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

In the matter of an Appeal from the judgment dated 19.03.2013 of the High Court of the Western Province holden in Colombo (in the exercise of its Civil/Commercial jurisdiction)

M/S Ind- Sri Industrial Corporation (Private) Ltd
Kurunduwatta Estate, Udamapitigama
Malwana.

PLAINTIFF

Case No: S.C. (CHC) Appeal 23/2013

C.H.C. Case No: HC/Civil/278/2011/MR

Vs.

M/S Dwellco Developments (Private) Limited
No.1090, Sri Jayawardenapura Road,
Rajagiriya,Kotte.
New Address
No. 89, 1/1 Castle Street, Borella.

DEFENDANT

AND NOW BETWEEN

M/S Dwellco Developments (Private)Limited
No.1090, Sri Jayawardenapura Road,
Rajagiriya,Kotte
New Address
No. 89, 1/1 Castle Street, Borella

DEFENDANT-APPELLANT

Vs.

M/s Captain Steel (Private) Limited
(Before - M/S Ind- Sri Industrial Corporation
(Private) Ltd.)
Kurunduwatta Estate, Udamapitigama
Malwana

PLAINTIFF-RESPONDENT

Before: **Hon. S. Thurairaja, P.C., J.**
Hon. Kumudini Wickremasinghe, J.
Hon. Janak De Silva, J.

Counsel: Ravi Algama for the Defendant-Appellant
Johnson Peiris with Ms. Dilmi Amarasinghe for the Petitioner-Respondent

Argued on: 12.09.2024

Decided on: 06.02.2026

Janak De Silva, J.

This appeal arises from a sale of goods transaction. The Plaintiff-Respondent (Plaintiff) is engaged in the business of manufacturing and supplying Tor Steel used in the construction industry. Since 2006, the Defendant-Appellant (Defendant) established commercial relations with the Plaintiff for the purchase of Tor Steel of various gauges on credit basis.

The Plaintiff instituted action to recover a total sum of Rs. 5,057,464.87, consisting of a capital sum of Rs. 2,987,375.97 together with interest in a sum of Rs. 2,070,089/= on goods sold and delivered. There were in total five invoices and these transactions took place during 2008.

The Defendant denied liability and raised two principal defences, namely that the High Court of the Western Province holden in Colombo (Commercial High Court) did not have jurisdiction to hear and determine the action and that in any event the action was prescribed.

The Plaintiff led the evidence of two witnesses and marked several documents. The Defendant did not lead any evidence.

The learned judge of the Commercial High Court rejected both defences raised by the Defendant and entered judgment in favour of the Plaintiff.

At the hearing, the learned counsel for the Defendant, acting in the best traditions of the Bar, conceded that goods to the value of Rs. 2.9 million was in fact received. This concession was correctly made as the evidence clearly establishes the sale and delivery of the goods. The grounds of appeal were limited to two principal submissions.

Firstly, it was submitted that this action is prescribed in terms of Section 8 of the Prescription Ordinance, and the learned judge of the Commercial High Court erred in law in concluding that the action is not prescribed as it is Section 6 of the Prescription Ordinance that is applicable. This submission is based on the alleged failure on the part of the Plaintiff to establish the existence of any written agreement or agreements.

Secondly and without prejudice, the Defendant submitted that even if it is found that a valid written contract or contracts existed between the parties, the learned judge of the Commercial High Court nonetheless erred in law in concluding that the Commercial High Court possessed jurisdiction to hear and determine the action as the capital sum in issue was less than Rs. 3 million, and that there existed no agreement between the parties for the payment of interest.

Prescription

The conflicting positions between parties on prescription arise due to the different time frames stipulated in Sections 6 and 8 of the Prescription Ordinance. An action on any matter falling within Section 6 must be instituted within six years from the date of the breach of any written contract or agreement, whereas an action on any matter falling within Section 8 must be brought within one year after the debt shall have become due.

