

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

In the matter of an Appeal from the judgment dated 28-02-2012 pronounced by the Provincial High Court of Western Province holden in Colombo.

SC/CHC/Appeal No:

34/2012

Elk Plain Farms (Private) Limited,

No. 07, Wilson Street,

Colombo 12.

H.C. Civil Case No:

157/2007/MR

PLAINTIFF

Vs.

Seylan Bank Limited,

Ceylinco - Seylan Towers,

90, Galle Road,

Colombo 03.

DEFENDANT

AND NOW BETWEEN

Seylan Bank Limited,

Ceylinco - Seylan Towers,

90, Galle Road,

Colombo 03.

DEFENDANT-APPELLANT

Vs.

Elk Plain Farms (Private) Limited,

No. 07, Wilson Street,

Colombo 12.

PLAINTIFF-RESPONDENT

Before : Janak De Silva J.

: Menaka Wijesundera J.

: Sampath B. Abayakoon, J.

Counsel : Dr. Romesh De Silva, P.C., with Harsha

Amarasekara, P.C., and Shehan Gunawardene

instructed by Ms. Jennifer Proctor for the

Defendant-Appellant.

: Ms. Roshana Rashid for the Plaintiff-Respondent.

Argued on : 12-02-2026

Written Submissions : 15-07-2016 (By the Plaintiff-Respondent)

: 23-03-2026 (post-argument written submissions by
the Defendant-Appellant)

Decided on : 23-06-2026

Sampath B. Abayakoon, J.

The defendant-appellant bank (hereinafter referred to as the defendant) filed this appeal on being aggrieved of the judgment dated 28-02-2012 pronounced by the Provincial High Court of the Western Province holden in Colombo (Commercial High Court), while exercising its original civil jurisdiction.

The impugned judgment was in favour of the plaintiff-respondent (hereinafter referred to as the plaintiff) for a sum of Rs. 9,850,000/- together with legal interest and costs. The said judgment has been pronounced on the basis of unjust enrichment of the defendant for the reasons stated therein.

In paragraph 19 of the petition of appeal dated 26-04-2012, the defendant has pleaded the following grounds of appeal for the determination of the Court.

- a. Can there be unjust enrichment in the absence of any intention on the part of the defendant to be unjustly enriched?
- b. Can the wrong of unjust enrichment be imputed upon the defendant in the absence of any wrongdoing on the part of the defendant?
- c. Can the wrong of unjust enrichment be claimed against a *bona fide* agent that receives money on behalf of its principal?
- d. In any event, should the value of the sum by which the defendant is allegedly unjustly enriched by the sum actually utilized and/or used for its benefit by the defendant?
- e. Can a claim for money had and received succeed if the money has been received in good faith and paid over to the principal prior to it being claimed by the plaintiff?

At the hearing of this appeal, this Court heard the submissions of the learned President's Counsel who represented the defendant and the submissions of the learned Counsel who represented the plaintiff as to their respective stands.

At the conclusion of the hearing, this Court allowed both parties to file post-argument written submissions, if they so wish, for the consideration of the Court.

Facts in Brief

The plaintiff company instituted action against the defendant bank by the plaintiff dated 29-05-2007 on a cause of action based on conversion of a cheque as averred in the plaintiff, and also on two alternative causes of action, namely for money had and received wrongfully, and for unlawful and wrongful unjust enrichment.

It has been the position of the plaintiff that one of the cheque leaves stolen from its cheque book was fraudulently drawn for a sum of Rs. 9,850,000/- and deposited into an account under the name of Deeptha Contraction maintained at the defendant's bank branch in Raddolugama. It has been claimed that acting carelessly and negligently, the defendant sent the same to the clearing bank for clearance, and thereafter, having received the money to its bank account, acted wrongfully and caused the losses as stated in the plaintiff.

In their answer, the defendant bank has denied any wrongdoing in relation to the transaction and also has set up a claim in reconvention for a sum of Rs. 15,000,000/- for the damages caused to the reputation and goodwill of the bank.

At the trial, the parties have admitted the following facts.

