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

In the matter of an Appeal in terms of Article 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

SC/CHC/Appeal No:

22/2020

Commercial High Court No:

HC (Civil) 328/14 MR

Multi Finance PLC,

No. 281, R.A. De Mel Mawatha,

Colombo 03.

(And now)

23rd Floor, Eastern Tower,

World Trade Center,

Colombo 01.

PLAINTIFF

Vs.

01. Hikkaduwa Liyanage

Kumuduni Malkanthi,

No. 122, Modara,

Patuwatha, Dodanduwa.

02. Hettiarachchige Asanka

Sanjeewa Hettiarachchi,

No. 26, Panwila, Hikkaduwa.

03. Mohammed Adli Mohamed,

No. 53/100, Kithulampitiya,

Nawinna, Uluwitike.

04. Thotagamuwe Buddhika

Harendra De Silva,

No. 40, Kowila Road,

Dadalla, Galle.

DEFENDANTS

AND NOW BETWEEN

Hikkaduwa Liyanage Kumuduni

Malkanthi,

No. 122, Modara, Patuwatha,

Dodanduwa.

01ST DEFENDANT-APPELLANT

Vs.

Multi Finance PLC,

No. 281, R.A. De Mel Mawatha,

Colombo 03.

(And Now)

23rd Floor, Eastern Tower,

World Trade Center, Colombo 01.

PLAINTIFF-RESPONDENT

LB Finance PLC,

No. 275/75,

Prof. Stanley Wijesundara

Mawatha,

Colombo 01.

AMALGAMATED PLAINTIFF-

RESPONDENT

01. Hettiarachchige Asanka

Sanjeewa Hettiarachchi,

No. 26, Panwila, Hikkaduwa.

02. Mohammed Adli Mohamed,

No. 53/100, Kithulampitiya,

Nawinna, Uluwitike.

03. Thotagamuwe Buddhika

Harendra De Silva,

No. 40, Kowila Road,

Dadalla, Galle.

DEFENDANT-RESPONDENTS

Before **:** Janak De Silva, J.

: Sobhitha Rajakaruna, J.

: Sampath B. Abayakoon, J.

Counsel	**:**	Prabash Semasinghe with Erangi Vitharana Pathirana instructed by Upul Mudalige for the Defendant-Appellant.
	:	Senaka De Saram with Tharindu Balasuriya instructed by Wickrama Punchihewa for the Amalgamated Plaintiff-Respondent.
Argued on	**:**	26-08-2025
Written Submissions	**:**	29-09-2025 (By the 01st Defendant-Appellant)
	:	26-09-2025 (By the Amalgamated Plaintiff-Respondent)
Decided on	**:**	18-12-2025

Sampath B. Abayakoon, J.

This is an appeal preferred by the 1st defendant-appellant (hereinafter referred to as the 1st defendant) on the basis of being aggrieved of the judgment pronounced on 29-05-2020 by the learned Judge of the Commercial High Court of Colombo.

The plaintiff-respondent company (hereinafter referred to as the plaintiff) has instituted proceedings before the Commercial High Court based on a hire purchase agreement entered in terms of the Finance Leasing Act No. 56 of 2000 as amended, in order to recover the sum mentioned in the plaint from the 1st defendant and the other defendants mentioned in the plaint.

It appears that the matter has previously proceeded *ex parte* against the 4th defendant and a judgment has been pronounced, and the case against the 2nd defendant has been laid by. The case against the 3rd defendant has also been fixed *ex parte* and the *ex parte* trial against the 3rd defendant has proceeded

along with the *inter parte* trial against the 1st defendant, who is the appellant in this action.

Although the 1st defendant has set out several grounds of appeal in paragraph 5 of the petition of appeal dated 27-07-2020 for the consideration of the Court, when this matter was taken up for argument before this Court, the learned Counsel for the 1st defendant informed the Court that he will only rely on one ground of appeal for the purposes of his arguments.

It was his position that there was no proper termination of the lease agreement by the plaintiff company, and therefore, issue No. 07 formulated by the plaintiff at the trial should have been answered in the 1st defendant's favour, and the action before the Commercial High Court should have been dismissed on that ground alone.

