

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

In the matter of an appeal under Section 5(1) of the High Court of the Provinces (Special Provisions) Act No. 10 of 1996 read together with Section 6 thereof, and Article 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

SC (CHC) Appeal No. 14/2023

Commercial High Court of Colombo

Case No. HC (Civil) 221/2013/MR

Commercial Bank of Ceylon PLC,
No. 21, Sir Razik Fareed Mawatha,
Colombo 1.

PLAINTIFF

Vs

Anguru Kankanamge Naransi Jinadasa,
No. 15/1, Suramya Pedesa,
Katubedda, Moratuwa.

DEFENDANT

And now between

Anguru Kankanamge Naransi Jinadasa,
No. 15/1, Suramya Pedesa,
Katubedda, Moratuwa.

DEFENDANT – APPELLANT

Vs

Commercial Bank of Ceylon PLC,
No. 21, Sir Razik Fareed Mawatha,
Colombo 1.

PLAINTIFF – RESPONDENT

Before: Janak De Silva, J
Arjuna Obeyesekere, J
Dr. Sobhitha Rajakaruna, J

Counsel: A.D.H. Gunewardana with Shanaka Warnakulasuriya for the Defendant – Appellant

Varuna Senadhira with Sandamali Munasinghe and Irfan Batcha for the Plaintiff – Respondent

Argued on: 24th July 2026

Written Submissions: Tendered on behalf of the Defendant – Appellant on 23rd July 2026
Tendered on behalf of the Plaintiff – Respondent on 22nd June 2026

Decided on: 30th September 2026

Obeyesekere, J

- (1) This appeal arises from the judgment delivered on 3rd July 2020 by the High Court of the Western Province holden in Colombo exercising Civil jurisdiction [the Commercial High Court/High Court] by which the High Court granted the Plaintiff – Respondent [the Plaintiff] the relief prayed for, subject to one exception.

Loan facilities to the Defendant

- (2) The Plaintiff is a licensed commercial bank. It is admitted that the Defendant – Appellant [the Defendant] was a customer of the Plaintiff Bank and maintained a current account with the Plaintiff, first at its Ratmalana branch and thereafter at its branch situated in Mount Lavinia. The Plaintiff states that it granted the Defendant several loan facilities and that as security for the said facilities, the Defendant mortgaged by way of the following Mortgage Bonds, the property referred to in the First Schedule to the plaint:

Mortgage Bond No.	Date	Amount secured – Rs.	Interest per annum - %	Marked as
148	13 th August 2004	3,600,000	15	P2
332	15 th September 2005	1,600,000	16	P4
2644	07 th December 2007	2,800,000	20	P6

- (3) All three mortgage bonds were in respect of the same property and while P2 was a primary mortgage over the said property, P4 and P6 were secondary and tertiary mortgages, respectively, in respect of the said property.
- (4) It is admitted by the Defendant that as security for the loan facilities that he had obtained from the Plaintiff, he mortgaged in favour of the Plaintiff another property referred to in the Second Schedule to the plaint by Mortgage Bond No. 2824 dated 31st October 2008 [P8], with the amount secured by P8 being Rs. 5,600,000.

Rescheduling of the outstanding loans

- (5) The Plaintiff states that the Defendant failed to settle the loan facilities obtained by him and that at the request of the Defendant, the Plaintiff agreed to re-schedule in the following manner the capital and interest outstanding on the several loan facilities that the Defendant had obtained by then from the Plaintiff, as evidenced by the offer letter dated 20th August 2009 [P12] issued by the Plaintiff:
- (a) The amount outstanding in the current account to be converted to a Term Loan Facility in a sum of Rs. 4,797,000, with the capital being repaid in 59 monthly instalments of Rs. 80,000 each and 1 instalment of Rs. 77,000 together with interest at the rate of 19% per annum [**Loan No. 1**];
 - (b) The capital outstanding on the existing Term Loan and the Revolving Short Term Loans to be converted to a new Term Loan Facility in a sum of Rs. 9,000,000 repayable in 84 monthly instalments together with interest at the rate of 19% per annum [**Loan No. 2**];
 - (c) The interest outstanding on the existing term loan facilities and the overdraft taken on the current account to be converted to a Term Loan in a sum of Rs.

2,359,000 repayable in 36 equal monthly instalments. Since this loan consisted of interest already accrued and outstanding, the Plaintiff had offered this loan without any further interest. It must be stated further that the Plaintiff is seeking to recover interest on this loan only from the date of decree and not from the date of default [**Loan No.3**].