I examined the interface between Sections 7 and 8 of the Prescription Ordinance in ***Wijitha Group of Companies (Private) Limited v. Capital Printpack (Private) Limited*** **[S.C. Appeal 21/2017, S.C.M. 09.06.2023]** and held as follows:

1. Where a given cause of action appears to fall within the scope of more than one provision of an Act, our Courts have consistently held that specific provision must be operative while the general provision must be taken to affect only other parts of the Act to which it may properly apply.
2. A sale of goods transaction can be based on either a written or unwritten contract.
3. A claim for the price of goods sold and delivered under a written contract is governed by section 6 of the Prescription Ordinance.
4. If a claim for the price of goods sold and delivered under an unwritten contract is held to be governed by Section 7 of the Prescription Ordinance, the words "goods sold and delivered" in Section 8 become redundant. In interpreting any section of an Act, the Court cannot make any part of the Act superfluous. Accordingly, a claim for the price of goods sold and delivered on an unwritten contract, falls within Section 8 of the Prescription Ordinance.

Written Contract

The Plaintiff mainly relies on purchase orders marked P2 to P6 and tax invoices marked P7 to P11 to prove that there was a written contract between the parties.

The Plaintiff further submitted that the Defendant's conduct, in purchasing steel products on more than 130 purchase orders between 2006 and 2008 identified as P18(i) to P18(xxv), P19(i) to P19(xlii), and P20(i) to P20(lxi) including P2 to P11, affirmed its acceptance of the contractual relationship.

Additionally, the Plaintiff submitted that the letter marked P1 dated 28 November 2006 written following a discussion between the parties, sets out, *inter alia*, a credit period of thirty days and the right to recover a penalty of Rs. 30 per metric ton for each day of delay in payment, as reflected in item 3 of P1. While the Defendant did not deny receipt of this letter, or object to it being marked in evidence, it did not produce any document indicating a written rejection or repudiation of the terms therein.

As the learned judge of the Commercial High Court observed (Page 2 of the judgment which is at page 519 of the Appeal Brief), "*It is significant to note that none of those documents was contested or submitted to be marked subject to proof by Counsel for the Defendant. In other words all of those documents are admitted documents."*

Nevertheless, the Defendant submitted that documents marked P1 to P11 fail to meet the degree of formality required to constitute a written agreement. It was further submitted that any attempt to read these documents collectively as constituting written contracts would lead to absurdity, and that at best they merely corroborate the occurrence of five transactions of goods sold and delivered.

Reliance was placed on ***Ceylon Insurance Company Ltd v. Diesel and Motor Engineering Company Ltd***. **[79(2) NLR 5 at 8]**, where Vythialingam J. held:

> *"For the purpose of constituting a written promise, contract, bargain or agreement no special form of writing is required. However, there must be some degree of formality and a mere exchange of letters may not be enough."*

With regards to P1, the Defendant submitted that it was signed only by the Plaintiff, and that its admission at trial merely established its authenticity, not the Defendant's acceptance of its terms. It was further submitted that P1 was not referred to in any of the documents marked P2 to P11, that its contents were general in nature and not transaction-specific, and that the significant gap between the date of P1 and the dates of P2 to P11 militated against any inference that the documents formed part of a single written contract. On this basis, it was submitted that P1 could not form part of a written agreement and, at most, constituted an invitation to treat.

Accordingly, the Defendant submitted that documents P1 to P11 did not constitute a written contract, as they did not refer to each other in a manner permitting them to be read together, were not sufficiently signed by both parties, and did not demonstrate mutual agreement on the essential terms in writing, as required by the authorities relied upon.

The letter marked P1, relied upon by the Plaintiff, predates the purchase orders and invoices forming the subject matter of the present action by approximately two years. It does not refer, either expressly or by necessary implication, to the specific transactions, quantities, or invoices now in dispute. Nor does it constitute an offer and acceptance referable to those later dealings. A document executed substantially prior to the impugned transactions, without express incorporation or reference thereto, cannot by itself be elevated to the status of a binding written contract governing later commercial dealings. Accordingly, P1 cannot form the sole or primary legal basis upon which the Plaintiff's claim is founded.