1. The fact that the defendant bank is a licenced commercial bank whose head office is situated within the jurisdiction of the Court, and it maintains several branches within Sri Lanka, including a branch at Raddolugama.
2. At all times relevant to this action, a company called Deeptha Contractors (also called as Deeptha Contraction) maintained three accounts at the Raddolugama branch of the defendant bank. The said company is a company registered under a single ownership of one Illukgedara Mudiyansele Heen Banda *alias* Ilukegedara Mudiyansele Heen Bandara.
3. The parties have admitted that at the time the defendant's Raddolugama bank branch received the cheque bearing No. 124956

marked 'X' along with the plaint, the earlier mentioned Deeptha Contraction had loans up to Rs. 15,000,000.00 obtained from the defendant bank under several bonds as mentioned.

4. The defendant bank has admitted that under normal course of banking, the relevant cheque No. 124956 was sent for clearance to the drawer bank, namely the Bank of Ceylon.
5. The defendant bank had admitted writing the letter dated 19-03-2007 annexed as P-02 along with the plaint.
6. The parties have also admitted that the above-mentioned cheque was cleared by the Bank of Ceylon for payment on 27-06-2005.

The case has proceeded to trial based on 12 issues settled by the plaintiff and the 13th to 31st issue settled by the defendant, and also two consequential issues raised as issue No. 32 and 33 by the plaintiff. While the trial was proceeding, the learned Counsel for the defendant bank has raised yet another issue on 22-07-2008 as issue No. 34.

At the trial, the plaintiff has initially called its Company Secretary to give evidence. However, subsequently, the plaintiff has withdrawn the said evidence filed by way of an affidavit and had later called its Managing Director to give evidence on its behalf. The plaintiff has also called an Assistant Government Examiner of Questioned Documents (EQD) to substantiate that the relevant cheque marked P-05 was a forgery. On behalf of the defendant, the Branch Manager of its Raddolugama bank branch has been called to testify.

The plaintiff is a company incorporated in Sri Lanka with limited liability. Admittedly, the two Directors of the company are citizens of the United States of America. They are Dr. Thariq Kuraishy, the Managing Director, and his wife Melissa Kuraishy, who is the other Director.

The evidence placed before the Court and the documents tendered to the Court reveal the following relevant facts.

1. One Buddhi Jayasinghe who was employed in the Promotions Department of the Board of Investment (BOI) in Sri Lanka at the time

relevant to this incident was involved in assisting the plaintiff company to obtain approval from BOI and the Ceylon Tourists Board and other relevant authorities to obtain necessary statutory approvals for the construction of a tourist hotel in Nuwaraeliya.

2. In his evidence, the Managing Director of the company has stated that his company opened a bank account bearing No. 1656882 at the Bank of Ceylon Corporate Branch, Fort, Colombo on 30-05-2005, and a cheque book of 50 cheque leaves was issued to him by the bank. Consequent to the opening of the account, the company arranged the monthly bank statements in relation to the above account to be sent to another Director named Dixon Silva who died in August 2006. In October 2006, the said bank statements and other documents were collected from late Dixon Silva's residence. When the company's financial accounts were audited in October 2006, it was discovered that the cheque No. 124956 from the company's cheque book has been drawn for a sum of Rs. 9,850,000/- and the said sum has been debited from the company's account on 27-06-2005.
3. Upon inquiry, it was found that the cheque has been deposited on 23-06-2005 at the defendant bank's Raddolugama branch by a customer of that bank under the name of Deeptha Contraction. The plaintiff has come to know that the said account belongs to one Illukgedara Mudiyansele Heen Banda *alias* Ilukegedara Mudiyansele Heen Bandara.
4. It is an admitted fact that the defendant bank under normal course of banking practice sent the relevant cheque for clearance to the Bank of Ceylon, and upon clearance, the sum mentioned in the cheque has been credited to the account of Deeptha Contraction.
5. It has been the evidence of the Director of the company that earlier mentioned Buddhi Jayasinghe and his father-in-law Bandara came and met him and his wife, where they admitted the fraud committed by them, while agreeing to pay back the money amounting to Rs.

9,850,000/-. However, since that was not forthcoming, a complaint was lodged with the Criminal Investigations Department (CID).

