

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

In the matter of an appeal made in terms of section 5 (1) of the High Court of the Provinces (Special Provisions) Act, No. 10 of 1996 with Article 128 (4) of the Constitution.

SC / CHC / APPEAL / 14 / 2016

HC (Civil) / 235 / 2010 / MR

People's Merchant Bank PLC,

21, Nawam Mawatha,

Colombo 2.

Formerly at Level - 2,

Hemas House,

75, Braybroke Place,

Colombo 2.

PLAINTIFF

-Vs-

**1. Hycont Property Developers (Pvt)
Ltd.,**

600 1/1, Kotte Road,
Bangala Junction,
Pitakotte.

2. Sithy Nehimiya Junaideen,
213, Ambagamuwa Road,
Nawalapitiya.

**3. Kalugurunnehelagedara Abdul
Rahuman Jamaldeen Sithy Zaneera,**
213, Ambagamuwa Road,
Nawalapitiya.

DEFENDANTS

AND NOW BETWEEN

**1. Hycont Property Developers (Pvt)
Ltd.,**
600 1/1, Kotte Road,
Bangala Junction,
Pitakotte.

2. Sithy Nehimiya Junaideen,
213, Ambagamuwa Road,
Nawalapitiya.

**3. Kalugurunnehelagedara Abdul
Rahuman Jamaldeen Sithy Zaneera,**
213, Ambagamuwa Road,

Nawalapitiya.

DEFENDANT – APPELLANTS

-Vs-

People’s Merchant Bank PLC,

21, Nawam Mawatha,

Colombo 2.

Formerly at Level - 2,

Hemas House,

75, Braybroke Place,

Colombo 2.

PLAINTIFF – RESPONDENT

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

Mahinda Samayawardhena, J. &

K. Priyantha Fernando, J.

Counsel: Murshid Maharooof with Githme Senanayake for the Defendant –
Appellants.

Lasantha Mudalige with Lashan Thalpawila, Thilina Wariyapperuma and Pulara Dankotuwa for the Plaintiff – Respondents.

Argued &

Decided on: 14.01.2026

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

We have heard both the learned counsel for the Defendant – Appellant (hereinafter sometimes referred to as ‘the Defendants’) and the Plaintiff – Respondent (hereinafter sometimes referred to as “the Plaintiff). By a plaint dated 06.04.2010, the Plaintiff- the Peoples Merchant Bank PLC instituted this action against the three Defendants praying *inter alia* for a declaration that a sum of Rs.7,705,468/09/- is jointly and severally due from the said Defendants with interest thereon at the rate of 9% per annum.

The action of the Plaintiff was founded upon a loan of Rs 6,000,000/- granted to the 1st Defendant Company and the mortgage bonds executed by the 2nd and 3rd Defendants to secure the repayment of the said loan. The 1st, 2nd and 3rd Defendants filed their answer on 24 June 2010 and prayed *inter alia* for the dismissal of the action filed by the Plaintiff. As paragraph 5 of the said answer indicates, the only grounds that were recited for the dismissal of the plaint were clearly set out namely, the notary who executed the two mortgage bonds had not complied with Section 31 of the Notaries Ordinance. The learned counsel for the Defendant–Appellants reiterated before this Court the very grounds advanced before the Commercial High Court and took Court through the testimonies led therein in support of those grounds.

By two mortgage bonds bearing Nos. 575 and 576 both dated 15.12.2008 and attested by a notary public of Colombo, the Defendants jointly and/or severally agreed and bound themselves to repay on demand the financial facility granted to the first Defendant with interest. As the evidence unfolded, it is quite clear that the 2nd and 3rd Defendants by the mortgage bond bearing No 575 specifically mortgaged and hypothecated with the Plaintiff the property described in the 1st schedule as a primary mortgage. It would appear that the Plaintiff called the attesting witness one Anoj Thennakoon whose testimony makes it clear that he was aware of the executants of the mortgage bonds marked P6 and P7 as the said executants had previously visited the Plaintiff Company in their engagements to obtain the said facilities. This item of evidence that the said notary had known the Defendants was not seriously challenged at the trial. It is quite clear that in the course of their evidence the Defendants never took up the position that they had not signed or executed the said mortgage bond, though the letters of demand had been sent to the Defendants. These letters of demands have not been responded to. In other words, there was a failure to respond to the letters of demand. These letters of demand were also marked in evidence and they had not been challenged.

In the circumstances, it would appear that the Defendants admitted the liability to pay the monies mentioned in the said letters of demand. In this context the Court draws attention to the case of *Seneviratne and Another v. Lanka Orix Leasing Co. Ltd.*¹, where a previous precedent *Saravanamuttu v. de Mel*² was cited and all these cases are to the effect that if letters of demand which are sent in the course of business are not replied, that silence would amount to admission of liability.

We now turn to the principal argument advanced by the learned counsel for the Appellant namely, the validity of the mortgage bonds. Though the Defendant did not challenge the evidence of the said Thennakoon that he knew the executants, the

¹ (2006) 1 Sri.L.R. 230

² 49 N.L.R 489

attack seemed to be based on Section 31 of the Notaries Ordinance. In fact, Section 31, enacts rules for compliance by a notary who would execute instruments affecting lands. But there is a series of cases holding that the failure of a notary to observe the provisions of Section 31 of the Notaries Ordinance in executing instruments would not vitiate such documents. The Court draws its attention to the case of *Asliya Umma v. Thingal Mohamad*³ where Dheeraratne, J. articulated this principle. Thus, we find this argument based on non-compliance with the rules set out in the Notaries Ordinance would not hold water.

Another salient factor that weighs with this Court is what transpired in a previous case filed by the 2nd Defendant – Appellant in this case. This case was filed in the Commercial High Court but was subsequently withdrawn. In the said action, the 2nd Defendant had sought to release the said mortgage bond by paying the monies due to the Plaintiff and we find that the said mortgage bonds are annexed to the plaint as P2 and P3. An aspect of the case worth highlighting is that the Defendants had not pleaded any ground to impeach the said mortgage bonds, and they never prayed that the said mortgage bonds should be invalidated on any irregularity as urged before this Court. As such, the Defendants are estopped from challenging the mortgage bonds on the ground of any vitiating factor that would nullify the said mortgage bonds marked as P6 and P7.

The learned Commercial High Court Judge by his judgment dated 19.02.2016 has carefully considered the evidence led in the case and the legal issues arising thereon and has come to the correct finding that the case should be decided in favour of the Plaintiff. In the circumstances, we see no reason to interfere with the judgment dated

³ 1999 2 Sri.L.R 152

19.02.2016. Accordingly, we affirm the judgment of the learned Commercial High Court Judge and dismissed this appeal.

Judge of the Supreme Court

Mahinda Samayawardhena, J.

Judge of the Supreme Court

I agree.

K. Priyantha Fernando, J.

Judge of the Supreme Court

I agree.