

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

In the High Court of the Western
Province in the exercise of its civil
jurisdiction sitting in Colombo.

Sampath Bank PLC, No. 110,
Sir James Peiris Mawatha,
Colombo 02.

Having an office or branch at
People's Park, Bodhiraja Mawatha,
Colombo 11.

Plaintiff

Vs.

**S.C. (CHC)Appeal No.19/2010
HC (Civil) Case No. 275/2006(1).**

1. Ceylon & Overseas Traders (Pvt)Ltd.
No. 54, 4th Cross Street, Colombo 11.
2. Nellainayagam Eskiappan
Thaumanasundaram
3. Nellainayagam Manickam
Both of No.54, Cross Street,
Colombo 11.

Defendants.

AND NOW BETWEEN

Sampath Bank PLC,
Having its registered office at No.
110,
Sir James Peiris Mawatha,
Colombo 02.

Having an office or branch at
People's Park, Bodhiraja Mawatha,
Colombo 11.

Plaintiff-Appellant

Vs.

1. Ceylon & Overseas Traders (Pvt)Ltd.
No. 54, 4th Cross Street, Colombo 11.
2. Nellainayagam Eskiappan
Tayumanasundaram
3. Nellainayagam Manickam
Both of No.54, Cross Street,
Colombo 11.

Defendant-Respondents.

BEFORE : S. THURAIRAJA, PC, J.
A. L. SHIRAN GOONERATNE, J.
ACHALA WENGAPPULI, J.

COUNSEL : Chandaka Jayasundera, PC with Ms. Vishmi
Fernando for the Plaintiff-Appellant
Respondents are absent and unrepresented.

ARGUED ON : 25th March, 2024

DECIDED ON : 26th February, 2026

ACHALA WENGAPPULI, J.

The Plaintiff Bank instituted an action in the Commercial High Court of *Colombo* against the 1st, 2nd and 3rd Defendants to recover a sum of Rs.19,119,910.62 and interest calculated from 30.09.2006, which it claimed from them as dues arising over an overdraft facility obtained by the 1st Defendant.

The parties proceeded to trial with recording of nine admissions and a total of 53 trial issues between them. The Commercial High Court, by its judgment dated 15.01.2010, dismissed the Plaintiff, solely on the basis of the admission No. 5, by which the parties have accepted that the contents in paragraph 5 of the Answer as being an admitted fact. In paragraph 5 of the Answer, the 1st Defendant asserted that he has repaid all the monies so overdrawn so far and as such there is no money remaining due from the 1st Defendant to the Plaintiff Bank.

Being aggrieved by the dismissal of its Plaintiff, the Plaintiff Bank thereupon preferred an appeal against the said judgment and thereby sought to have set it aside.

The Defendants, despite the repeated issuances of notice of appeal informing them of the appeal pending before this Court, were absent and unrepresented. The hearing of the appeal therefore proceeded before the Commercial High Court without the Defendants.

At the hearing of the instant appeal, learned President's Counsel for the Plaintiff Bank submitted that the said "*admission*", relied on by the trial Court to dismiss the Plaintiff, was not acted upon by either party as they have proceeded to trial on multiple issues, which are even touching upon the very scope covered by the said admission (Issues Nos. 29 and 30). He therefore submitted that the parties have continued to litigate before the trial Court on the premise that at all material times, none of the parties have admitted of the position that no money was due to the Plaintiff Bank from the 1st Defendant. In these circumstances, it was contended by the learned President's Counsel, that the said "*admission*", in reference to an

avertment of the Defendant's answer, had been recorded "*erroneously*" by the Court stenographer.

