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

In the matter of an appeal in terms of Section 5 of the High Court of the Provinces (Special Provisions) Act, No. 10 of 1996

SC/CHC/APPEAL NO: 26/2020
High Court No: HC (Civil) 84/15/MR

Lanka Orix Finance PLC,
Formerly known as Lanka Orix Finance Company PLC
100/1, Sri Jayawardenapura Mawatha, Rajagiriya.

PLAINTIFF

- Vs -

1) Randunu Dewage Kingsley Ananda Wickremasinghe,
   66/7, Aluthwatte Road, Chilaw.

2) Omali Nissanka,
   66/7, Aluthwatte Road, Chilaw.

DEFENDANTS

And now between

Randunu Dewage Kingsley Ananda Wickremasinghe,
66/7, Aluthwatte Road, Chilaw.

1ST DEFENDANT – APPELLANT

LOLC Finance PLC,
Formerly known as Lanka Orix Finance Company PLC
and Lanka Orix Finance PLC,
100/1, Sri Jayawardenapura Mawatha,
Rajagiriya.

PLAINTIFF – RESPONDENT

Omali Nissanka,
66/7, Aluthwatte Road,
Chilaw.

2ND DEFENDANT – RESPONDENT

Before: **S. Thurairaja, PC, J**
Achala Wengappuli, J
Arjuna Obeyesekere, J

Counsel: Nilum Devapura with Anjali Ratnayake for the 1st Defendant – Appellant

Shanaka De Livera with Vihanga Dissanayake and Ruwani Chandrasiri for the Plaintiff – Respondents

Argued on: 4th December 2024

Written Submissions: Tendered on behalf of the 1st Defendant – Appellant on 26th June 2024

Tendered on behalf of the Plaintiff – Respondent on 4th November 2024

Decided on: 18th July 2025

Obeyesekere, J

The Plaintiff – Respondent [the Plaintiff] filed action against the 1st Defendant – Appellant [the 1st Defendant] and the 2nd Defendant – Respondent [the 2nd Defendant] in the High Court of the Western Province holden in Colombo [the Commercial High Court/High Court] on 20th February 2015, claiming a sum of Rs. 8,417,358 together with interest thereon at the rate of 4% per month from 21st January 2015. Only the 1st Defendant filed answer and trial was fixed *ex parte* against the 2nd Defendant. Admissions and Issues having been raised, the Plaintiff led the evidence of two witnesses while the 1st Defendant gave evidence on his behalf. By judgment delivered on 6th August 2018, the High Court delivered judgment in favour of the Plaintiff, as prayed for.

Aggrieved, the 1st Defendant filed this appeal on 1st October 2018.

Case for the Plaintiff

The 1st and 2nd Defendants, who were carrying on a shoe manufacturing business in partnership under the name, style and firm of "Ran Shoe", had entered into a "Cheque Discounting Facility Agreement" bearing No. CD 11-10-01 B with LOLC Factors Limited on 20th October 2011 [**P12**]. A cheque discounting facility, commonly referred to as factoring, is essentially a commercial arrangement where one party, known as the factor, provides cash or finance to businesses by purchasing their receivables. In this appeal, postdated cheques that the 1st Defendant received from his customers were purchased by LOLC Factors Limited in advance at a discounted price. Factoring is thus a source of obtaining funds in advance from the factor and provides the much needed liquidity required by small and medium scale businesses.

According to P12, the upper limit of the facility granted to the Defendants was Rs. 4,500,000. It is clear from the statement of account relating to the above agreement [**P10**] that the Defendants had deposited cheques to the said account as well as drawn cheques issued by them, and that there was a debit balance in excess of Rs. 5 million by March 2016. According to the Plaintiff, which is an associate company of LOLC Factors Limited, the 1st Defendant had made a request to the Plaintiff on 19th March 2014 that the Plaintiff grant a loan to the 1st Defendant that would enable the 1st Defendant to settle the balance outstanding under P12 to LOLC Factors Limited.

