<u>IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA</u>

Ceylon Paper Sacks (Private) Limited,
No. 47, Maligawa Road,
Etul Kotte.
<u>Defendant-Appellant</u>

SC/CHC/APPEAL/20/2012
HC (CIVIL) 200/2000 (1)

<u>Vs.</u>

Michael Laurents Cyrille Caderamanpulle,
No. 15/5, Victoria Place,
Elvitigala Mawatha, Colombo 08.
(Deceased)

Joseph Romesh Shehan Caderamanpulle,
No. 33, Boran Road, Cofield,
Victoria 3162, Australia.
<u>Substituted Plaintiff-Respondent</u>

Before: Mahinda Samayawardhena, J.
K. Priyantha Fernando, J.
Menaka Wijesundera, J.

Counsel: Kuvera De Zoysa, P.C., with Sumedha Mahawanniarachchi and Samuditha Kumarasinghe for the Defendant-Appellant.

Dr. Lasantha Hettiarachchi with Minaali Haputantri and Nishadini Gunawardena for the Substituted Plaintiff-Respondent.

Argued on: 14.10.2025

Written submissions:

by the Defendant-Appellant and the Substituted Plaintiff-Respondent on 14.11.2025.

Decided on: 31.03.2026

Samayawardhena, J.

The Plaintiff instituted this action against the Defendant in the Commercial High Court, claiming that he is the owner of three machines which he had permitted the Defendant Company to use on lease. The Plaintiff was a shareholder and the Managing Director of the Defendant Company until he lost control of the management of the company on or about 16th September 1998. Thereafter, the Defendant Company failed to return the machinery to him and continued to use the same wrongfully. The Plaintiff prayed, *inter alia*, for the following reliefs:

(a) A declaration that the Plaintiff is the rightful owner of the three machines;
(b) Judgment against the Defendant for a sum of Rs. 2,250,000/- as loss of lease rentals for the months of October, November, and December 1998, together with interest until payment in full;
(c) Judgment against the Defendant for a sum of Rs. 16,500,000/- as loss and damage from 1st January 1999 to 31st October 2000, and a further sum of Rs. 750,000/- per month from 1st November 2000 until the date of decree, together with interest until payment in full;
(d) An order directing the Defendant to hand over possession and custody of the said three machines, in good order and condition, to the Plaintiff; and
(e) Costs.

The Defendant, by way of answer, stated that the machines had been consigned to the Defendant Company and installed and operated at its premises, and therefore contended that the Defendant Company is the owner of the machinery.

At the trial, the Plaintiff led the evidence of four witnesses, namely, a partner of P.E. Mathew & Co., Chartered Accountants, who were the auditors of the Defendant Company for the years 1980–1997; an officer of Bura Hathy & Co., Chartered Accountants, who were the auditors of the Defendant Company from 1998; an officer of Sampath Bank Ltd; and the Plaintiff himself. The Defendant led the evidence of its General Manager. At the conclusion of the trial, the Commercial High Court entered judgment in favour of the Plaintiff granting all the reliefs as prayed for in the prayer to the plaint.

The Defendant appealed to this Court on several grounds. It was contended that the Defendant Company is the owner of the machines; that the fixed asset register of the Defendant Company does not reflect the machinery due to the Plaintiff's default; that the Plaintiff failed to disclose the lease agreement to the Board of Directors of the Defendant Company in terms of section 203 of the Companies Act No. 17 of 1982, thereby rendering the lease agreement invalid; and that the Plaintiff has failed to prove his entitlement to the lease rentals.

I shall first consider whether the Plaintiff is entitled to the ownership of the machinery.

The dispute concerns three machines. The first is a "01 set HDPE 2 colour stripes tubular film extrusion machine – Model HDPE-600-CFB with accessories" valued at US$ 22,000/-. The invoice dated 19th October 1995 was issued by Siam Plastic Machinery Co. Ltd, a company based in Taiwan, in the name of Ceylon Paper Sacks Limited (P4). The remarks in the said invoice state that the shipment was effected on the instructions of Defimex S.A., a company based in Belgium, and that the payment was prepaid by them.

