

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

In the matter of an appeal of an Appeal in terms of Section 5(1) of the Provinces (Special Provisions) Act No.10 of 1996 read with Articles 127 and 128 of the Constitution.

Dynamic Steel (Private) Ltd.,
484, Annanagar West Exten,
Chennai, 600-101,
India.

Plaintiff

SC/CHC/Appeal7/2012
Commercial High Court Case No.
H.C. (Civil) 36/2004/01

Vs

1. Kara Steel Mills (Private) Limited,
633, Srimavo Bandaranayake Mawatha,
Colombo 14.
2. Faiz-ur Rahaman,
Kara Steel Mills (Private) Limited,
633, Srimavo Bandaranayake Mawatha,
Colombo 14.

Defendants

NOW

1. Kara Steel Mills (Private) Limited,
633, Srimavo Bandaranayake Mawatha,
Colombo 14.
2. Faiz-ur Rahaman,
Kara Steel Mills (Private) Limited,
633, Srimavo Bandaranayake Mawatha,
Colombo 14.

Defendant-Appellants
Vs

Dynamic Steel (Private) Ltd.,
 484, Annanagar West Exten,
 Chennai, 600-101,
 India.

Plaintiff-Respondent

Before : Sisira J de Abrew J
 V.K.Malalgoda PC J
 Murdu Fernando PC J

Counsel : Maithri Wickramasinghe PC with Rakitha Jayathunga
 for the Defendant-Appellants
 Canishka Witharana for the Plaintiff-Respondent

Argued on : 9.1.2019

Written Submission
 Tendered on : 10.2.2012 by the Defendant-Appellants
 21.3.2016 by the Plaintiff-Respondent

Decided on : 6.3.2019

Sisira J de Abrew J

The Plaintiff-Respondent in this case instituted action against the Defendant-Appellants to recover a sum of US Dollars 160,139.64

The learned High Court Judge of the Commercial High Court, by his judgment dated 24.11.2011, held in favour of the Plaintiff-Respondent and concluded that a sum of Rs.4,195,353.33 is payable by the 1st Defendant-Appellant to the Plaintiff-Respondent. Being aggrieved by the said judgment the Defendant-Appellants have appealed to this court.

The 1st Defendant-Appellant has, from time to time, purchased certain materials and machinery used in the steel industry from the Plaintiff-Respondent. According to the admissions recorded at the trial, the Defendant-Appellants have paid US Dollars (USD) 1750 on two occasions in connection with invoice No.131 and 138 in settlement of the sum due on purchase of goods from the Plaintiff-Respondent. However the Plaintiff-Respondent in its plaint takes up the position that the Defendant-Appellants have paid USD 4511.33 and USD 1750 on 27.6.2003 and 21.3.2001 respectively in order to settle the balance due from the Defendant-Appellants. Learned President's Counsel for the Defendant-Appellants submitted that the claim of the Plaintiff-Respondent had been prescribed within one year from the date of sale of goods in terms of Section 8 of the Prescription Ordinance. He contended that the Plaintiff-Respondent had sold goods to the 1st Defendant-Appellant and that therefore the claim of the Plaintiff-Respondent would be prescribed within one year from the date of sale of goods in terms of Section 8 of the Prescription Ordinance. He relied on the concept of 'goods sold and delivered.' Learned President's Counsel for the Defendant-Appellants further submitted that the Plaintiff-Respondent had instituted this action on individual invoices and that therefore the action of the Plaintiff-Respondent would be prescribed within one year from the date of the transaction in terms of Section 8 of the Prescription Ordinance. But the position of the Plaintiff-Respondent was that the action had been instituted on the basis of accounts stated and not on the basis of individual invoices. The learned High Court Judge has however considered Section 7 of the Prescription Ordinance and decided to accept the position taken up by the Plaintiff-Respondent. The learned High Court Judge further held that the action of the Plaintiff-Respondent was not prescribed. In these circumstances, I would like to

consider Sections 7 and 8 of the Prescription Ordinance. Section 7 of the Prescription Ordinance reads as follows.

“No action shall be maintainable for the recovery of any movable property, rent, or mesne profit, or for any money lent without written security, or for any money paid or expended by the plaintiff on account of the defendant, or for money received by defendant for the use of the plaintiff, or for money due upon an account stated, or upon any unwritten promise, contract, bargain, or agreement, unless such action shall be-commenced within three years from the time after the cause of action shall have arisen.”

Section 8 of the Prescription Ordinance reads as follows.

“No action shall be maintainable for or in respect of any goods sold and delivered, or for any shop bill or book debt, or for work and labour done, or for the wages of artisans, labourers, or servants, unless the same shall be brought within one year after the debt shall have become due.”