However, the evidentiary value of P1 is not thereby rendered nugatory. While it does not independently establish a written contract in relation to the orders in issue, it remains relevant as part of the surrounding circumstances evidencing the nature of the commercial relationship between the parties. It reflects the terms proposed and

communicated at an earlier stage of their dealings and provides context as to the commercial understanding that existed between them prior to, and during, the continuation of business relations.

It is settled law that no specific form of writing is required to constitute a written promise, contract, bargain or agreement. In ***Ceylon Insurance Company Ltd.*** **[supra]** it was held that while *no special formality* is necessary, there must be sufficient written material evidencing the agreement between the parties.

In examining the meaning of the words *"written contract or agreement"* in Section 6 of the Prescription Ordinance, it must be borne in mind that a written contract or agreement is formed only where there is *consensus ad idem* or manifested meeting of minds. This is achieved where there is a manifested offer and a manifested acceptance. Where there is any writing, demonstrating an express or implied manifested offer and an express or implied manifested acceptance, there is *consensus ad idem* or meeting of minds in written form, and a written contract or agreement within the meaning of Section 6.

There are five purchase orders submitted in writing by the Defendant marked P2 to P6 dated 26.09.2008, 26.09.2008, 21.08.2008, 21.07.2008, and 21.07.2008 respectively. These purchase orders carry the numbers 3346, 3348, 3230, 3148 and 3146 respectively. They include the name and other details of the Defendant printed on them. Additionally, each of these documents contain the signatures of the Supplies Officer and another representative of the Defendant. They contain the description, unit, rate, quantity, value and gross value of the goods. All these purchase orders were marked without any objection from the Defendant.

The five tax invoices marked P7 to P11 dated 02.10.2008, 02.10.2008, 23.08.2008, 24.07.2008 and 21.07.2008 respectively contain the numbers of the purchase orders issued by the Defendant and the signatures of two representatives of the Defendant in

the place reserved for “Customer Sign”. They contain the description of the item, length, unit, quantity, rate, amount, VAT rate and total. The description of items therein matches the description of the items in the respective purchase orders. These were marked without any objection by the Defendant.

Moreover, the Plaintiff had marked copies of the purchase orders and tax invoices as part and parcel of the plaint. In the answer, the Defendant did not put in issue the actual or apparent authority of the signatories to bind it. Neither were any issues raised on them.

The tax invoices carried a stipulation of interest at the rate of 26% per annum on overdue payments. As correctly submitted by the Plaintiff, these invoices must be treated as counter-offers, in that while the purchase orders issued by the Defendant set out the description of the goods, quantity and the price, the tax invoices issued by the Plaintiff set out the two parties, description of the steel supplied, the quantities delivered, the price payable, the credit period, and the applicable interest in the event of default. Thus, the purchase orders amounted to offers, the new condition in the invoices on interest payable amounted to counter-offers, and the signatures of the Defendant’s representatives on the invoices, whose authority was never challenged, amounted to acceptances of those counter-offers.

The interest stipulation was clearly printed on the face of each invoice. In ***L'Estrange v. F Graucob Ltd.*** **[(1934) 2 KB 394**] it was held that a party who signs or accepts a commercial document is bound by its terms, whether or not such terms were read, provided they were reasonably brought to the party’s notice. A contracting party bears a responsibility to examine documents upon which it acts and cannot escape liability by asserting internal lapses or ignorance of their contents.