The Plaintiff states that having considered the request of the 1st Defendant, it made an offer to the 1st Defendant on 24th March 2014 [**P2**] offering a loan in a sum of Rs. 5,200,000, repayable over a period of sixty months in 12 instalments of Rs. 125,025 each and a further 48 instalments of Rs. 142,908 each, with the first instalment due in April 2014. It is admitted by the 1st Defendant that he signed P2, thereby confirming that he was in agreement with the terms of P2.

On the same date, the Plaintiff and the 1st Defendant had entered into a Loan Agreement [**P3**] in a sum of Rs. 5,200,000, with P3 specifically mentioning that the purpose of the loan is to settle the existing cheque discounting facility bearing Agreement No. CD 11-10-01 B [i.e., P12]. The 1st Defendant has admitted signing P3. Thus, P3 formed the contractual nexus between the Plaintiff and the 1st Defendant, as well as provided context

to the entire transaction. It must be stated that the said sum of Rs. 5,200,000 was not paid to the 1st Defendant but had instead been transferred to LOLC Factors Limited in order to reduce the liability owed by the 1st Defendant to the said company. The receipt of the said sum of Rs. 5,200,000 is clearly reflected in the Statement of Account P10 maintained by LOLC Factors Limited.

The Plaintiff states that the 1st Defendant paid just one instalment and had thereafter defaulted in his repayment obligations. On 29th January 2015, the Plaintiff had sent under registered post, a letter of demand [**P5**] to the 1st Defendant demanding that a sum of Rs. 8,417,358, said to be the total sum outstanding as at 20th January 2015 together with interest at 4% per month from that date be paid to the Plaintiff. The 1st Defendant did not comply with P5 nor did the 1st Defendant deny liability. It is only thereafter that the Plaintiff filed action in the Commercial High Court seeking to recover the said sum of money.

Position of the 1st Defendant

There were two admissions that were marked at the beginning of the trial. The first was the jurisdiction of the High Court. The second was that the 1st Defendant signed P2 and P3. While the latter admission was without any reservation with regard to its content, the 1st Defendant took up the following defences in the several issues raised by him:

a) He did not have any financial dealings with the Plaintiff;

b) He did not make a written request to the Plaintiff for a loan of Rs. 5,200,000;

c) He did not receive any monies under and in terms of P2 and P3;

d) Although he has obtained factoring facilities from LOLC Factors Limited, he has settled the said facility;

e) He was threatened by officials of the Plaintiff to sign on blank papers and forms and that he therefore did so under duress, with the said documents being P2 and P3;

f) The contents of P2 and P3, which were in English, were never read out to him nor did he understand the contents of the said documents as he was not conversant with English.

Judgment of the High Court

There is one observation that I must make prior to referring to the findings of the High Court. Most of the documents marked by the Plaintiff, including P2 and P3 the signature of which by the 1st Defendant was recorded as a formal admission, have been marked subject to proof. However, the proceedings do not bear out the reason for the said documents to be marked subject to proof. I must state that objecting to every possible document marked by the opposing party without having any reason for doing so or moving that documents be marked subject to proof has now become a common practice and is one of the factors that have contributed to delays witnessed in our Courts. While Attorneys-at-Law must desist from raising frivolous objections when documents are marked by the opposing Counsel, and while an application that a document be marked subject to proof must always be substantiated with reasons, the trial Judge too must insist on reasons being adduced if a party wishes to object to a document being marked and immediately decide on such objection. I am optimistic that this practice can be curtailed in cases where the pre-trial provisions introduced by the Civil Procedure (Amendment) Act, No. 29 of 2023 would apply.

The High Court has carefully considered the evidence of A. G. Kamal Sanjeewa, an Executive Officer of the Plaintiff, the evidence of the 1st Defendant, and adopted a wholistic approach in arriving at its conclusion that the 1st Defendant made a request for the said loan facility, that the 1st Defendant is the beneficiary of such loan facility, and is therefore liable to the Plaintiff. Whether the Plaintiff is entitled to claim the entire amount referred to in the prayer to the plaint is however a matter that I shall consider at the end of this judgment.