The most important question that must be decided in this case whether action of the Plaintiff-Respondent is prescribed or not. If the action of the Plaintiff-Respondent has been instituted on the basis of ‘account stated’, then the action is not prescribed. I now advert to this question. In order to consider this question paragraphs 15 and 16 of the Plaintiff should be examined. Paragraph 15 of the Plaintiff reads as follows.

“The Plaintiff states that in the Annual Accounts prepared by the Plaintiff for the Fiscal Year ended from 31st March 2000 a balance of a sum of US Dollars 54,608.65 was found to be entered in the corresponding value in Indian Rupees as the amount due to the Plaintiff from the 1st Defendant Company. (A true copy of the Annual Accounts stated for the Fiscal Year

1999-2000 is annexed hereto marked as P7 and pleaded as part and parcel of the Plaintiff).

Paragraph 16 of the Plaintiff reads as follows.

“The Plaintiff also found the said value of US Dollars 54,608.65 equivalent in Sri Lankan Rupees is entered under the heading ‘Current Liabilities’ as Rupees 6,968,375 in the Balance Sheet that forming part of the Annual Accounts of the 1st Defendant for the year ended from 31st March 2000. (A true copy of the Annual Accounts of the Defendant Company for the year ended from 31st March 2000 is annexed to the Plaintiff marked P8 and pleaded as part and parcel of the Plaintiff.”

Further at the trial, Kodikar Madar Sahib Ajmal Ahamed, Charted Accountant who is the Statutory Auditor of the 1st Defendant-Appellant giving evidence produced the Financial Accounts of the 1st Defendant-Appellant marked P23 for the year ended on 31.3.2003. According to the said report under the heading of ‘Current Liabilities and Creditors’ an amount of Rs.4,195,353/33 has been entered and under the heading of ‘Creditors’, ‘Dynamic Steel (Pvt) Ltd, 404, Annanager, Madras 600101, India’ has been typed and against the said name Rs.4,195,353/33 has been typed. ‘Dynamic Steel (Pvt) Ltd, 404, Annanager, Madras 600101, India’ is the Plaintiff-Respondent in this case. The above particulars clearly indicate that the action of the Plaintiff-Respondent has been instituted on the basis of Account Stated and not on the basis of individual invoices. Further in the statement of Financial Accounts of the 1st Defendant Company (the 1st Defendant-Appellant) for the year ended 31.3.2003 marked P23, the 1st Defendant-Appellant has admitted that his creditor was the Plaintiff-Respondent and that the current liability to the creditor was Rs.4,195,353.33. This is an admission by the 1st Defendant-Appellant that the amount payable to the Plaintiff-Respondent as at 31.3.2003 was

Rs.4,195,353.33. The case was filed in the Commercial High Court on 27.2.2004. Thus the action of the Plaintiff-Respondent has not been prescribed in terms of Section 7 of the Prescription Ordinance. Even in the statement of Financial Accounts of the 1st Defendant Company (the 1st Defendant-Appellant) for the year ended 31.3.2000 marked P20, the 1st Defendant-Appellant has admitted that one of his creditors was the Plaintiff-Respondent and that the current liability to the creditor was Rs.6,017,410.62. Similar entries are found in the statement of Financial Accounts of the 1st Defendant Company (the 1st Defendant-Appellant) for the year ended on 31.3.2001(P21) and 31.3.2002(P22). Thus it appears that in his own statements of Financial Accounts, the 1st Defendant-Appellant has admitted his liability to the Plaintiff-Respondent. When I consider the above matters, I am of the opinion that the applicable provision relating to prescription is section 7 of the Prescription Ordinance and not section 8 of the Prescription Ordinance. This view is supported by the judgment of Justice Garvin in the case of Silva Vs Silva 36 NLR 307 wherein His Lordship observed the following facts.

“There was an account in respect of goods sold and delivered between plaintiff and defendant, consisting of debit entries in respect of goods sold to the defendant and credit entries in respect of payments by him. On a certain date the accounts were looked into and a balance found to be due, which the defendant acknowledged by signing a document.

His Lordship held as follows: *“An action to recover the balance was prescribed in three years.”*

For the above reasons, the contention of learned President’s Counsel for the Defendant-Appellants that the action of the Plaintiff-Respondent has been prescribed in terms of Section 8 of the Prescription Ordinance cannot be accepted and is hereby rejected.

Considering all the above matters, I hold that the action of the Plaintiff-Respondent

has not been prescribed and that the learned High Court Judge was correct when he held in favour of the Plaintiff-Respondent.

For the above reasons, I dismiss the appeal of the Defendant-Appellants with costs.

Appeal dismissed.

Judge of the Supreme Court.

V.K. Malalgoda PC J

I agree.

Judge of the Supreme Court.

Murdu Fernando PC J

I agree.

Judge of the Supreme Court.