Learned President's Counsel further submitted that the Commercial High Court, in addition to that ground, had erroneously relied on the judgment of *Uvais v Punyawathie* (1993) 2 Sri L.R. 46, in support of its impugned finding that the said admission could not subsequently be amended or retracted. It was argued on behalf of the Plaintiff Bank that the said judgment is not applicable to the instant case as it referred to an instance where parties agreed to record an admission and thereafter sought to retract that admission whereas the instant matter is in relation to a situation where the Plaintiff Bank had taken the position that it did not in fact make such an admission and that it has "*in fact been ERRONEOUSLY recorded.*"

Before I proceed to consider the merits of these two grounds of appeal, that were urged by the learned President's Counsel for the Plaintiff Bank, in the light of the applicable principles of law and decided authorities, it is helpful at this stage, if an attempt is made to set out the respective factual positions placed before the Commercial High Court by the contesting parties in terms of their pleadings, *albeit* briefly, as it would provide the context against which the trial Court arrived at its impugned finding could be tested.

The Complaint filed by the Plaintiff Bank, describing the cause of action on which it sued the 1st Defendant, averred that it had accrued when the latter failed to pay the capital and interest amounting to Rs.19,119,910.62, due to the former, over an overdraft facility granted in a sum of Rs.

25,000,000.00, when demanded to do so. These monies became payable by the 1st Defendant in terms of a loan agreement entered into between the parties on 05.09.2005. The total of the sum claimed from the 1st Defendant was arrived at only after making adjustments to the payments made from time to time by the 1st Defendant. The Plaintiff also indicated that the Plaintiff Bank had first granted the overdraft facility to the 1st Defendant in a sum of Rs. 20,000,000.00 on 05.08.1998 upon his request and another, in a sum of Rs. 10,000,000.00 on 06.06.2002.

It was also averred in the Plaintiff that the cause of action against the 2nd and 3rd Defendants accrued when the 1st and 2nd Defendants failed to pay the said capital and interest, when demanded to do so, as they stood as guarantors to the loan agreement between the Plaintiff Bank and the 1st Defendant jointly and severally.

The three Defendants have taken up the position in their joint Answer that although they admit that an overdraft facility was obtained from the Plaintiff Bank, the 1st Defendant has repaid all the monies he had overdrawn (vide paragraph 5) and that there is no money due from the 1st Defendant to the Plaintiff Bank. The Defendants accordingly denied that there is any outstanding due to the Plaintiff Bank over the said overdraft facility. The Defendants further denied that a sum of Rs. 25,000,000.00 was granted on 05.09.2005, as averred in the Plaintiff and assert that the Plaintiff Bank did not release any monies after 05.09.2005 despite agreeing to do so.

With that general background of the contents of the pleadings, I now turn to the specific averments made by the parties in their respective

pleadings that were presented before the Commercial High Court and as such are directly relevant to the determination of the instant appeal.

Paragraph 7 of the Complaint reads as follows;

“ විත්තිකරු සිය ගිණුම පවත්වාගෙන යන අතරතුර පැමිණිලිකාර බැංකුවෙන් අයිරා ස්වභාවයේ බැංකු පහසුකම් ඉල්ලා සිටින ලද අතර, 1 වන විත්තිකරුගේ ඉල්ලීම මත පැමිණිලිකාර බැංකුව විසින් 1 වන විත්තිකරුට සිය ජංගම ගිණුමෙන් අයිරා පහසුකම් ලබා දෙන ලදී.”

Paragraph 5 of the joint Answer reads thus;

“[R]eplying paragraph 7 of the Complaint, these Defendants only admit that the 1st Defendant obtained banking facilities by way of overdraft from the Plaintiff and the 1st Defendant has repaid the monies so overdrawn and there is no money due from the 1st Defendant to the Plaintiff.”

Now, I wish to refer to the circumstances under which these admissions were marked.

The Complaint was filed on 23.11.2006 and the joint answer of the Defendants was filed on 27.03.2007. In compliance with the procedural requirement of framing issues, in terms of Section 146 of the Civil Procedure Code, was fixed for 03.07.2007. The Plaintiff Bank tendered a document to Court on that day containing five proposed admissions and setting out the 29 issues it had identified. The 5th admission proposed by the Plaintiff Bank reads as follows; “ පැමිණිල්ලේ 7 වන ඡේදයේ සඳහන් බැංකු අයිරා පහසුකම් ලබා ගත් බව පිළිගනී”. The Defendants, on their part, proposed four admissions and identified 28 issues. The 4th proposed admission of the Defendants in this regard reads as “[T]he 1st Defendant obtained banking

facilities by way of overdraft from the Plaintiff” is at variance with the proposed admission No. 5 by omitting the reference to paragraph 7 of the Plaintiff.