- (6) By P12, the Plaintiff had proposed further that the above three loans be secured by the four mortgage bonds P2, P4, P6 and P8. Since the total amounts secured by the said four bonds, excluding interest, was Rs. 13,600,000 and since the aggregate value of the proposed Loan Nos. 1 and 2 was Rs. 13,797,000, the Plaintiff had proposed in P12 that the Defendant execute a secondary mortgage in a sum of Rs. 200,000 in respect of the property in the Second Schedule. Although by P12, the Plaintiff sought to secure all three rescheduled loan facilities, the aggregate of the capital secured by P2, P4, P6 and P8 and the proposed secondary mortgage was limited to Rs. 13,800,000.
- (7) It is admitted by the Defendant that he received P12 and that, having perused and understood the contents of P12, he agreed to accept the banking facilities offered by P12 on the terms and conditions mentioned in P12. The Defendant had accordingly executed Mortgage Bond No. 2956 [P10] with the amount secured by P10 being Rs. 200,000.

Breach and action in the High Court

- (8) The Plaintiff states that the Defendant:
- (a) Failed to pay a single instalment of Loan No.1;
 - (b) Paid a sum of Rs. 60,000 out of the capital in Loan No.2, thus leaving a sum of Rs. 8,940,000 as capital outstanding; and
 - (c) Paid a sum of Rs. 131,200 out of the capital in Loan No. 3, thus leaving a sum of Rs. 2,227,800 as capital outstanding.

- (9) Having demanded the above monies from the Defendant by its letter dated 3rd April 2013 [P17], the Plaintiff instituted action in the High Court on 29th July 2013 seeking to recover under three causes of action the following sums of money:
- (a) A sum of Rs. 4,797,000 together with a sum of Rs. 3,215,465 being the interest due thereon until 21st November 2012, and interest at the rate of 22% per annum on Rs. 4,797,000 from 22nd November 2012 until the date of decree;
 - (b) A sum of Rs. 8,940,000 together with a sum of Rs. 5,845,452 being the interest due thereon until 21st November 2012, and interest at the rate of 22% per annum on Rs. 8,940,000 from 22nd November 2012 until the date of decree;
 - (c) A sum of Rs. 2,227,800 together with legal interest thereon from the date of decree.
- (10) The Plaintiff also sought an order declaring that the properties referred to in the First and Second Schedules to the plaint are liable to be sold by public auction and for the above sums of monies to be recovered from the proceeds of such sale.
- (11) The Defendant filed his answer admitting the following:
- (a) That he maintained the aforementioned current account at the Plaintiff bank;
 - (b) The execution of the mortgage bonds P2, P4, P6, P8 and P10;
 - (c) That his unsettled loan facilities were re-scheduled by P12 and the contents of P12; and
 - (d) P13 and P20 which contained the general terms and conditions subject to which Loan Nos. 1 and 2 were granted.

Trial before the High Court and the judgment of the High Court

- (12) While the Plaintiff led the evidence of two witnesses, the Defendant gave evidence on his own behalf. The High Court delivered the aforementioned judgment in favour of the Plaintiff, subject to one exception, that being the High Court held that the amounts due under Loan No.3 of Rs. 2,359,000 were not secured by any one of the

mortgage bonds and hence, the proceeds derived from the public auction of the two properties cannot be utilised to set off the monies due under Loan No. 3.

- (13) While the Plaintiff did not impugn this finding at the hearing before us, I must state that the High Court erred when it arrived at the said finding. While the aggregate value of Loan Nos. 1 and 2 was Rs. 13,797,000 and with P2, P4, P6 and P8 securing a sum of Rs. 13,600,000, it appears at first glance that the Plaintiff required the execution of P10 in a sum of Rs. 200,000 only to cover the balance sum between the aforementioned aggregate value of Loan Nos. 1 and 2 and the amount secured by P2, P4, P6 and P8. However, P12 makes it clear that the security offered by P2, P4, P6 and P8 and the mortgage bond that was to be executed [P10] would be applicable in respect of all three loans. Thus, the only conclusion that can be drawn is that the capital sum that can be recovered in respect of all three loans in terms of P2, P4, P6, P8 and P10 shall be limited to Rs. 13,800,000. I must perhaps for the avoidance of any doubt state that in addition to the said capital sum, the Plaintiff shall also be entitled to recover from the sale proceeds of the security offered, interest on the capital outstanding under all three loans and all other sums set out in P2, P4, P6, P8 and P10.

Grounds urged by the Defendant

- (14) The learned Counsel for the Defendant relied on two grounds in support of his position that the High Court erred when it granted relief to the Plaintiff.
- (15) The first ground was that the rate of interest that the Plaintiff was seeking to claim on the outstanding sums of money under Loan Nos. 1 and 2 was contrary to what the parties had agreed, both in the mortgage bonds and in P12. It was his position that in terms of the mortgage bonds P2, P4, P6 and P10, interest could be recovered at the rate of 15%, 16%, 20% and 19%, respectively, and that in terms of P12, interest was payable at the rate of 19% per annum but that the Plaintiff was seeking to recover interest at the rate of 22% per annum.
- (16) This ground had been raised by way of an issue before the High Court. Having considered the provisions of P12, the general terms and conditions contained in P13, P18 and P20 and the several mortgage bonds, the High Court has arrived at the

conclusion that the Plaintiff is entitled to recover interest at the rates claimed by the Plaintiff. I shall now consider if the said conclusion is correct.