Intention to create legal relations

With the position of the 1st Defendant being that he did not enter into a contract with the Plaintiff in respect of the said sum of Rs. 5,200,000, I must refer to the manner in which the intention to enter into a contract can be ascertained when one party denies the existence of a contract before I consider the positions of both parties and the judgment of the High Court.

In **Noorbhai v Karuppan Chetty** [27 NLR 325] the Privy Council held that "… *the very elementary proposition of law [is] that a contract is concluded when in the mind of each contracting party there is a consensus ad idem ...*"

Weeramantry in "**The Law of Contracts**" [1967, Volume I, paragraph 84] has pointed out that the constituent elements of a contract can be reduced to the following basic essentials:

(a) Agreement between parties;

(b) Actual or presumed intention to create a legal obligation;

(c) Due observance of prescribed forms or modes of agreement, if any;

(d) Legality and possibility of the object of the agreement;

(e) Capacity of parties to contract.

Weeramantry goes on to state as follows:

> "*An agreement is a manifestation of mutual assent by two or more persons to one another. In simpler terms, therefore, an agreement would mean a state of mental harmony regarding a given matter between two persons, as gathered from their own words or deeds. Contract generally connotes among other things an actual or notional meeting of minds, for in general without such a meeting of minds a contract does not come into being. Agreement on the other hand, primarily denotes such meeting.* [paragraph 86]
>
> *The view is commonly held that in addition to the other requisites* ***for the formation of a valid contract there should also be present, on the part of the parties, an intention to enter into legal relations****. It follows from this view that this requirement must be superadded to the fact of agreement if the agreement is to be productive of legal results.* [paragraph 158; emphasis added]
>
> *Whether two minds are in actual or real agreement not even the parties themselves can say for no man can fathom the thoughts of another; and in the realm of actual intention no man can speak for anyone but himself.* ***The law consequently views the question of intention objectively****. Unable to plumb the depths of intention, it*

proceeds upon the external manifestations of such intention, whether by words or by deeds. From these external manifestations the law ascertains the presumed or notional intentions of parties. [paragraph 86; emphasis added]

Agreement, which is so important to the formation of contract, depends in its turn on the intention of the contracting parties. The inner or true intention of a person is, however, not generally capable of ascertainment with any degree of assurance by another, if indeed it is capable of ascertainment at all. ***The law therefore always adopts an objective test in determining the intention of the parties to a contract****, and is guided by their manifestations of intention whether by words or by acts. From such words or acts it draws its inferences regarding intention on the basis of a reasonable person's assessment of them in the context in which they were uttered or performed.* [paragraph 104; emphasis added]

It would therefore be more correct to say that in all cases where the law requires an actual intention to enter into legal relations, what is required is either an intention which actually exists or one which, ***having regard to all surrounding circumstances, it will by a fiction deem to exist in the minds of the parties****."* [paragraph 158; emphasis added]

It is to the surrounding circumstances and documents that I shall now turn to.

Analysis of the positions of both parties

It is important to understand the overall background in which P2 and P3 came to be executed. The version of the Plaintiff that the 1st Defendant had a factoring arrangement with LOLC Factors Limited since 2011 is borne out by P12 and the statement of account relating thereto. The 1st Defendant did not deny that he had obtained factoring facilities but claimed that he had settled such facilities. In support thereof, the 1st Defendant produced a receipt issued by LOLC Factors Limited on 16th May 2012 for a sum of Rs. One million [**V1**]. However, (a) as pointed out by the Plaintiff, V1 does not state that the said funds were received in settlement of the facility made available by P12, and (b) the statement of account P10 shows that the 1st Defendant engaged in transactions in 2013 and 2014, which could not have been the case had the facility been settled by the 1st Defendant. The High Court quite rightly rejected the position taken up by the 1st

Defendant that he had duly settled all his liabilities to LOLC Factors Limited by V1. Thus, while V1 does not support the version of the 1st Defendant, the fact remains that the 1st Defendant had a factoring facility as borne out by P12 as at March 2014, and that the said facility was overdue in an amount in excess of Rs. 5m.