6. It was on the above basis that the plaintiff company has instituted action in the Commercial High Court claiming that the defendant had not acted in good faith and as a prudent banker, but had acted negligently, contrary to the ordinary course of business as a collecting bank and its normal banking practices, especially in relation to the collection of a third-party cheque.
7. Under cross-examination, it has been admitted that the plaintiff company instituted action against Bank of Ceylon (document marked D-1) on the same facts claiming that the said bank which was the plaintiff's paying bank, acted negligently and thereby caused damage to the plaintiff.
8. The plaintiff has also instituted action against the earlier-mentioned Jayasinghe and his father-in-law based on the same facts, and an *ex parte* judgment has been pronounced against them, giving reliefs for the plaintiff as sought in the said plaint.
9. The action filed against the Bank of Ceylon by the plaintiff had been laid by at the request of the plaintiff.
10. It has been established by the defendant that in the plaint filed against the Bank of Ceylon, the plaintiff company has averred that when the cheque was sent by the defendant to the Bank of Ceylon for clearance, an employee of the Bank of Ceylon named N.K.D. Perera has made an endorsement to the effect that "cheque irregularly drawn." It has also been averred in the said plaint that upon receiving instructions from another officer of the Bank of Ceylon by the name of W.C. Alwis, the earlier endorsement has been struck off on the basis that there was no problem with the cheque and a fax will also come.
11. In paragraph 18 of the said plaint, the plaintiff company has averred that the cheque had been cleared for payment by the Bank of Ceylon on 27-06-2005. In accordance with banking practice and the practice adopted in clearing cheques, since the Seylan Bank had not

been informed that the cheque was not in order, the Seylan Bank has remitted that sum of Rs. 9.850 million to the account of its customer Deeptha Contractions.

12. It has been clearly established that the plaintiff company has placed the blame as to the whole saga on the Bank of Ceylon when it instituted action against the said bank, but for some reason, the plaintiff has not proceeded against the Bank of Ceylon.
13. There was no evidence placed before the trial Court that the signature of the other authorized signatory of the cheque, namely Dixon Silva's signature, has also been forged.
14. For a cheque belonging to the plaintiff company to become a valid tender, the company seal should also be placed apart from the signatures of the two authorized Directors.

It must also be said that when taking the evidence of the plaintiff's Managing Director as a whole, it appears that he was not certain as to how and under what circumstances the relevant cheque had gotten into the hands of Buddhi Jayasinghe as claimed by him. To a question under cross-examination to this effect, the answer given by the witness shows the uncertainty of him on this matter.

The relevant question and the answer read as follows (at page 229 of the appeal brief) -

“Q. According to you the cheque book and the seal was there. You are at a loss to explain to Court as to how a cheque leaf which was from a book in your position was taken out?”

A. On that day when the cheque books were given to us and difference were to be paid. Dixon Silva and I signed 4-5 cheques. The seals were there. The company secretary was there. The cheques in America were written out. I made out a couple of cheques. We do not put stamps or seals on our cheques. We do not have seals in America. So, I would not have stamped them. Buddhi Jayasinghe was there also and this could have been misappropriated and taken out. What I am saying is I made a

mistake of actually writing. No cheque was signed by me unless it was properly written out. Therefore, any signatures that were there was solved because I did not sign.”

The Judgment of the High Court

The judgment of the learned Judge of the High Court in a nutshell can be summarised in the following manner.

After having considered the evidence placed before the Court, the learned Judge of the High Court has proceeded to consider the main cause of action pleaded by the plaintiff against the defendant, namely wrongful conversion.

The learned trial Judge has observed that in terms of section 82 of the Bills of Exchange Ordinance, a collecting bank can provide a defence for the tort of conversion committed in respect of cheques by proving that;

- a. It received payment for a customer,
- b. The bank acted in good faith and without negligence.

However, having analysed the facts relating to the matter as he thought fit, it has been decided that payment bank's fault or wrongdoing is not a reason to release the defendant bank from its tortious liability. It has been determined that it is the defendant bank who collected the cheque and converted it due to its own negligence.

