

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

Merchant Bank of Sri Lanka &
Finance PLC,
(Former Merchant Bank of Sri Lanka
PLC)
No.28, St Michael's Road,
Colombo 03.
Petitioner

SC/APPEAL/95/2025

HC/ARB/408/2021

Vs.

Weerasinghe Kodikankanamalage
Gihan Akila Dushantha,
No. 1357, Palayaththuwa,
Trincomalee.
Respondent

AND NOW

Weerasinghe Kodikankanamalage
Gihan Akila Dushantha,
No. 1357, Palayaththuwa,
Trincomalee.
Respondent-Appellant

Vs.

Merchant Bank of Sri Lanka &
Finance PLC,
(Former Merchant Bank of Sri Lanka
PLC)
No.28, St Michael's Road,
Colombo 03.
Petitioner-Respondent

Before: Hon. Justice Mahinda Samayawardhena
Hon. Justice K. Priyantha Fernando
Hon. Justice Menaka Wijesundera

Counsel: Rudane Zahir with Sifan Muttalif for the Respondent-Appellant.
Suresh Phillips with Pushpa Damayanthi for the Petitioner-Respondent.

Argued on: 09.10.2025

Written submissions:

By the Respondent-Appellant on 05.12.2025

By the Petitioner-Respondent on 08.09.2025 and 07.11.2025

Decided on: 13.02.2026

Samayawardhena, J.

The petitioner-respondent (hereinafter referred to as the respondent) filed this application against the respondent-appellant (hereinafter referred to as the appellant) on 22.07.2021 in the Commercial High Court, in terms of section 31(1) of the Arbitration Act No. 11 of 1995, seeking enforcement of the arbitral award marked G.

The appellant had entered into a lease agreement marked B with the respondent and obtained on lease a motor lorry on the terms and conditions set out therein. The respondent referred the dispute to arbitration in terms of the arbitration clause in the lease agreement, alleging, *inter alia*, that the appellant had violated the agreement by failing to pay lease rentals and by failing to hand over the lorry upon termination of the agreement.

In addition to documents marked G and B, the respondent tendered the following documents along with the application:

A – Certificate of incorporation of the respondent

C, C1 and C2 – Notice of reference to arbitration and proof of service on the appellant by registered post

D, D1 and D2 – Notice issued by the arbitrator and proof of service on the appellant by registered post

E1, E2, E3, F1, F2 and F3 – Notices issued by the arbitration centre informing the next dates of hearing, together with proof of service on the appellant by registered post

G1, G2 and G3 – Proof of service of a copy of the arbitral award on the appellant by registered post

Upon the filing of the application for enforcement, the Commercial High Court issued notice on the appellant together with copies of the application and annexures. Notice was served through the Fiscal on 26.01.2022. The appellant thereafter filed objections in terms of section 40(2) of the Arbitration Act on 25.01.2023.

In his objections, the appellant sought dismissal of the respondent's application primarily on two grounds:

- (a) that the lease agreement marked B was a nullity, as he had signed it without knowledge of its terms; and
- (b) that he was unaware of the arbitration proceedings and had not received any notices sent by registered post.

Both parties thereafter filed written submissions.

The learned Judge of the Commercial High Court delivered judgment in open Court on 13.07.2023. Learned Counsel for the appellant admitted before this Court that the judgment was delivered in the presence of both Attorneys, allowing the respondent's application for enforcement of the arbitral award.

The issue before this Court arises in the following manner. The appellant applied for a certified copy of the judgment on 17.07.2023, upon payment of the requisite fee, as evidenced by P1(a), and obtained it on the same date. This certified copy of the judgment has been marked P1. Judgment P1 records that the appellant was absent and unrepresented in Court.

Thereafter, on 25.07.2023, the appellant applied for a certified copy of the entire case record, as evidenced by P3(a), in order to prefer an appeal. The certified copy of the case record was issued on 27.07.2023. In that record, the appellant discovered another judgment of the same date, which was different from P1, and which proceeds on the basis that the appellant was represented in Court. This judgment has been marked P2. Judgment P1 did not appear in the certified copy of the case record. Although the ultimate conclusion in both judgments is the same, the reasons contained therein materially differ. The learned High Court Judge has made no reference in P2 to the earlier judgment marked P1.

The appellant filed this appeal seeking leave to appeal in terms of section 37(2) of the Arbitration Act on the following questions of law:

- (a) Did the learned High Court Judge err in delivering the *ex parte* judgment marked P1?
- (b) Did the learned High Court Judge err in stating in the said judgment that there was no legal representation on behalf of the appellant?
- (c) Did the learned High Court Judge err in delivering two judgments marked P1 and P2 on the same date?

This Court granted leave to appeal on the aforesaid questions of law.

At the argument, this Court also raised the following additional questions of law:

- (d) Did the respondent-appellant make an application before the Commercial High Court in terms of the provisions of the Arbitration Act?
- (e) If the answer to (d) is in the negative, should the application of the respondent-appellant to the High Court have been dismissed *in limine*?
- (f) Even assuming that the Commercial High Court pronounced two judgments on the same date, has that fact caused prejudice to the substantive rights of the appellant?

It is a fundamental principle that once a judgment is pronounced, the judge becomes *functus officio*. Although this rule admits of certain limited exceptions, none of those exceptions are applicable to the present case. The learned High Court Judge did not purport to act within any recognised exception. Instead, the record reveals that the first judgment marked P1 was deliberately replaced by the second judgment marked P2, without reference to or acknowledgment of the former. Such conduct is wholly impermissible.

Where an appellant has been issued with certified copies of two different judgments of the same date, the appellant is left in a state of uncertainty as to which judgment prevails. This situation causes grave prejudice to the appellant's right to pursue a proper appeal before this Court.

For the foregoing reasons, I answer the questions of law as follows:

- (a) Yes.
- (b) Yes.
- (c) Yes.
- (d) The appellant did not make an application to set aside the award under section 32 of the Arbitration Act, but filed objections as permitted under section 40(2) of the Act.
- (e) The objections could not have been dismissed *in limine*.
- (f) Yes.

Accordingly, both judgments marked P1 and P2 are set aside. The incumbent High Court Judge of the Commercial High Court is directed to deliver judgment afresh on the basis of the material already available on record.

Judge of the Supreme Court

K. Priyantha Fernando, J.

I agree.

Judge of the Supreme Court

Menaka Wijesundera, J.

I agree.

Judge of the Supreme Court