It is in this background that the 1st Defendant had made a request to the Plaintiff for a loan on 19th March 2014, and that (a) P2 was issued, and (b) P3 was entered into, consequent to such request. Furthermore, the 2nd Defendant had executed a personal guarantee [**P6**] as security for the said loan facility. Even though the 1st Defendant has admitted signing P2 and P3, the 1st Defendant has claimed that the monies lent and advanced under P3 were never released to him, and that, as he was not the recipient of the said sum of Rs. 5,200,000, he is not obliged to repay the said sum to the Plaintiff.

P3 contains a specific clause that the purpose of the loan was to settle the existing cheque discounting facility bearing Agreement No. CD 11-01-01 B [i.e., P12]. In addition to this clause in P3, the 1st Defendant, by letter dated 24th March 2014 [**P11**] has specifically requested that the monies lent and advanced to him under P3 be released directly to LOLC Factors Limited.

P11 reads as follows:

> "*I refer to the loan agreement bearing number F4-03-02BWCR dated 24th March 2014 entered into by and between me and Lanka Orix Finance PLC to borrow a sum of Rs. 5,200,000 subject to the terms and conditions thereof.*
>
> ***I hereby request you and authorise you Lanka Orix Finance PLC to disburse the proceeds of the loan amount of Rs. 5,200,000 in the following manner****:*
>
> *(1) To draw an account payee cheque for the sum of Rs. 5,200,000 in favour of LOLC Factors Limited in respect of Cheque Dishonouring Agreement No. CD 11-10-01 B.*
>
> ***I further confirm that I shall pay the loan instalments to you as per the terms and conditions of the said Loan Agreement, despite the above request***."

Thus, taken in conjunction with P12, I am of the view that the contractual relationship between the Plaintiff and the 1st Defendant and the intention to create legal relations is clearly borne out by P2, P3 and P11. It is on this basis that the High Court rejected the argument of the 1st Defendant that (a) he did not have any financial dealings with the Plaintiff, (b) he did not make a written request for a loan of Rs. 5,200,000, and (c) that he did not receive any monies under and in terms of P2 and P3.

I am in agreement with the High Court that the 1st Defendant made a request for a loan of Rs. 5,200,000 from the Plaintiff in order to settle LOLC Factors Limited and that the said monies were lent and advanced to the 1st Defendant, but at the request of the 1st Defendant, the said sum of Rs. 5,200,000 was credited to the account of the 1st Defendant at LOLC Factors Limited thereby extinguishing the liability of the 1st Defendant to LOLC Factors Limited. The 1st Defendant is accordingly liable to the Plaintiff under P3.

The High Court has also rejected the position of the 1st Defendant that he was threatened by officials of the Plaintiff to sign P2 and P3 and that he did so under duress, on two grounds. The first was that if it was so, the 1st Defendant ought to have complained to the Police, which admittedly the 1st Defendant has not done. The second ground is that the 1st Defendant kept silent when served with the letter of demand instead of responding to it and stating his position.

The failure to respond to business correspondence and the consequence thereof was considered in **Saravanamuttu v De Mel** [49 NLR 529 at page 542] where Dias, J held that, "*In business matters, if a person states in a letter to another that a certain state of facts exists, the person to whom the letter is addressed must reply if he does not agree with or means to dispute the assertions. Of course there are exceptions to this rule. For example, failure to reply to mere begging letters when the circumstances show that there was no necessity for the recipient of the letter to reply can give rise to no adverse inference against the recipient*."