The proceedings of Court on 13.07.2007 indicate a total of nine admissions were recorded on that day, in addition to accepting 1st to 27th issues for the Plaintiff Bank and 28th to 53rd issues for the Defendants.

The nine admissions made by the parties at the commencement of the trial and recorded by the Court are as follows;

“ පිළිගැනීම්:

1. පැමිණිල්ලේ 1 වන ජේදය පිළිගනී
2. 1 වන විත්තිකරු විසින් පැමිණිලිකාර බැංකුවේ 1996.05.17 දිනැති ගිණුම් ඉල්ලුම්පත්‍රය ඉදිරිපත් කල බව පිළිගනී.
3. 1 වන විත්තිකරු අංක 0002 1001 5183 දරණ ජංගම ගිණුම පවත්වා ගෙන ගිය බව පිළි ගනී.
4. 1 වන විත්තිකරු පැමිණිලිකාර බැංකුවේ ගනුදෙනුකරුකවකු බව පිළි ගනී.
5. උත්තරයේ 5 වන ජේදය පිළිගනී.
6. අධිකරණ බලය පිළි ගනී.
7. පළවන විත්තිකරු නීතිය ඉදිරියේ සංස්ථාපනය කරන ලද සංස්ථාපිත සමාගමක් බව පිළි ගනී.
8. උත්තරයේ 12(අ) ජේදයේ සඳහන් කර ඇති රුපියල් මිලියන 25 ක් සඳහා වූ අයිරා පහසුකමක් පළවන විත්තිකරු විසින් 2005 අගෝස්තු මස පැමිණිලිකරුගෙන් ඉල්ලා සිටි බව පිළි ගනී.
9. පැමිණිලිකරු 1 වන විත්තිකරුට මිලියන 25 ක මුදලක් බැංකු පහසුකමක් ලෙස ලබා දීමට 2005 සැප්: මාසයේදී එකඟ වූ බව පිළිගනී.”

Perusal of the appeal brief revealed that the document containing the proposed admissions and issues, tendered by the Plaintiff Bank had its 5th admission struck off with a single line drawn across the text by someone. In addition, the proposed issues that were initially numbered as issues 1 to 29 were renumbered to read as issues 1 to 27 after striking out the 1st and 2nd proposed issues. The two proposed issues that were struck out are as follows;

“ විසඳිය යනු ප්‍රශ්න

1. මෙම නඩුව අසා තීරණය කිරීමට මෙම ගරු අධිකරණයට අධිකරණ බලය ඇත්තේද?
2. 1 වන විත්තිකරු නිසි පරිදි සංස්ථාපිත සමාගමක්ද?”

The learned High Court Judge, who presided over the Commercial High Court, at the time of recording these admissions and issues and proceeded to trial, was elevated to the Court of Appeal, before he could pronounce the judgment. The parties have consented before the succeeding High Court Judge to adopt the evidence already led and to pronounce judgment on that evidence.

The succeeding High Court Judge, in the process of writing the judgment, has realised that the admission No. 5 has effectively nullified any cause of action that may have accrued to the Plaintiff Bank against the Defendants. He therefore directed the parties to address Court on that point by offering clarifications. The parties were at variance over the question whether the said admission was correctly recorded. The Defendants have resisted any changes made to the said admission. Learned High Court Judge had thereupon conducted an inquiry into the accuracy of the recoding of the said admission by verifying it with the

shorthand notes of the Court stenographer that were made contemporaneously and retained in the Registry of that Court. The proceedings of Court conducted on 07.05.2009, indicate the out-come of that inquiry.

