

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

Bianca (Pvt) Ltd.,
C10 Creation Limited.
Padukka Road,
Wataraka,
Meegoda.
Defendant-Appellant

SC/CHC/APPEAL/21/2021
HCC/193/2012/MR

Vs.

People's Bank,
No. 75, Sir Chittampalam A. Gardiner
Mawatha, Colombo 2.
Plaintiff-Respondent

Before: Hon. Justice S. Thurairaja, P.C.

Hon. Justice Mahinda Samayawardhena

Hon. Justice Sampath B. Abayakoon

Counsel: Chandaka Jayasundere, P.C. with Rehan Almeida for the
Defendant-Appellant.

Chamath Fernando for the Plaintiff-Respondent.

Argued on: 28.03.2025

Written Submissions:

By the Appellant on 30.05.2025

By the Respondent on 05.05.2025

Decided on: 25.06.2025

Samayawardhena, J.

The plaintiff bank instituted this action against the defendant in the Commercial High Court in 2012 seeking to recover term loan facilities granted to the defendant in the nature of Trust Receipts for Goods for Exportation, as reflected in Trust Receipts marked P3, P7, and P11. The defendant filed answer seeking dismissal of the plaintiff's action. It must be noted that the defendant did not raise any specific defence in the answer. At the trial, *inter alia*, the following two admissions were recorded:

4. පැමිණිල්ල සමග පැ3, පැ7 සහ පැ11 වශයෙන් ලකුණු කර ඉදිරිපත් කර ඇති අපනයන භාර කුවිතාන්සි මත ඒවායේ දක්වා ඇති නියම හා කොන්දේසි වලට යටත්ව විසින් පිළිවෙලින් ඇමරිකානු ඩොලර් 8630.54ක්ද 11,823.32 ක් ද සහ 12,100/- ක් ද ණය මුදල් ලබා ගත් බව පමණක් පිළිගනී.

5. පැමිණිල්ල සමග පැ15 ලෙස ලකුණු කර ඉදිරිපත් කර ඇති එන්තරවාසි ලිපිය ලැබුණු බව පමණක් පිළිගනී.

The defendant did not reply to the Letter of Demand.

At the trial, several witnesses testified on behalf of the plaintiff, and documents marked P1 to P16 were produced in evidence. At the close of the plaintiff's case, no objection was raised regarding the proper proof of those documents.

On behalf of the defendant, no witnesses were called, nor were any documents marked.

At the conclusion of the trial, the learned High Court Judge delivered judgment in favour of the plaintiff bank, permitting it to recover the principal sum together with interest at 8% from the defendant.

The defendant appealed to this Court.

At the hearing of the appeal, the sole ground urged by the learned President's Counsel for the defendant was that the learned High Court Judge had erred in the calculation of the interest component.

In the plaint, the plaintiff bank stated that it was entitled to recover interest at the rate of LIBOR plus 3.5% *per annum*. However, in the Trust Receipts marked P3, P7 and P11, clauses 1 and 3 expressly provide that the defendant agreed to pay "8% above today's current 3 months LIBOR rate" as interest, along with 1% penal interest. I note that the plaintiff did not satisfactorily explain the LIBOR rate at the trial. Nevertheless, as clearly stipulated in P3, P7 and P11, the defendant undertook to pay interest at "8% above today's current 3 months LIBOR rate" together with 1% penal interest on the capital sum. This means the plaintiff was contractually entitled to recover 8% above the LIBOR rate in addition to penal interest.

However, the learned High Court Judge disregarded the LIBOR rate and allowed the plaintiff to recover only 8% interest on the capital, without even awarding the 1% penal interest. In view of, particularly, the fourth admission recorded at the trial—where the defendant admitted to obtaining loan facilities subject to the terms and conditions set out in P3, P7 and P11—I am of the view that the calculation adopted by the learned High Court Judge was fair.

Although the defendant did not dispute the principal sums borrowed and only contested the interest recoverable, the principal sums have remained unpaid for over 15 years.

For the aforesaid reasons, I dismiss the appeal. The plaintiff bank shall be entitled to recover the taxed costs in this Court and the Court below.

In the connected appeal (SC/CHC/APPEAL/19/2021), the defendants are the guarantors. As agreed before this Court, the parties to that appeal shall be bound by this judgment.

Judge of the Supreme Court

S. Thurairaja, P.C., J.

I agree.

Judge of the Supreme Court

Sampath B. Abayakoon, J.

I agree.

Judge of the Supreme Court