- (17) In terms of P12, what has been offered by the Plaintiff and accepted by the Defendant is the **repayment of the capital** in equal monthly instalments together with the repayment of interest calculated separately *“at 19% per annum plus levies thereon payable monthly subject to fluctuations at the sole discretion of the Bank”*. In other words, the Defendant had agreed to (a) the repayment of the capital in equal monthly instalments, and (b) the payment of interest at a variable rate on the capital outstanding on the date of payment of each monthly instalment, with the applicable rate of interest at the time of the issuance of P12 being 19%.
- (18) A distinction must perhaps be made between the above mode of repayment in P12, and where the instalment contains a component of the capital and interest calculated at a fixed rate, with the value of the monthly instalment in the latter mode of payment, known as an “equated monthly instalment”, being fixed. What was offered and accepted by the Defendant was not an equated monthly instalment nor a fixed rate of interest.
- (19) That the rate of interest can fluctuate over the period of repayment has been clearly laid down in P12 and is further reflected in Clause 1 of the General Terms and Conditions marked P13, P18 and P20 which (a) are identical in content, (b) have been signed by the Defendant, and (c) have been formally admitted by the Defendants, save P18. Clause 1 thereof reads as follows:

“Notwithstanding the rate of interest, if any, specified in the said letter [P12], interest on the daily balances is payable by me monthly at such other or higher rate or rates as may be charged by the Bank in the ordinary course of its business from time to time from customers.”

- (20) Similar provision is contained in the mortgage bonds P2, P4, P6, P8 and P10. While in terms of the said bonds, the Plaintiff can recover, in addition to the capital sum secured by the said bonds, interest at the rate specified therein, the relevant clause reads as follows:

“Interest on the aforesaid sums and sum of money at ... per centum per annum or at such rate or rates as may from time to time be fixed or charged by the Bank or its Managing Director, Deputy General Manager, or Accountant for the time being and to be computed from the date or respective dates of such loans advances payments being made according to the usual course of business of the Bank.”

- (21) The Bank Officer who gave evidence has clearly explained that the interest rate that was imposed was a variable rate of interest and that quite apart from that fact being clearly set out in the mortgage bonds, P12 has made it abundantly clear that the rate of interest is variable. The witness had stated further that (a) the rate of interest and the fact that it is variable are matters that have been discussed and agreed upon with the Defendant and that P12 was issued only thereafter, and (b) the rate was adjusted according to market rates prevailing at the relevant time.
- (22) The Defendant has admitted in cross examination that the rate of interest in P12 was subject to fluctuation and that the rates of interest specified in the mortgage bonds were also variable but had stated later that he did not agree to a rate of interest higher than what had been specified in P12.
- (23) Taking into consideration the above, I am in agreement with the High Court that the rates of interest at which the Plaintiff was seeking to recover the capital outstanding is in terms of P12. This is in accordance with Section 192(1) of the Civil Procedure Code which provides that when the action is for a sum of money due to the plaintiff, the court may, in the decree order interest according to the rate agreed between the parties in the instrument sued upon.
- (24) The Defendant had raised a further issue before the High Court whether the Plaintiff can recover in one action moneys outstanding under three separate loans since the said loans had been secured by the mortgage of two different properties. The High Court had answered this issue in the affirmative. This finding of the High Court formed the basis for the second ground on which the learned Counsel for the Defendant sought to impugn the judgment of the High Court.
- (25) I have already stated that by P12, the Plaintiff offered to reschedule as three separate loans the monies outstanding on the loan facilities taken by the Defendant

and that all three loans were secured by the mortgage bonds executed in respect of the two properties referred to in the First and Second Schedules to the plaint. The Defendant has agreed to the said offer and P12 is therefore the agreement between the parties. It is clear that all three causes of action arise from P12, and that all three loans have been cumulatively secured by the aforementioned mortgage bonds. Thus, I am in agreement with the High Court that seeking to recover the three loans under three causes of action does not amount to a misjoinder of causes of action.

Conclusion

(26) In the above circumstances, I affirm the judgment of the High Court, subject to the variation that the Plaintiff shall be entitled to recover the capital outstanding under all three loans from the proceeds of the sale of the properties referred to in the aforementioned mortgage bonds with the total capital that can be recovered being limited to Rs. 13,800,000. I must reiterate that the Plaintiff shall also be entitled to recover interest due under all three loans together with any other sums that have been provided for in the said mortgage bonds.

(27) This appeal is accordingly dismissed, without costs.

JUDGE OF THE SUPREME COURT

Janak De Silva, J

I agree.

JUDGE OF THE SUPREME COURT

Dr. Sobhitha Rajakaruna, J

I agree.

JUDGE OF THE SUPREME COURT