However, having determined that a conversion of the cheque has been made by the defendant bank, the learned trial Judge has observed that it is the English Law of banking that should be applicable in such a situation. Having determined that the relevant cheque marked P-05 is a nullity for the reasons stated therein, it has been held that the Court will not grant the claim of the plaintiff based on the face value of the forged cheque with regard to the cause of action based on conversion.

After having determined so, the learned trial Judge has proceeded to consider the other two causes of action pleaded, which are alternative causes of action, namely “**money had and received**” and “**unjust enrichment**” to find whether the plaintiff has established the said causes of action.

The learned trial Judge has very correctly determined that an action on the basis of money had and received is an action based on English Law principles, while an action on unjust enrichment is based on Roman Dutch Law principles.

It has also been determined that the legal foundations of these actions may differ, but both actions are there to give relief against unjust enrichment.

It has been determined that the paying bank, namely the Bank of Ceylon, paid money to the defendant bank after the clearance of a forged cheque from a cheque book issued to the plaintiff’s account, and therefore, the Bank of Ceylon paid this amount from the money it holds for the plaintiff, and the said money does not belong to the defendant bank. Therefore, the defendant was unjustly enriched by the value of money it received.

It has been held that although it can be argued that the defendant bank received and held in good faith for the benefit of its account holder, by paying it over to the principal **before the claim is made**, the position of the defendant bank is materially changed. *(The emphasis is mine)*

The learned trial Judge has considered as relevant the following judgment cited by the defendant to support its case.

In the case of **Morison Vs. London County and Westminster Bank (1914) 3 KB 356**, it was stated that,

“Now the law is clear that if an agent pay over money that has been paid to him by mistake of fact he does no wrong; and the plaintiff must call for the principal.”

After determining as such, the learned trial Judge has proceeded to consider how and in what manner the money remitted to the account of its principal

by the defendant bank was utilized. It has been determined that when the sum mentioned was remitted to the defendant bank by the clearing bank and in turn to the account of Deeptha Contraction, the said account had an overdrawn balance of Rs. 3,414,192.98/-. Upon the deposit, the overdrawn balance has been set off and recovered by the defendant bank, which made the account of Deeptha Contraction an account with a credit balance of Rs. 6,435,80.02/-.

It has been determined further that though one may argue this is an entry made during the normal accounting procedure of a bank, the defendant bank would have come to know about the forgery in relation to the relevant cheque due to CID investigations and other complaints, and the defendant bank had failed to establish that it made any inquiries from the account holder in respect of the alleged forgery. Another finding against the defendant was that it had not proceeded to rectify the entries in the bank's ledger accounts marked D-04 or to collect the overdrawn amount separately from the account holder of the defendant bank.

It has been the finding of the High Court that the bank has unjustly enriched for a sum of Rs. 3,414,192.98/- when it set off the said sum from the sum received to the bank based on the forged cheque.

The learned trial Judge has dismissed the defendant's contention that it acted according to the normal banking practices and allowed the account holder to withdraw the balance amount by honouring cheques presented, and such withdrawals establish that the bank no longer holds any of the monies received to the account of the relevant account holder. While dismissing the said contention, the learned trial Judge has noted that the signature on the cheques marked D-10 and D-11, which are cheques drawn by Deeptha Contractors while the account holder is Deeptha Contraction, is also not clear, which should have been apparent to the defendant bank. Hence, the defendant bank has been negligent in honouring such cheques, whereas those cheques may also have been forgeries committed by the account holder Bandara's son-in-law Buddhi Jayasinghe.

It has been determined that the defendant has failed to place evidence before the Court to establish that the account holder exhausted the money in the ordinary course of banking by making withdrawals or by making orders to pay. Therefore, the defendant bank must face the operational risks it takes when operating the accounts of its customers, and the defendant is liable under money had and received. It has also been determined that although some others too may have unjustly enriched as a result of this forgery, it is a cause of action accrued to the defendant bank against the people who withdrew such money, and it was up to the defendant bank to take steps to recover the same from the said persons.

I would like to reproduce the following paragraph at page 24 of the judgment, which summarizes the learned trial Judge's views as to the granting of relief to the plaintiff.