The second machine is an "automatic flexible drinking straw bending machine, Model JS-162" valued at US$ 49,267/-. The invoice dated 19th February 1997 was issued by Le Grand Corp., a company based in Taiwan, for the account and risk of Ceylon Paper Sacks Limited (P5).

The Defendant, through the evidence of its General Manager, Mr. Mohammed Sheroon Hathy, contends that, since the Plaintiff's name does not appear in the invoices, the Plaintiff has no ownership of the machines. Mr. Hathy further states that, as Defimex S.A. had originally purchased the machines, it is Defimex S.A. that is the owner thereof, and that such ownership was thereafter assigned to the Defendant Company.

However, the Defendant has failed to produce any evidence to establish its relationship with Defimex S.A. or to demonstrate that there had in fact been an assignment of the machines to the Defendant. Paragraphs 13 and 17 of Mr. Hathy's affidavit themselves reveal uncertainty as to the Defendant's entitlement to the machines, as both paragraphs state that "due to assignment and/or agreement between the Defendant and Defimex S.A. and/or prescription, the Defendant has now become its lawful owner." No evidence was led to substantiate any of these alleged grounds of title. In cross-examination, Mr. Hathy admitted that there are no documents evidencing any assignment of these two machines to the Defendant.

The Plaintiff, on the other hand, has produced a letter dated 3rd February 1999 issued by Defimex S.A., confirming that it made the payment on behalf of the Plaintiff and that the Plaintiff had personally settled those sums (P12). This position was also confirmed by the Plaintiff in his cross-examination.

The Plaintiff has further produced a letter dated 18th November 1999 from Le Grand Corp. (P11), stating that the aforesaid straw bending machine was shipped on the instructions of the Plaintiff, described therein as "the former Managing Director of Ceylon Paper Sacks Limited", and that Le Grand Corp. had extended a loan to the Plaintiff covering the value of the

machine, namely US$ 49,267.00, which loan was fully settled by the Plaintiff in March 1998.

The invoice (P5) indicates that the machine was delivered on the instructions of Defimex S.A., and the letter issued by Defimex S.A. (P12) confirms that Defimex S.A. paid for the machine, that it was shipped to the Defendant Company on the instructions of the Plaintiff, and that the funds were thereafter settled personally by the Plaintiff.

While P11 and P12 appear to be inconsistent as to the manner in which payment for the straw bending machine was effected, whether by way of a loan extended by Le Grand Corp. or by payment made by Defimex S.A., the Plaintiff, in cross-examination, clarified that Defimex S.A. made payment to Le Grand Corp., thereby settling the loan granted by Le Grand Corp. to the Plaintiff on his behalf:

> *Q: According to this document Defimex paid for both machines?*
> *A: Yes.*
> *Q: There is no reference whatever here in the document P12 to Le Grand Corp advancing any monies?*
> *A: Defimex says they have paid Le Grand.*
> *Q: I'm talking of P12, 2nd para?*
> *A: It states there.*
> *…*
> *Q: P11 says that Le Grand extended a loan to Caderamanpulle which was settled by Caderamanpulle in March 1998?*
> *A: It was settled on my behalf.*

The third machine is a "3 colours drinking straw making machine" valued at US$ 23,000/-. The invoice dated 16th October 1997 was issued by Siam Plastic Machinery Co. Ltd in the name of DJ Merchandising Company Pty Ltd, a company based in Australia, under L/C No. 40011-97-02536 issued by Sampath Bank Ltd (P7).

The Plaintiff produced the letter of credit (P9) together with the connected offer letter dated 5th June 1997 addressed to him, which he had personally signed and returned to the bank (P10), through the evidence of the witness from Sampath Bank Ltd. A perusal of the letter of credit shows that it was opened by the Plaintiff, as the applicant, in favour of DJ Merchandising Company Pty Ltd, as the beneficiary, for the purchase of the aforesaid 3 colours drinking straw making machine. The letter of credit further indicates that the Plaintiff was to be the "notify party" under the bill of lading and that all bank charges associated with the credit were to be borne by him. There is no reference to the Defendant Company in these documents.

