

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

In the matter of an appeal under and in
terms of Article 128 (2) of the Constitution
of the Democratic Socialist Republic of Sri
Lanka.

SC / APPEAL / 55 / 2019

SC / HCCA / LA / 444 / 2014

WP/ HCCA (Colombo) 307 / 2008 (F)

DC Colombo: 56440 / MR

S.S. Selvaraja,

3/15, Pinnawatte Road,

Dehiwala.

PLAINTIFF

-Vs-

Seylan Bank Ltd,

Ceylinco Seylan Towers,

90, Galle Road,

Colombo 03.

DEFENDANT

AND THEN BETWEEN

S.S. Selvaraja,

3/15, Pinnawatte Road,

Dehiwala.

PLAINTIFF – APPELLANT

-Vs-

Seylan Bank Ltd,
Ceylinco Seylan Towers,
90, Galle Road,
Colombo 03.

DEFENDANT – RESPONDENT

AND NOW BETWEEN

Seylan Bank Ltd,
Ceylinco Seylan Towers,
90, Galle Road,
Colombo 03.

**DEFENDANT – RESPONDENT –
APPELLANT**

-Vs-

S.S. Selvaraja,
3/15, Pinnawatte Road,
Dehiwala.

**PLAINTIFF – APPELLANT –
RESPONDENT**

Before: Yasantha Kodagoda, PC, J
A.H.M.D. Nawaz, J &
K. Priyantha Fernando, J

Counsel: Kuvera de Zoysa, PC with Senaka de Saram instructed by Wayoma Paranagama for the Defendant-Respondent-Appellant.

Rohan Sahabandu, PC with Ms. Chathurika Elvitigala and Ms. S. Senanayake instructed by K. Kaneshayogan for the Plaintiff – Appellant – Respondent.

Argued &

Decided on: 08.09.2025

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

We have heard both the learned President’s Counsel for the Appellant and the Respondent.

Mr. Kuvera de Zoysa, the learned President’s Counsel for the Appellant advances the argument that the learned High Court Judges erred in law when they concluded that a final appeal would lie in this matter, where the Plaintiff had preferred a final appeal instead of an application for leave to appeal. The pivotal question that seems to have been foremost in the mind of this court at the time of grant of leave is as follows;

*“Is the Civil Appellate High Court judgment dated 24/07/2014 in conformity with the judgment in cases such as **S.R. Chettiar & others v. V.S.N. Chettiar**¹ and **P.P.P. Senanayake v. H.G. Chamika Jayantha & two others**²”*

¹ (2011) 2 Sri.L.R 71

² SC.Appeal.No. 41/2015 decided on 14/08/2017; (2017) 1 Sri.L.R 368

Both these cases dealt with the circumstances in which a final appeal would lie and the two approaches known as the order approach and application approach as regards filing of a final appeal and a leave to appeal application were in contention before the Supreme Court in these two cases.

In the appeal decided by the seven-judge bench of this court which is designated as *Dona Padma Priyanthi Senanayake v. H.G. Chamika Jayantha & 02 others*³, the court affirmed the judgment in *Chettiar v. Chettiar*⁴. The gist of the seven- judge bench Judgment is as follows;

- 1. Appeal could be filed in respect of judgments or orders which are final. In respect of other orders leave has to be obtained. Therefore, it appears that it is the finality of the judgment or order that matters and not the name given as judgment or order.*
- 2. In two cases before the court orders are made in respect of points of law raised by the parties. If the preliminary objections were rejected, cases could have proceeded to trial in both cases at the time of the dismissal right to the parties were not determined.*
- 3. In order to decide whether an order is a final judgment or not the proper approach is the approach adopted by Lord Escher in **Salaman v. Warner** which was cited with approval by Lord Denning in **Salter Rex & Co v. Ghosh**, in this Judgment it was stated;*

“If the decision whichever way it is given, will if it stands finally to dispose of the matter in dispute, I think that for the purpose of these Rules it is final. On the other hand, if the decision, if given in one way, will finally dispose of the matter in depute, but if given in the other will allow the action to gone, then I think it is not final but interlocutory”

The question arises whether the issues of law that were answered by the learned District Judge in this case would permit the case to go on if it was answered in

³ See fn 2

⁴ See fn 1

either way. The Plaintiff instituted the action alleging disposition on the part of Defendant in ways other than the procedure prescribed under the Recovery of Loans (Special Provisions Act No. 04 of 1990) but however, when the case was taken up, 05 issues were raised as preliminary issues of law and tried under Section 147 of the Civil Procedure Code.

Issue No. 18 raised by the Defendant Bank is pivotal in this matter.

“If so, cannot the Plaintiff have and maintain this action against the Defendant Bank?”

This question was answered in favour of the Bank which was the Defendant in the case. In other words, this was a question of law that resolved itself in favour of the Bank to the effect that the Plaintiff could not have and maintain the action against the Defendant Bank. In fact, the learned District Judge could have answered this question in favour of the Plaintiff. In other words, the learned District Judge could have held that the Plaintiff could have and maintain this action against the Defendant Bank. If this question had been answered in favour of the Plaintiff, this case would have proceeded to trial. But the legal issue was answered in favour of the Defendant Bank to the effect that the Plaintiff could not have and maintain the action. Thus, the case terminated without any merits being examined by the District Judge. The case falls within the test adopted in the ***Priyanthi Senanayake Case*** namely, if a decision is given in another way and that answer has the likelihood of allowing the action to go on, the Courts have concluded that it is not a final order but an interlocutory order. In other words, merits had not been examined and the order will be interlocutory.

To put it in another way, the reason is that rights of parties have not been determined by the District Court at the time of giving such an answer to the legal issue. In such a situation, the interlocutory order should have given rise to a leave to appeal application. But rather in this case the Plaintiff preferred an appeal to the Civil Appellate High Court. The Civil Appellate High Court fell into an error in not coming to grips with the crux of the judgment which had postulated the distinction between leave to appeal application and final appeal. The Civil

Appellate High Court took the view that an appeal would lie at the instance of the Plaintiff – Appellant – Respondent in this case. The objection raised by the Defendant Bank that a final appeal would not lie in this case was rejected by the learned Civil Appellate High Court Judges. But on the principles, I have adumbrated, as emerging from *Chettiar v. Chettiar (supra)* and *Dona Padma Priyanthi Senanayake v. H.G. Chamika Jayantha & 02 others (supra)* the objection raised by the Defendant – Respondent – Appellant must have been upheld by the Civil Appellate High Court Judges.

In the circumstances, this Court proceeds to set aside the judgement of the Civil Appellate High Court dated 24 July 2014 and allow the appeal. Accordingly, the Civil Appellate High Court cannot exercise its appellate jurisdiction in this case and the appeal preferred by the Plaintiff – Appellant – Respondent in the Civil Appellate High Court stands dismissed. Accordingly, the questions of law on behalf of the Appellant are answered in favour of the Appellant Bank and the appeal is allowed.

Judge of the Supreme Court

Yasantha Kodagoda, PC, J.

I agree.

Judge of the Supreme Court

K. Priyantha Fernando, J.

I agree.

Judge of the Supreme Court