“The plaintiff need not suffer for the business risks taken by the defendant at the expense of the plaintiff. It should also be noted that the defendant would not have unjustly enriched itself if it took due care in collecting the forged cheque by recognizing it as an irregularly drawn cheque. Furthermore, it is not proved that the money was withdrawn or paid out to the orders of the account holder Deeptha Contraction. Therefore, it is my considered view that defendant can also be made liable under the cause of action of unjust enrichment but he is not entitled to claim under the both alternative causes of action as amount lost or involved is the same.”

The learned trial Judge has answered the issues in favour of the plaintiff on the above basis. Accordingly, relief has been granted as prayed for in prayer (¶i) of the plaint based on the 2nd alternate cause of action of unjust enrichment, awarding a sum of Rs. 9,850,000/- and legal interest on the said sum from 27-06-2005 until and unless the said ordered sum is settled in full.

Consideration of the Question of Law and Conclusion

The plaintiff has instituted this action citing the main cause of action as wrongful conversion, whereas the plaintiff has cited money had and received and unjust enrichment only as alternative causes of action.

In his judgment, the learned trial Judge, though determined that a wrongful conversion has taken place, has decided not to grant relief based on the said cause of action for the reasons adduced. Hence, I find it unnecessary to consider in detail whether the learned District Judge was correct in coming to the said finding, although I have my own reservations about the said finding.

The learned trial Judge has determined further that both the alternative causes of action have been established, however, since they are alternative to each other, he proceeded to grant relief on the basis of unjust enrichment by the defendant bank at the expense of the plaintiff.

It needs to be noted that when the Managing Director of the plaintiff company submitted his evidence-in-chief by way of an affidavit and before he was subjected to cross-examination, the learned Counsel who represented him has informed the Court that the case before the Court is concerned about the conversion of a cheque.

Therefore, in my view, to come to a finding whether the learned trial Judge was correct in granting relief on the basis of unjust enrichment, the evidence led on the basis of wrongful conversion and money had and received needs to be considered together after having taken the totality of the evidence placed before the trial Court by both sides to the action.

It is trite law which needs no further elaboration that a civil case of this nature has to be decided on a balance of probability considering the evidence as a whole.

The whole case of the plaintiff had been on the premise that the defendant bank had not acted in good faith and as a prudent banker, but had acted

negligently and contrary to the ordinary course of business as a collecting bank and normal practices of a collecting bank, especially in relation to the collection of a third-party cheque, which is the subject matter of this action.

I find that in such a context, it is of paramount importance to look into the part played by the defendant bank in relation to the matters averred in the plaint and the evidence led in that regard.

Since the plaintiff is claiming negligence and failure to abide by the normal banking practices by the defendant bank, in my view, it becomes necessary to consider the actions of the plaintiff company as well, which was represented by its Managing Director at the trial. In this context, the plaintiff's conduct becomes intensely relevant as to its affairs before and after the tendering of the allegedly forged cheque in order to determine whether any negligence or procedural wrongdoing can be inferred on the defendant bank, who had only acted as the collecting bank.

As I emphasized earlier, the evidence placed before the Court in this regard needs to be considered and evaluated taken as a whole.

Saleem Marsoof., J. held in the case of **Sopinona Vs. Pitipanaarachchi and Two Others [2010]1 SRI L.R. 87, at page 89;**

“The Judge must evaluate and consider the totality of the evidence, giving a short summary of the evidence of the parties and witnesses and stating the reasons for his preference to accept the evidence of one party as opposed to that of the other.”

The Managing Director of the plaintiff company in his evidence has claimed that once he received the cheque book relevant to the company's account maintained at the Bank of Ceylon, the cheque book was always with him. Even when he left the country a few days after the cheque book was collected from the bank by him, he took care to take the cheque book with him. He has stated that the only occasion he took out the cheque book was when he signed

four to five cheques in front of the Company Secretary, the other Director Dixon Silva, and the alleged fraudster Buddhi Jayasinghe.

The piece of evidence I reproduced earlier in this judgment clearly shows that the Managing Director was not sure even whether he signed the four or five cheques in blank form. He has admitted that he made a mistake of actual writing though no cheque was signed by him unless it was properly written out.