The Defendant's witness stated in evidence that the Defendant Company had made the payments for the three machines. However, the witness failed to produce any documentary evidence to substantiate that the company had advanced such monies:

> Court
>
> *Q: Does it state anywhere that the company paid this money to the bank. When you release money to somebody it must have got into the books?*
>
> *A: Yes.*
>
> *Q: So how much of money has been credited or given to purchase these items?*
>
> *A: Yes.*
>
> *Q: Is it on record? Do you have any proof to say that the money was given to Caderamanpulle to purchase those machines?*
>
> *A: No.*

Apart from the mere *ipse dixit* of the Defendant's witness, no credible evidence has been adduced to substantiate that position.

The Defendant further contends that it is the "consignee" in invoices P4 and P5 and, on that basis, claims ownership of the machinery. However, the status of consignee does not necessarily confer ownership. It is

noteworthy that, while the Defendant's witness states at paragraph 21 of his affidavit that the Plaintiff had consigned the third machine in his personal capacity, the Defendant nevertheless claims ownership of that machine as well.

The Plaintiff also relies on the fact that these three machines are not reflected in the fixed asset register of the company as proof that they are not owned by the company. The Defendant, however, contends that the machines ought to have been entered in the fixed asset register and that the Plaintiff, as the Managing Director at the relevant time, is best placed to explain the failure to do so.

The Plaintiff led the evidence of two successive auditors of the Defendant Company for the years 1997 and 1998 in this regard. The auditor of the Defendant Company up to the year 1997 confirmed that the machines referred to in invoices marked P4 and P5 are not reflected in the fixed asset register of the Defendant Company for the year ended 31st March 1997 (P2). This witness stated that, in the course of their duties, auditors carry out independent verification of transactions and that, if payments had been made by the company in respect of such assets, they would at least be reflected in the bank statements. No such bank statements were produced by the Defendant in evidence.

The auditor of the Defendant Company from the year 1998 onwards stated that the additions to plant and machinery for the year 1998 are reflected in document P6(b), and that the machine referred to in invoice P7 is not recorded as an addition in the accounts. If that machine had been purchased by the company, it would have been reflected in the accounts for that year under the heading "additions to plant and equipment". The witness further stated that there is no such entry in the accounts and confirmed that their audit involved independent verification and was not based solely on documents furnished by the company.

Given the independent verification carried out by the auditors, the Defendant's position that the absence of the three machines from the fixed asset register is attributable to the Plaintiff's default cannot be accepted. Any such omission would have been identified and rectified in the course of the audit.

In any event, the Managing Director alone cannot be faulted for failing to make entries in the fixed asset register when the company has a Board of Directors, of which the Plaintiff is only one member. Further, if, as the Defendant contends, there is an error in the fixed asset register, there was nothing preventing the Board of Directors of the Defendant Company from taking steps to rectify it, at least after 16th September 1998, when the Plaintiff lost control of the management of the company. No such steps have been taken.

The foregoing evidence makes it amply clear that the machines were purchased by the Plaintiff using his personal funds and that they are owned by him. This has also been the finding of the Commercial High Court.

However, the judgment of the Commercial High Court has addressed only the question whether the Plaintiff has established ownership of the machinery. While such a finding entitles the Plaintiff to the reliefs sought in prayers (a) and (d) to the plaint, it does not address the Plaintiff's entitlement to the reliefs claimed under prayers (b) and (c).

I shall now consider whether the Plaintiff is entitled to the lease rental payments claimed.

The Plaintiff has averred that he leased these machines to the Defendant for use at a rental of Rs. 15,000/- per 1,000 kilograms of plastic raw material processed for the Defendant Company. When the machines were not required for the Defendant Company, they were used by Yamaha Music Centre, of which the Plaintiff was the Managing Partner,

and the Defendant Company was paid Rs. 3.50 per kilogram to defray the cost of electricity, labour, and other factory overheads.

The Defendant's audited financial statements for the year ended 31st March 1998 (P6) reflect a sum of Rs. 2,284,561.31 as being due to the Plaintiff. The audited financial statements for the year ended 31st March 2002 (P17(a)) reflect a sum of Rs. 4,061,706/- as an amount "due to directors," and the notes to the accounts (P17(b)) indicate that this amount is due to the Plaintiff.