The verification of the notes of the stenographer revealed that;

“ ලක්ෂ ලේඛිකාවගේ සටහන් අනුව ඇය දන්වා සිටින්නේ, පිළිගැනීම් 4 ක් නඩු වාර්තාවේ යෝජනා තුළ ඇති බවත්, උත්තරයේ 7 වන ඡේදය පිළි ගැනීම ලෙස පළමුව සටහන් කර ඇති අතර, පසුව එය උත්තරයේ 5 වන ඡේදය ලෙසට නිවැරදි කර ඇති බවත්, උත්තරයේ 5 වන ඡේදය පිළි ගනී යන ලෙස එම දින සටහන් කර ගෙන ඇති බවත්ය.”

On this material, the Commercial High Court concluded;

“ අධිකරණය නිරීක්ෂණය කරන්නේ, එදින පිළි ගනීම් සහ යෝජනා සටහන් කරන විට ඊට පෙර පැමිණිල්ල විත්තිය විසින් පිළි ගැනීම් සහ විසඳනා වෙන් වෙන්ව යෝජනා කර තිබූ බවත්, පැමිණිල්ලේ 1,2,3, සහ 4 පිළි ගැනීම් ඒ ලෙසම පිළි ගැනීම් ලෙස සටහන් කර ඇති බවත්, පැමිණිල්ලේ 5 වන පිළි ගැනීම ලෙස යෝජනා කර තිබූ "පැමිණිල්ලේ 7 වන ඡේදයේ සඳහන් බැංකු අයිරා පහසුකම ලබා ගත් බව පිළි ගනී" යන්න කපා හැර ඇති බවත්, ඒ වෙනුවට මෙම 5 වන නව පිළි ගැනීම පැමිණ ඇති බවත්ය. ඊට අමතරව 6,7,8 සහ 9 ලෙසද පිළි ගැනීම් සටහන් වී ඇත් බවත්ය.”

The contention that the admission No. 5 was erroneously recorded contrary to the intentions of the parties therefore could not be accepted. On 03.07.2007, when the admissions were recorded, there were three more admissions, not initially proposed by either party, were also recorded. The stenographer's note also indicates the fact that, initially the admission was recorded to read as admitting paragraph 7 of the Answer, but was immediately corrected by the parties to read as admitting paragraph 5 and not paragraph 7 of the Answer, as it now appears in the proceedings. It is paragraph 5 that primality contains “... *the circumstances of the case upon*

which the defendant means to rely for his defence; ...” averred by them in compliance with Section 75(d) of the Civil Procedure Code.

Paragraph 7 of the Answer reads as follows;

“ [T]hese Defendants further state that the Plaintiff –

(a) has wrongfully and unlawfully charged excessive interest on the overdraft;

(b) has appropriated the monies that the Defendants paid towards the overdraft interest.”

Thus, it is clear that the averments contained in paragraph 7 of the Answer are not directly relevant to the defence taken up by the Defendants and, as a result, the admission No. 5 required to be corrected to reflect the position they have actually taken up in paragraph 5.

After the trial Court recorded admissions and issues on 03.07.2007, the Plaintiff Bank did not immediately proceed to present any evidence before Court on that day itself and the trial was accordingly adjourned to 16.01.2008. On that day, after the witness for the Plaintiff Bank commenced his oral evidence and, halfway through the Examination-in-Chief itself, the Court granted an adjournment for the Plaintiff Bank. As the learned High Court Judge rightly observed that the witness had no clear understanding of the matters in relation to the case was presented on behalf of the plaintiff. The evidence of the said witness was eventually concluded on 02.07.2008 and the case of the Plaintiff Bank was closed after reading the documents marked X 1 to 21A, immediately thereafter.