In **Disanayaka Mudiyanselage Chandrapala Meegahaarawa v Disanayaka Mudiyanselage Samaraweera Meegahaarawa** [SC Appeal No. 112/2018; SC minutes of 21st May 2021] Samayawardhena, J stated that, "*However, I must add that although it is a general principle that failure to answer a business letter amounts to an admission of the*

contents therein, this is not an absolute principle of law. In other words, failure to reply to a business letter alone cannot decide the whole case. It is one factor which can be taken into account along with other factors in determining whether the Plaintiff has proved his case. Otherwise, when it is established that the formal demand, which is a sine qua non for the institution of an action, was not replied, Judgment can ipso facto be entered for the Plaintiff. That cannot be done. Therefore, although failure to reply to a business letter or a letter of demand is a circumstance which can be held against the Defendant, it cannot by and of itself prove the Plaintiff's case. The impact of such failure to reply will depend on the facts and circumstances of each case."

I am in agreement with the above reasoning and wish to reiterate that the failure to respond to a business letter must not be looked at in isolation of the other facts and that its impact would depend on the facts and circumstances of each case. Having said so, I am in agreement with the learned Counsel for the Plaintiff and the High Court that an inference can be drawn from the failure to respond to P5 that the 1st Defendant had duly undertaken liability in terms of P3. Similarly, the belated version of the 1st Defendant that he was threatened by the Plaintiff to sign P2 and P3 which he claims were blank at the time he signed them, and the contents of which he did not understand, too must be rejected.

Calculation of the amount due

This brings me to the correctness of the amount claimed by the Plaintiff.

The capital sum lent and advanced to the 1st Defendant on 24th March 2014 was Rs. 5,200,000 repayable in a period of five years. With interest calculated at the rate of 20% per annum, the 1st Defendant was required to pay the said capital sum in 12 monthly instalments of Rs. 125,025 and 48 monthly instalments of Rs. 142,908. Thus, had the 1st Defendant paid the monthly instalments on the due date, the total sum that the 1st Defendant would have paid at the end of the five year period, inclusive of capital and interest for the five year period, was Rs. 8,359,884. The Plaintiff admits that one instalment of Rs. 125,000 was paid but has not given the date of repayment nor the capital component of such instalment. The Plaintiff has stated in the Statement of Account [**P4**] that the outstanding interest payable as at 20th January 2015 is a sum of Rs. 182,474.

The above calculation taken from P4 can be summarised as follows:

Total value of monthly instalments	= Rs. 8,359,884
Less instalment paid	= Rs. 125,000
Add overdue interest	= Rs. 182,474
Total due as at 20th January 2015	= Rs. 8,417,358

The above breakdown includes the interest from the date the facility was granted until 23rd March 2019. The Plaintiff is however seeking to recover a sum of Rs. 8,417,358 **together with interest thereon** at the rate of 4% per month from **21st January 2015**. Thus, the Plaintiff is not only claiming compound interest but is also seeking to claim interest for the period 21st January 2015 to 24th March 2019 twice over. Given the manner in which the Plaintiff has calculated the sum outstanding as at 21st January 2015, I am of the view that the Plaintiff shall only be entitled to a sum of Rs. 8,417,358, together with interest calculated at the rate of 20% per annum from **24th March 2019** until the date of decree on a sum of Rs. 5,100,000 [credit having been given for the capital component of the instalment paid by the 1st Defendant].

The High Court has thus erred by granting the entire sum claimed in the plaint. In the said circumstances, the amount awarded by the High Court shall be amended so that the Plaintiff shall only be entitled to a sum of Rs. 8,417,358, together with interest calculated at the rate of 20% per annum from 24th March 2019 on a sum of Rs. 5,100,000 until the date of decree, and thereafter with legal interest on the aggregate amount of the decree till the date of payment in full.

Conclusion

Subject to the above variation, the judgment of the High Court against the 1st and 2nd Defendants are hereby affirmed. The Plaintiff shall be entitled to costs before both Courts.

JUDGE OF THE SUPREME COURT

S. Thurairaja, PC, J

I agree.

JUDGE OF THE SUPREME COURT

Achala Wengappuli, J

I agree.

JUDGE OF THE SUPREME COURT