The Defendant failed to lead any evidence to contradict the evidence led by the Plaintiff. In ***L. Edrick De Silva v. Chandradasa De Silva*** **[70 N.L.R. 169 at 174]** H.N.G. Fernando, C.J., observed that where the plaintiff has in a civil case led evidence sufficient in law to prove a *factum probandum*, the failure of the defendant to adduce evidence which contradicts it adds a new factor in favour of the plaintiff. There is then an additional "matter before the Court", which the definition in Section 3 of the Evidence Ordinance requires the Court to take into account, namely that the evidence led by the plaintiff is uncontradicted [See ***Gnanapala Weerakoon Rathnayake v. Don Andrayas Rajapaksa*** **(S.C. Appeal No. 120/2009, S.C.M. 01.08.2017 at page 5)**].

Where goods are supplied pursuant to invoices containing defined terms issued in response to purchase orders sent by the buyer, and such invoices are signed and accepted without demur by the buyer or authorised representative, the law will not permit the buyer to later deny the contractual force of those documents contrary to established commercial practices. To hold otherwise would allow a buyer to negate legal certainty in commercial transactions.

According to Wessels [*The Law of Contract in South Africa*, Vol. I, page 565]:

> *"The written contract may be contained in more than one document, provided that the one so refers to the other that the two may be read together and that the two considered together are sufficiently signed (Jones v. Reynolds, loc. cit. ; Ridgway v. Wharton, 1854, 6 H.L. Cas. 238 : 27 L.J. Ch. 46 : Sarl v. Bourdillon, 1856, 1 C.B. (N.S.) 188 : 26 L.J.C.P. 78 : 140 E.R. 79 ; but see Jacob v. Kirk, 1839, 2 Mood. & R. 221 ; Jones Brothers v. Joyner, 1900, 82 L.T. 768). The writing or writings must contain the essential terms of the contract and must show that the parties have agreed to the terms (Gray v. Smith, 1889, 43 Ch.D. 208 C.A. : 59 L.J. ch. 145 : 62 L.T. 335 ; Hussey v. Horne Payne, 1879 L.R. 4 A.C. 311 : 48 L.J. Ch. 846 : 41 L.T.I. ; Graaf v.*

Cullen, 1911 T.P.D. 421, 425 ; Archer v. Baynes, 1850, 5 Exch. 625 : 20 L.J. Ex. 54. See also Amod v. Parsotham and Others, 1929 N.P.D. 163)."

The purchase orders P2 to P6 and tax invoices P7 to P11, read together clearly establish the existence of a written contract between the Plaintiff and Defendant for the sale of goods.

Accordingly, I hold that the Plaintiff sued the Defendant on five written contracts and whether this action is prescribed must be determined by reference to Section 6 of the Prescription Ordinance.

The purchase orders and tax invoices are dated 2008 and this action was instituted in 2011. I therefore hold that this action is not prescribed.

Jurisdiction

The jurisdiction of the Commercial High Court is established in Section 2(1) of the High Court of the Provinces (Special Provisions) Act No. 10 of 1996 (Act). In ***Trans Orbit Global Logistics (Pvt) Limited v. People's Bank*** **[S.C. Appeal No. 92/2020, S.C.M. 13.12.2021]**, I examined this jurisdiction and held (at page 5) as follows:

"The jurisdiction so vested in the Commercial High Court has two components, namely:

(1) Subject Matter Jurisdiction

(2) Territorial Jurisdiction

The subject matter jurisdiction is set out in the First Schedule to the Act while the territorial jurisdiction is set out in section 2(1) of the Act. The resulting jurisdiction is rendered exclusively to the Commercial High Court.

The territorial jurisdiction depends upon where the party or parties defendant to such action resides or reside, or the cause of action has arisen, or the contract sought to be enforced was made, or in the case of applications or proceeding under

the Companies Act, No. 17 of 1982 the registered office of the Company is situated."

The territorial jurisdiction is not in issue. The Defendant impugns the subject matter jurisdiction of the Commercial High Court to hear and determine this action.

