. If the person who bears that burden fails to adduce evidence or adduces no evidence at all, that burden is not discharged and the party must fail on that issue. In the present case, the Defendant bore the burden of proving that **D12** constituted a full and final settlement. The Defendant gave no evidence whatsoever. Not a single witness was called on behalf of the Defendant, either to prove the circumstances in which **D12** came to be inscribed with the notation “being final payment,” or to explain the basis upon which the figure of Rs. 124,377/= was said to represent the total balance due, or to rebut the Plaintiff’s testimony that this notation was not on the document when it was delivered. The Defendant’s burden under Section 101 of the Evidence Ordinance has therefore plainly not been discharged.

25. Further, where a party leads evidence sufficient in law to establish a fact, the failure of the opposing party to adduce evidence contradicting it adds a material factor in favour of the first party. This is a principle long recognised in our law. As this Court has occasion to apply the principle stated in *Edrick De Silva v. Chandradasa De Silva*⁴, where it was held at page 174 that when the Petitioner has led evidence sufficient in law to prove a relevant fact, the failure of the Respondent to adduce contradicting evidence adds a new factor in favour of the Petitioner, for Section 3 of the Evidence Ordinance requires the Court to take into account that the evidence led by the Petitioner stands uncontradicted. In the present case, the Plaintiff led evidence under oath, supported by documentary material, establishing his claim. The Plaintiff’s witness specifically and unequivocally asserted that the words “final payment” were not present on **D12**

⁴ 70 N.L.R. 169

when it was delivered to the Plaintiff. That evidence was uncontradicted by the Defendant, who offered not a single word in response. Applying the principle in *Edrick De Silva*, this uncontradicted evidence must be accepted as more probable than not.

26. Section 114 (f) of the Evidence Ordinance is also germane. That provision empowers a Court to presume that evidence which could be and has not been produced would, if produced, be unfavourable to the person who withholds it. The Defendant was in possession of all the internal records that could have thrown light upon the origin of the notation “being final payment” on **D12**, the manner in which the figure of Rs. 124,377/= was computed as the “final” balance, and the identity of the person who inscribed those words upon the document. Not one of those records was produced. Not one witness with personal knowledge of these matters was called. The adverse inference sanctioned by Section 114 (f) may properly be drawn against the Defendant.

The Admission Implicit in D12 Itself as Regards Additional Work

27. An examination of the reverse of **D12**, which the Defendant itself produced and relied upon, yields an admission of considerable significance. The invoice summary on the reverse of **D12** shows the total amount of work done as Rs. 1,025,800.30/=. This figure stands in sharp contrast to the original contract sum of Rs. 945,100/=. It exceeds the contract sum by over Rs. 80,000/=. The Defendant’s own document therefore acknowledges a total value of work done that is substantially greater than the agreed contract figure.

28. This has an important bearing on the Defendant’s contention that no additional work was authorised or performed. If the Defendant’s position were that only the contracted scope of work at Rs. 945,100/= was ever agreed upon and only that work was performed, then the Defendant’s own invoice summary would show a total not

exceeding Rs. 945,100/=. Yet the Defendant's own computation shows Rs. 1,025,800.30/=. The Defendant cannot in those circumstances maintain with any credibility that it authorised no additional work and that the Plaintiff performed no work beyond the contracted scope. The figure in the Defendant's own document gives the lie to this assertion. The Plaintiff's position i.e, that additional work was done with the tacit understanding and approval of the Defendant is therefore far more consistent with the documentary evidence, including the Defendant's own documents, than the Defendant's denial.

A Critical Examination of the Defendant's Submissions

29. The Defendant's submissions before this Court advanced a number of contentions which, upon examination, do not withstand scrutiny.
30. First, the Defendant argued that the Plaintiff completed only 90% of the contractual works and that, having received Rs. 990,115.97/= a sum already exceeding the contract figure, the Plaintiff had in fact been overpaid and was therefore estopped from claiming any further sum. This argument is, with respect, misconceived. The relevant question is not whether the payments received exceeded the original contract figure. The relevant question is whether the Plaintiff is entitled to be paid for additional work performed over and above the contracted scope. If additional work was in fact done with the concurrence of the Defendant and the evidence, including the Defendant's own invoice summary, strongly supports that conclusion, then the Plaintiff is entitled to be paid for that additional work regardless of the fact that the payments already received may exceed the original contract price. The doctrine of unjust enrichment that the Defendant seeks to invoke has no application in circumstances where the Plaintiff rendered services that the Defendant accepted and benefited from.

31. Second, the Defendant relied on document **P10**, described as an invoice summary prepared by the Plaintiff's own accountant, which the Defendant contended showed a balance of only Rs. 124,377/= due. It is to be noted, however, that the figure of Rs. 124,377/= appearing in P10 represents the balance as computed on the basis of certain assumptions. The Plaintiff's position, consistently maintained throughout, was that this figure did not reflect the totality of the additional work done. The fact that an interim computation by the Plaintiff's accountant produced the figure of Rs. 124,377/= does not estop the Plaintiff from demonstrating by further evidence that additional sums remain due. In any event, the learned District Judge and the learned Judge of the Civil Appellate High Court had the opportunity to evaluate the entire body of evidence, including **P10**, in its proper context, and both Courts concluded that the Plaintiff's final claim as set out in **P8** was established. This Court sees no reason to take a different view.

32. Third, the Defendant contended that the Plaintiff failed to produce any addendum to the contract or any written approval from the Defendant for additional works, as required by the contract. It is correct that clause 12 of the contract vested in the Defendant the right to order additional work and that, in a formal sense, no written addendum was produced. However, it is well established in the law of contract that the parties to a contract may by their conduct depart from the strict written terms and may give effect to a variation by conduct or by tacit agreement. The Defendant's own invoice summary, as already noted, acknowledges a total value of work in excess of the contract figure. This is the strongest possible indication that the Defendant itself recognised and accepted, at least implicitly, that work beyond the original contracted scope had been performed. In those circumstances, the absence of a formal written addendum does not disentitle the Plaintiff from recovering the value of the additional work performed.