There was no application made by the Plaintiff Bank in any of these days on which the trial continued thereafter seeking to 'correct' the admission No. 5, which now it claims to have been recorded "*erroneously*" or to invite the Commercial High Court to exercise its discretion conferred under the proviso to Section 58, where it is stated that " ... *the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.*"

The Defendants, have highlighted the following instances where the Plaintiff Bank, could have moved Court to correct the admission recorded erroneously, as it alleged. In any of the subsequent trial dates, 01.11.2007, 16.01.2008, 31.03.2008, 02.07.2008 or 19.09.2008 no such application was made and therefore they taken up the position that the said admission should not be 'corrected' after a lapse of nearly a year and a half since the commencement of trial. In this respect, it is relevant to note that, in the set of written submissions filed by the Defendants at the close of evidence but before the issue of admission No. 5 was brought up by the succeeding trial Judge, they have mentioned therein the fact of 9 admissions recorded by Court. In contrast, the Plaintiff Bank, in its set of written submissions, made no reference to any admission so recorded at all. Interestingly, the Defendants, whilst proposing to the trial Court that the manner in which the issues raised by them ought to be answered by, submitted, particularly in relation to issues Nos. 21 and 30, the respective suggested answers as "*No sum is due*" and "*No money is due on account of the matters referred to in the Plaintiff.*" This leads to justifiable inference that the Defendants have in fact relied on the admission No. 5, in support of their position.

The issue No. 21 was framed to the effect the amount of money to be paid by the 2nd and 3rd Defendants on the guarantee bond whereas issue No. 30 was framed to the effect whether there is no money due to the Plaintiff Bank from the 1st Defendant.

These proposed answers to the two issues indicate that the Defendants have relied on the admission No. 5, even before the correctness of that admission was challenged, when the trial Court sought to clarify the respective positions of the parties over the same.

The Civil Procedure Code, from its earliest version enacted in 1890, did not contain any specific provision among its many Sections, by which enabling contesting parties to formally indicate their agreement to treat certain factual positions relevant to the dispute presented before Court and, of which are not at variance with their respective positions taken up in the pleadings as being proved, and thereby relieving them of the burden of adducing formal proof before Court to establish the same. Chapter XIX of the said Code that contains general procedure in conducting trials before District Courts, commences that procedure with Section 146, which only speaks of identifying questions of facts to be decided between them "*in the form of issues.*" The only reference made in the Civil Procedure Code regarding formal admissions on factual matters could be found in Sections 509 and 631, which has no bearing to the instant appeal.

However, over the years, a practice had developed among the trial Judges and the Counsel to record factual admissions that the parties are not at variance, as contained in the pleadings, followed by the framing of issues, on which the parties invite the trial Court to adjudicate over the

dispute exists between them. This they could do either at the commencement of a trial or during its course. The existence of this practice is evident from a reported judgment pronounced in the early 19th Century. In the head note of the judgment of *Cathiravelu v Dadabhoy* (1912), reported in 15 NLR 339, describes the question presented before the Supreme Court for determination as follows; “[N]o evidence was taken and no admissions were recorded. The District Judge answered the issues in the negative. On appeal it was contended that the District Judge had no right to dispose of the case on an issue in regard to which no evidence had been taken.” In the absence of a specific provision in the Civil Procedure Code, it is obvious that the said practice had its legal base upon Section 58 of the Evidence Ordinance, which states “[N]o fact needed to be proved in any proceedings which the parties thereto or their agents agree to admit at the hearing or which, before the hearing, they agree to admit by any writing under their hands, or by which any rule of pleading in force at the time they are deemed to have admitted by their pleadings.” This provision was further supplemented by Section 8(1) of the Evidence (Special Provisions) Act No. 14 of 1995, where it was stated “[I]n any proceedings it shall not be necessary for any party to tender any evidence of any fact which is admitted by the opposing party.”

Although, not applicable to the instant appeal, the continued practice of marking of admissions in Court on both factual and legal matters has received statutory recognition with the amendments introduced to the relevant provisions contained in the Civil Procedure Code, by Act No. 8 of 2017. The newly inserted Section 142A to the Code made it obligatory on the parties to propose admissions and issues during the pre-trial hearing while a corresponding duty is imposed on trial Judges

by Section 142D(c), which required them to obtain and record admissions of facts and of documents from the parties, during that stage.