The Plaintiff has also referred to an action bearing No. 51275/MR instituted in the District Court of Colombo, in which he claimed the said sum of Rs. 4,061,706/- from the Defendant on the basis that it was due and reflected in the audited accounts of the Defendant (P18). By the Plaintiff's own admission, judgment has been entered in his favour in that action. If that be so, that sum cannot be recovered again in the present action.

The lease rental payments ought to have commenced in 1995, when the Plaintiff first procured the first machine by invoice dated 19th October 1995 (P4), or at least in 1996. The second machine was procured in 1997 (P5). However, there is no evidence to demonstrate that such rental payments were in fact made to the Plaintiff. Although the Plaintiff refers to a current account into which these payments were allegedly credited, no statements relating to that account for the years 1995, 1996, 1997, and 1998 were produced in evidence.

It was also not clarified in evidence whether the figures reflected in the audited accounts represent lease rental payments due to the Plaintiff, and if so, whether they relate to the period from the inception in 1995 or to a specific period thereafter. These material aspects have been left uncertain.

The Plaintiff contends that the Defendant ought to have led evidence to demonstrate that no lease rentals were deposited into his current

account. However, as the party asserting the claim, the burden of proof lies on the Plaintiff. The Plaintiff has failed to discharge that burden.

In the above circumstances, the question whether the lease agreement is invalid by reason of the Plaintiff's failure to disclose it to the Board of Directors of the Defendant Company does not arise. However, for the sake of completeness, I must state that section 203(4) of the Companies Act No. 17 of 1982 imposes only a penalty for non-disclosure and does not render the transaction invalid on that ground alone.

Having considered the Plaintiff's entitlement to the lease rental payments, I now proceed to consider whether the Plaintiff is entitled to the loss and damages claimed.

The Plaintiff contends that, after losing control of the management of the Defendant Company, he pledged the three machines to St. Regis Packing (Pvt) Ltd in return for shares in that company. Thereafter, St. Regis Packing (Pvt) Ltd issued invoices to the Defendant Company for the use of the machines at a rate of Rs. 750,000/- per month (P13A–P13X), said to represent rental and loss of earnings. The basis of this calculation is set out in the Plaintiff's evidence-in-chief, and the Defendant has not challenged that calculation in cross-examination.

However, while the Plaintiff asserts that the pledge is reflected in an agreement, no such agreement was produced in evidence. The Defendant further states that documents P13A–P13X are invoices issued after the Defendant had replied to the Plaintiff's letter of demand, a position which was conceded by the Plaintiff. There is also an apparent inconsistency between the Plaintiff's position that the machines were pledged to St. Regis Packing (Pvt) Ltd and the fact that the said company issued invoices to the Defendant for the use of the machines, while the Plaintiff claims those same sums as being personally due to him in this action.

The Plaintiff seeks to overcome this inconsistency by stating that St. Regis Packing (Pvt) Ltd belongs to him and that it therefore makes no

difference whether the monies are paid to the company or to himself. However, having regard to the separate legal personality of a company and its shareholders, the Plaintiff cannot claim, in his personal capacity, sums which are referable to the company.

In the foregoing circumstances, the Plaintiff has failed to substantiate, by credible evidence, his entitlement to the loss of earnings and damages referable to the machines.

The Commercial High Court entered judgment granting all the reliefs prayed for in the plaint. I am unable to agree with that conclusion. On the proved facts of this case, I hold that the Plaintiff is entitled to the reliefs sought in paragraphs (a), (d), and (e) of the prayer to the plaint. However, he is not entitled to the reliefs sought in paragraphs (b) and (c).

Subject to the above variation, the judgment of the Commercial High Court dated 26.07.2011 is affirmed. The appeal is partly allowed. The parties shall bear their own costs in this Court.

Judge of the Supreme Court

K. Priyantha Fernando, J.
I agree.

Judge of the Supreme Court

Menaka Wijesundera, J.
I agree.

Judge of the Supreme Court