The averments in the plaint disclose that it was the 6th cheque leaf of the cheque book that has been used by the person who deposited the cheque to the account of Deeptha Contraction, which means it was on the occasion of signing four or five cheques by the Managing Director, the said cheque leaf has been taken out as he had taken the cheque book with him when he went overseas thereafter. I find it hard to accept that such a thing can occur in front of everyone, unless the owner of the cheque book willingly handed over the said cheque for whatever the reason that may be, or else the owner was negligent beyond imagination as to his own affairs.

It is in evidence that any cheque issued on behalf of the plaintiff company through its account requires the signature of its Managing Director as well as the other Director named Dixon Silva for it to become a valid tender. Although the other Director was dead at the time the plaintiff filed action, at no place in the evidence led before the trial Court, the witness Managing Director of the company has stated that the said Director Dixon Silva's signature was also a forgery, which goes on to further establish the fact that the Managing Director was not certain as to the circumstances under which the cheque marked P-05 happened to be issued or taken out of the cheque book without his knowledge.

No doubt once a cheque book is issued in relation to an account maintained by the relevant customer of the relevant bank, it is an instrument where the owner of the account can use it to deal with his own money as he thinks fit. It is his duty to ensure the safekeeping of the cheque book and to regularly be aware of the transactions he entered into using the cheque book.

Having considered the above circumstances, when the relevant cheque marked P-05 was deposited to the account of Deeptha Contraction, which was an account maintained at the defendant bank, what would have been the obligation of the defendant bank, and the duty of care they should have exercised should be the primary consideration in order to determine whether the defendant bank has acted negligently or against the established banking practices. In my view, only if that can be established, the causes of action under which the plaintiff filed action can be determined in favour of the plaintiff.

There can be no dispute that the defendant bank has acted only as the collecting bank when the cheque was deposited since it was a cheque written in relation to an account maintained at the Bank of Ceylon. Obviously, when the cheque was deposited, there had been no obvious discrepancies as to the requisites of a properly drawn cheque by its owner. There would have been no basis for the defendant bank to suspect the authenticity of the signatures as the mandate has been with the paying bank. Although the cheque was a cash cheque which can be encashed over the counter under normal circumstances, since it has been a crossed cheque, such a cheque has to be deposited into an account.

I find no reasons to accept that the defendant bank was negligent or has failed to follow due procedural steps when it accepted the cheque for the purpose of forwarding it to the paying bank, which was Bank of Ceylon, for the purpose of processing. I am of the view that there was no way for the defendant bank to refuse accepting the cheque as the bank was duty-bound to act on behalf of its customer who deposits what appears to be a properly drawn cheque to the customer's account.

Under cross-examination, the Managing Director himself has admitted that in paragraph 24 of the plaint against the Bank of Ceylon in the case bearing case No. HC (Civil) 198/2007/MR, the allegation was that Bank of Ceylon, while acting negligently and without good faith, cleared and paid for the said cheque and enabled the Seylan Bank to remit the same for the utilization and benefit of its customer. (in page 183 of the appeal brief).

It is clear that the Bank of Ceylon owes a fiduciary duty towards the Plaintiff, unlike the defendant Seylan Bank, which has only collected the cheque for the purpose of sending it to the Bank of Ceylon for clearing. It was only after its clearance by the Bank of Ceylon it has credited the account of its customer Deeptha Contraction, which is a fact admitted by the plaintiff.

In **Collettes Vs. Bank of Ceylon (1984) 2 SLLR 256**, it was held that-

“There is no negligence without a duty. The ordinary duty of the Bank is to repay the money deposited and honour the customer’s cheques.”

The learned trial Judge has found fault with the defendant for paying the money received to the relevant account to its principal before the claim is made by the plaintiff. It has been held that the defendant should have known about the forgery in relation to the cheque even before the filing of the case due to the CID investigations and other complaints. It has been held that the defendant failed to show that at least it inquired from the account holder of the alleged forgery, or did not take any steps to rectify the bank statement marked D-04 or remedy the situation.