Coming back to the appeal of the Plaintiff Bank, it is clear that the parties, following the said general practice, have recorded several factual and legal admissions, along with the set of issues, prior to proceeding to trial on that basis. Of these several admissions, the admission No. 5, which is under scrutiny now could undoubtedly be taken as an admission of fact.

Learned High Court Judge, after an inquiry into the correctness of the 'admission' as found in the proceedings, has held that an admission of fact could not be withdrawn, citing the judgment of this Court in *Uvais v Punyawathie* (*supra*). The said conclusion is being challenged by the learned President's Counsel before this Court on the premise that the *ratio* of that judgment has no application to the instant appeal, as what has been decided in that instance was that the parties should not be permitted to set out a case materially different from what is placed on record.

The effect of such an admission of fact, once formally recorded with the concurrence of the parties as well as of the trial Judge, was considered in the case of *Mariammai v Pethurupillai et al* (1918) 20 NLR 200, where Bertram CJ, held (at p.202); *[I]f a party in a case makes an admission for whatever reason, he must stand by it; and it is impossible for him to argue a point on appeal which he formally gave up in the Court below."*

The judgment of *Uvais v Punyawathie* (*supra*), delivered by Fernando J, also considered the situation where the admission made in relation to a variation to the terms of the contract of tenancy with an increase of rent, which was later disputed by the defendant in the appeal.

At the trial before the District Court, the plaintiff had relied on letters, dated 19.09.1970 and 30.06.1971, of the defendant by which she admitted that once her appeal made against the increased assessment of rent is decided, she would remit the correct rent amount with arrears. The appeal of the defendant was subsequently dismissed. In addition to the said correspondence, the defendant, in her answer, expressly admitted that she had agreed to pay the increased rent but had not done so owing to financial difficulties, which position the trial Court rejected. The District Court held with the plaintiff.

In judgment of the Court of Appeal in *Jayalath v Karunathilaka* (2013) 1 Sri L.R. 337, HNJ Perera J (as he then was) stated that (at p. 344) “[I]t is well established principle of law that parties to a case cannot resile from admissions of fact”. This pronouncement was made by that Court after making reference to the reasoning contained in the judgments of *Mariammai v Pethurupillai et al* (*supra*) and *Uvais v Punyawathie* (*supra*).

The judgment of this Court in *Uvais v Punyawathie* (*supra*) refers to an instance where the defendant contended for the first time in appeal that what the plaintiff demanded was damages and not the increased rent. She offered to pay an increased amount as rent but, in the absence of any demand to pay the increased rent, there was no agreement to pay the higher amount. The Court of Appeal accepted that contention and held that the plaintiff failed establish that the defendant was in arrears of rent and allowed the appeal.

Of the three questions presented for consideration of this Court in that instance, the question that has a direct bearing on the issue to be

determined in relation to the instant appeal is stated therein as follows (at p.49); “ [W]as the respondent [the defendant] entitled at the stage of the appeal to withdraw the admissions that she had agreed to pay the increased rent, but had failed to do so?”

Considering the submissions made on this particular question, Fernando J has held (at p.51) that;

“ [I]n the present case by the time the matter came up for decision in the trial Court, difficulties as to whether parties meant rent or damages, and the need for the tenant’s consent to an increased rent, had been completely removed by reason of the defendant’s express and unambiguous admissions that she agreed to pay the increased rent of Rs. 552.41 per month, but had not done so. On that basis, she pleaded inability to pay that rent, for reasons which the learned trial Judge properly rejected. Those admissions were not withdrawn during the trial and the judgment of the trial Judge was therefore perfectly correct.”