The said issue No. 07 raised before the Commercial High Court reads as follows-

> 07. පැමිණිල්ලේ 11 වන ඡේදයේ සඳහන් පරිදි පැමිණිලිකාර සමාගම විසින් 1 වන සහ 2 වන විත්තිකරුවන් සමග ඇති බදු ගිවිසුම නිසි පරිදි අවසන් කර ඇද්ද?

It was the position of the learned Counsel that in terms of section 20 and 21 of the Finance Leasing Act, the manner in which a lease can be terminated has been set out. He submitted that, in terms of the said sections, before sending a letter of termination, there should be a notice of termination, and the plaintiff has failed to send such a notice and had failed to adduce evidence in that regard, other than submitting the letter of termination to the Court. It was under this context the learned Counsel argued that issue No. 07 should have been answered in his client's favour.

The relevant section 21 of the Act reads as follows,

> **21(1). A lessor shall, prior to enforcing the right to accelerated payment or to the termination of a finance lease under section 20, serve by registered post a notice on the lessee –**

(a) specifying the circumstances which had caused a substantial failure of the lease within the meaning of the finance lease;

(b) appointing a date, not being a date less than seven days after the receipt of the notice, for remedying the failure referred to in paragraph (a).

(2) Where a lessee fails to remedy the failure specified in a notice served under subsection (1) on or before the date appointed in the notice, or fails to give a reasonable cause for such failure, the lessor may act in accordance with the provisions of section 20.

It needs to be noted that the 1st defendant has never taken up the position that the lease agreement between her and the plaintiff company was not terminated in accordance with the law at the trial. It has been the plaintiff who has raised an issue based on the letter of termination and has led evidence to prove that fact. The 1st defendant has not taken up the position that the plaintiff has failed to prove the termination of the agreement in her submissions before the trial Court. No such position has been taken up in the petition of appeal filed before this Court as well.

Be that as it may, since the only ground of appeal upon which the matter was argued revolves around the question whether a proper notice of termination has been sent to the 1st defendant, I am of the view that the contents of the admitted lease agreement marked P-03 at the trial will need to be considered in relation to section 31 of the Finance Leasing Act in this regard.

The said section 31 reads as follows-

31. The parties to a finance lease may provide in such lease for the non-applicability of the provisions of this Part of this Act other than the provisions contained in sections 11, 16, 22, and 24, to a finance lease entered into between them.

Therefore, it is manifestly clear that the Act has provided for the parties to agree on the non-applicability of certain sections of the Act, section 21 being one such section.

Article 4 of the Lease Agreement entered between the parties reads follows-

> **"Article 4: Non-applicability of certain sections of Finance Leasing Act 56 of 2000.**
>
> **The parties to this Agreement hereby agree that provisions of Part II of Finance Leasing Act 56 of 2000 will not apply to this Agreement other than provisions contained in sections 11, 16, 22, and 24 save and except as stated in this Agreement."**

The above Article of the agreement between the parties clearly establishes the fact that the plaintiff is not duty bound to follow the provisions of section 21 before issuing the letter of termination. However, the letter of termination of the agreement marked P-05, which is a document not marked subjected to proof, clearly establishes that the said letter refers to the fact that a notice of termination on substantial failure and accelerated payment has been sent to the 1st defendant on 15-11-2012.

There has been no denial of the said contents of P-05 by the 1st defendant. This goes on to show that although it was not necessary for the plaintiff company to follow the provisions of section 21, it has in fact followed the said provisions although the said letter has not been produced as evidence.

It is my view that there was no necessity for the plaintiff to produce such a letter in view of Article 4 of the Agreement between the parties.

Although the learned Counsel contended that the 1st defendant never received the letter of termination marked P-05, it needs to be stated that at the trial, the 1st defendant has specifically admitted receiving the letter of termination of the lease as pleaded in paragraph 11 of the plaint.

Under the circumstances, I find no basis whatsoever for the 1st defendant to argue that the plaintiff has failed to establish issue No. 07 raised at the trial.

Accordingly, the appeal is dismissed for want of any merit.

The 1st defendant shall pay a sum of Rs. 25,000/- as costs to the plaintiff.

Judge of the Supreme Court

Janak De Silva, J.

I agree.

Judge of the Supreme Court

Sobhitha Rajakaruna, J.

I agree.

Judge of the Supreme Court