33. Fourth, and perhaps most tellingly, the Defendant's counsel sought to characterise the letters of demand sent by the Plaintiff's instructing attorneys as evidencing confusion or even fraud in the Plaintiff's claim. This characterisation is, with

respect, both unwarranted and unsupported by the evidence. It is apparent that the initial letters of demand contained errors in computation, which were subsequently corrected by later correspondence. The correction of an error in a letter of demand does not constitute fraud or suppression. It was a proper act of rectification. The Defendant's attempt to impugn the Plaintiff's good faith on this ground is without merit. Moreover, no question of law was allowed by this Court on the question of the legality of the transaction or the locus standi of the Plaintiff, and the Defendant cannot at this stage, through the medium of written submissions, reintroduce contentions that were not the subject of leave.

34. Fifth, the Defendant advanced arguments based on the standard of proof in civil cases and referred to a number of authorities dealing with the burden of proof. While the general principle that a Plaintiff must prove his claim on a balance of probability is unexceptionable, it has no special application in a case such as the present, where the Plaintiff has led uncontradicted evidence and where the Defendant has produced a document (**D12**) which was objected to, marked subject to proof, and never proved. The burden of proof is a two-edged sword; it applies with equal force to the Defendant who seeks to rely upon **D12** as establishing a full and final settlement. The Defendant has singularly failed to discharge that burden.

The Concession of the Plaintiff's Counsel and the Proper Decree

35. As already noted, Counsel for the Plaintiff fairly conceded before the Civil Appellate High Court that the sum of Rs. 124,377/= evidenced by **D12** had inadvertently not been given credit for in **P8**. The Plaintiff accordingly volunteered to restrict his claim to Rs. 543,084.03/= (being Rs. 667,461.03/= less Rs. 124,377/=), with interest. This concession was reiterated in the Plaintiff's written submissions to this Court. This Court accepts the concession as properly and fairly made. The decree in favour of the Plaintiff must accordingly be modified to reflect this reduced figure, and interest must be computed upon that sum.

36. For the reasons stated, this Court arrives at the following conclusions:

- a) Document **D12** was produced by the Defendant and marked subject to proof over the objection of the Plaintiff. The Defendant led no evidence whatsoever to prove the authenticity of the notation “being final payment” inscribed thereon, the circumstances in which that notation came to be placed on the document, or the basis upon which Rs. 124,377/= was said to represent the total balance outstanding. The burden cast upon the Defendant by Section 101 of the Evidence Ordinance has not been discharged.
- b) The Plaintiff’s witness gave clear and uncontradicted evidence that the words “final payment” were not present on **D12** when the document was delivered to the Plaintiff. Applying the principle in *Edrick De Silva v. Chandradasa De Silva*⁵, this uncontradicted evidence must be accepted as more probable than the Defendant’s bare documentary assertion.
- c) An adverse inference under Section 114 (f) of the Evidence Ordinance may properly be drawn against the Defendant for its failure to produce evidence that lay within its own knowledge and control, namely evidence as to the origin and authenticity of the “final payment” notation on **D12**.
- d) The Defendant’s own invoice summary on the reverse of **D12** acknowledges a total value of work done at Rs. 1,025,800.30/=, a figure in excess of the original contract sum of Rs. 945,100/=, thereby implicitly acknowledging the performance of additional work beyond the contracted scope.

⁵ 70 N.L.R. 169

- e) There are concurrent findings of fact by the learned District Judge and the learned Judges of the Civil Appellate High Court, both of whom accepted the Plaintiff's version and found that the Defendant's failure to lead evidence was fatal to its defence. This Court, applying the principles laid down in *Mahavithana v. Commissioner of Inland Revenue*⁶, *Fredd v. Brown*⁷, and *Powell v. Streatham Manor Nursing Home*⁸, sees no ground to disturb those concurrent findings.
- f) The Plaintiff has fairly and properly conceded that credit of Rs. 124,377/= should be given in respect of the payment evidenced by D12, and has accordingly restricted the claim to Rs. 543,084.03/=.

37. In this case leave was granted on the following two questions of law;

- a) Have their Lordships' in the High Court of Western Province exercising Civil Jurisdiction holden at Mount Lavinia failed to consider that the learned District Judge has even failed to take into account the Appellant has fulfilled its monetary obligation to pay any payments lawfully due as per the contract entered into between the Appellant and Asiri Gardening and Cleaning Services.*
- b) Haven't their Lordships' in the High Court of Western Province exercising Civil Jurisdiction holden at Mount Lavinia failed to consider that the said Judgement is unsupported by available evidence to come to a conclusion that the Respondents are entitled to any additional payment over and above the contract sum?*

38. Based on the reasoning and conclusion reached above, these two questions are answered against the Defendant – Appellant – Appellant.

⁶ 64 NLR 217

⁷ 20 NLR 282

⁸ [1935] AC 243

39. In the circumstances, I proceed to dismiss the appeal of the Defendant. The judgment of the Civil Appellate High Court, which affirmed the judgment of the learned District Judge, is accordingly affirmed subject to the modification that the decreed amount is varied to Rs. 543,084.03/= with interest thereon at the legal rate from the date of the institution of the action until payment in full. The Defendant is also ordered to pay the Plaintiff the costs of this appeal.

Judge of the Supreme Court

Kumudini Wickremasinghe, J.

Judge of the Supreme Court

I agree.

K. Priyantha Fernando, J.

Judge of the Supreme Court

I agree.