Thus, the Courts were consistent with adopting the view that a formal admission of fact could not be retracted or ignored at all, particularly when raised at the appeal stage for the first time. His Lordship further noted (at 52) “ [W]hile it is sometimes permissible to withdraw admissions on questions of law, the admissions now under consideration are primarily questions of fact” which “may equally well have the result of express instructions given by the client.” However, the Courts have acted with caution in relation to admissions of fact, and unless they are considered to qualify to be termed as ‘admissions’, any admissions that are recorded in “so perfunctory manner that one cannot be certain as to who made the admission

and in what circumstances, it was made” were not considered as such (per Soertz J in *Punchibanda v Punchibanda et al* (1941) 42 NLR at 382. Similarly, where “*uncertainty as to the meaning of the admission*” too made the Courts reluctant of placing reliance on such admissions (per *Basnayake* CJ in *Zahir v Devid Silva* (1959) 61 NLR 357, at p. 359). In *Sivaratnam and Others v Dissanayake and Others* (2004) 1 Sri L.R. 144, *Amaratunga* J, whilst dealing with a situation where an admission of a fact made by a party in an affidavit that had been tendered during consideration of interim relief but denied that fact contained in the *Plaint* when filing the answer. The Court held (at p. 147);

“[I]n this case the plaintiff’s contention was that averments in paragraphs 2 to 6 of the Plaint have been admitted in the affidavit filed for the purpose of the interim injunction inquiry. An affidavit is written evidence. But such written evidence cannot be used to force an admission on the defendants when they, in their answer, have taken up a contrary position. The learned Judge was therefore correct in refusing to record that the averments in paragraphs 2 to 6 of the plaint as admissions.”

It must be noted that in *Punchibanda v Punchibanda et al* (*ibid*) it was also held (at p. 382) “*[I]t has been held in several cases that a proctor has the right to settle or compromise a matter or case entrusted to him even without consulting his client in regard to it.*”

However, it is important to highlight the position that the effect of an admission on law is materially different to the effect of an admission on facts, as indicative from the judicial precedents cited above. In the cases of an admission of law, *Katiritamby et al v Parupathipillai et al* (1921) 23

NLR 209, *Garvin* AJ held (at p. 211), “... as regards the law, an erroneous decision [made by a party in making an admission of law] does not prevent the Court from deciding the same question arising between the same parties in a subsequent suit according to law.” Bertram CJ, in *Perera v Samarakoon* (1922) accepted the view expressed by Indian Courts (at p. 504) to the effect that “an erroneous admission of Counsel on a point of law has no effect, and does not preclude the party from claiming his legal rights in the Appellate Court.”

Sharvananda J (as he then was) held the identical view in the case of *Soloman Ranaweera v Solomon Singho* (1978) 79 II NLR 136, when stating that the admission under consideration (at p.141); “... is a mistaken admission in law and is not binding on the plaintiffs.”

In view of the approach consistently taken by this Court in relation to admissions on facts, the contention that admission No. 5 has erroneously been recorded by the Commercial High Court cannot succeed. When the stenographer’s note indicates the position that the admission No. 5 was initially recorded to read as admitting paragraph 7 of the Answer, but immediately thereafter was corrected to read as admitting paragraph 5 and not paragraph 7 of the Answer makes it abundantly clear that it was not a mistake. This is clear evidence that the parties were fully conscious of exactly what they have agreed on during the proceedings, after shifting from the scope of their original proposed admissions made in relation to admission No. 5, while introducing several other admissions in the process, which they did not include in their proposed admissions and issues, signed by the respective Attorneys.

It is in these circumstances, the determination reached by the learned High Court Judge that the Plaintiff should be dismissed, particularly in view of the admission No. 5, and following *Uvais v Punyawathie* (*supra*) is clearly a justifiable one. This is because *Fernando J* observed in that judgment (at p.52) “ [Q]uite apart from any question of estoppel or prejudice, to permit admissions to be withdrawn in these circumstances would subvert some of the most fundamental principles of the Civil Procedure Code in regard to pleadings and issues.”

In my view, the appeal of the Plaintiff Bank is devoid of any merit and, with the affirmation of the judgment of the Commercial High Court dated 15.01.2010, it should stand dismissed.

I make no order as to costs.

JUDGE OF THE SUPREME COURT

S. THURAIRAJA, PC, J.

I agree.

JUDGE OF THE SUPREME COURT

A. L. SHIRAN GOONERATNE, J.

I agree.

JUDGE OF THE SUPREME COURT