However, it is my view that all the above-mentioned observations can be considered relevant in a situation where the plaintiff has been vigilant over his own affairs. It is in evidence that the plaintiff has not even looked at the monthly bank statements sent by its own bank, namely the Bank of Ceylon, informing the monthly transactions that took place in relation to the account. Had it exercised due care as required, the fact of deducting the relevant sum from its account would have been discovered. According to the evidence of the plaintiff’s Managing Director, the discrepancy as to the relevant amount has only been discovered nearly one and a half years after the occurrence of the event. It was only after such a discovery that complaints have been lodged to various institutions, including the CID.

It is therefore my view that there was no way for the collecting bank who maintained the account on behalf of its principal to know about any forgery in relation to the deposit made by the account holder. By the time the alleged forgery has come to light, the account holder of the collecting bank has done

transactions in relation to its own account where the defendant bank has no reason to deny or refuse, as such transactions had been done under normal banking practices.

At this juncture, I would like to reproduce the observations of **Surya Kant, J.** (as he was then) in the Supreme Court of India Case of **N. Raghavender Vs. State of Andhra Pradesh, Criminal Appeal No-05 of 2010 decided on 13-12-2021.**

Although this was an observation in relation to a criminal appeal in a matter of criminal breach of trust, I find the observation relevant in relation to the facts of this case.

“It is fruitful to point out that the banker is one who receives money to be drawn out again when the owner has occasioned for it. Since the present case involves a conventional bank transaction, it may be further noted that in such situations, the customer is the lender and the bank is the borrower, the latter being under a superadded obligation of honouring the customer’s cheques up to the amount of, money received and still in the banker’s hands. The money that a customer deposits in a bank is not held by the latter on trust for him. It becomes a part of the banker’s fund who is under a contractual obligation to pay the sum deposited by a customer to him on demand with the agreed rate of interest. Such a relationship between the customer and the bank is one of a creditor and debtor.”

It appears that the learned trial Judge has found fault with the defendant for accepting and honouring the cheques marked D-10 and D-11 drawn under the name of Deeptha Contractors, while the account holder was Deeptha Contraction. In my view, that was a matter between the defendant bank and its account holder Deeptha Contraction. There is no evidence to show that at any point the account holder complained to the defendant that it did not issue the cheques marked D-10 and D-11 or had alleged any forgery in that regard. It is my considered view that in a situation where the actual account holder

has no issue in relation to the transactions made through its own account, there cannot be any interpretation contrary to it.

I have no basis to agree with the learned trial Judge's contention that even in a situation where others may have been unjustly enriched, it is the defendant who should be liable. I am also not in a position to agree with the determination that automatic setting off of the overdrawn amount in relation to the bank account held by Deeptha Contraction at the defendant's bank amounts to unjust enrichment of the defendant to that amount. As I have considered before, it has happened under normal banking practices. After setting off the said overdrawn amount, the defendant bank has again allowed the account holder to overdraw the bank account as in normal banking practice, which shows that there was no actual unjust enrichment as determined by the learned trial Judge.

Moreover, after filing action against its own bank, namely the Bank of Ceylon, on the same basis as against the defendant and clearly implying that the defendant bank has done no wrong as the collecting bank, as I have discussed earlier, I am unable to find any plausible basis for the plaintiff to maintain this action based on the same facts it relied upon to institute action against the Bank of Ceylon.

For the reasons as considered above, I am of the view that, when determining the case in favour of the plaintiff, the learned trial Judge has failed to give due consideration to the lack of due care and negligence by the plaintiff, which has contributed much more towards this situation than the defendant's contribution as the collecting bank of the cheque.

Hence, I am of the view that the judgment of the High Court cannot be allowed to stand.

Accordingly, I answer the grounds of appeal in the following manner.

- a. No.
- b. No.
- c. No.
- d. No.
- e. No.

The judgment dated 28-02-2012 is hereby set aside and the plaintiff's action is dismissed.

The claim in reconvention by the defendant is also dismissed as no evidence has been placed in that regard before the trial Court.

The learned Judge of the Commercial High Court is directed to enter decree accordingly.

There will be no costs of this appeal.

Judge of the Supreme Court

Janak De Silva, J.

I agree.

Judge of the Supreme Court

Menaka Wijesundera, J.

I agree.

Judge of the Supreme Court