The subject matter jurisdiction, relevant to this action (as specified in Gazette Extraordinary No. 943/12 dated 01.10.1996), is set out in Item (1) of the First Schedule to the Act which reads as follows:

> *"All actions where the cause of action has arisen out of commercial transactions (including causes of action relating to banking, the export merchandise, services affreightment, insurance, mercantile agency, mercantile usage, and the construction of any mercantile document) in which the debt, damage or demand is for a sum exceeding three million rupees or such other amount as may be fixed by the Minister from time to time, by Notification published in the Gazette, other than actions instituted under the Debt Recovery (Special provisions) Act, No. 2 of 1990."*

Accordingly, at the relevant time, the Commercial High Court was vested with jurisdiction only in respect of actions arising out of commercial transactions where the *debt, damage or demand exceeded* Rs. 3 million.

A fundamental question that arises in examining this element of the subject matter jurisdiction of the Commercial High Court is whether these words refer to what is pleaded in the plaint or whether it means what is in fact actually awarded after trial. Both have certain weaknesses.

If it is contingent on what is claimed in the plaint, it is possible that a plaintiff may institute action claiming an exaggerated sum merely to come within the jurisdiction of the Commercial High Court and end up with a judgment falling below this element of the Court's subject matter jurisdiction.

If it is contingent on what is in fact actually awarded after trial, there lies the danger of the time and resources of litigants and Court being consumed for an action which does not fall within its jurisdiction.

The Act does not provide definitions of the words “debt”, “damage” or “demand”. In ***Cornel & Company Limited vs. Mitsui and Company Limited and Others*** **[(2000) 1 Sri.L.R. 57]**, Court was called upon to interpret Item 1 of the First Schedule to the Act. After an exhaustive examination of both the Sinhala and English texts, Fernando, J. (at page 66) held as follows:

> *“Accordingly, the first condition is much wider than the English text suggests, and is satisfied even if the action only "relates to" or "involves" a debt, damage or demand in a sum which exceeds three million rupees (although it does not seek to recover such a sum).”*

In ***Trans Orbit Global Logistics*** **(Pvt) Limited [supra]**, I approved the wider interpretation of Item 1 of the First Schedule to the Act.

The word “demand” in Item (1) of the First Schedule to the Act indicates that the subject matter jurisdiction is not contingent on the sum awarded by way of a judgment. A demand necessarily connotes a stage prior to the validity of such *demand* being adjudicated by Court and transformed into a judgment. The three words “debt”, “damage” or “demand” in Item (1) of the First Schedule to the Act must be interpreted in an *ejusdem generis* manner.

I prefer to establish jurisdiction of the Commercial High Court on the sum claimed in the plaint as debt, damage or demand, and thereby bring certainty, rather than waste the time and resources of litigants and Court by establishing jurisdiction on the sum awarded in the judgment which may lead to the dismissal of the action merely because the sum finally awarded is lower than the amount prescribed by the Minister. The danger of

plaintiffs making an exaggerated claim of a debt, damage or demand merely to come within the jurisdiction of the Commercial High Court can be countered by depriving the plaintiff of the costs if the Court is satisfied of such conduct on the part of the plaintiff.

Therefore, I hold that this element of the subject matter jurisdiction of the Commercial High Court is established where the debt, damage or demand set out in the plaint exceeds the amount as may be fixed by the Minister from time to time, by Notification published in the Gazette although the plaintiff may not finally obtain judgment in a sum which exceeds the amount fixed by the Minister.

The total amount claimed by the Plaintiff is Rs. 5,057,464.97 which brings the action within the subject matter jurisdiction of the Commercial High Court. In any event, the Commercial High Court correctly entered judgment in the same amount.

For all the foregoing reasons, I hold that the findings of the Commercial High Court on the issues of prescription and jurisdiction are correct in law.

Accordingly, the judgment of the Commercial High Court dated 19.03.2013 is affirmed.

The Defendant has appealed without any reasonable prospects of success. I am therefore inclined to award high costs. The appeal is dismissed with costs fixed at Rs. 5,00,000/=.

JUDGE OF THE SUPREME COURT

S. Thurairaja, P.C., J.

I agree.

JUDGE OF THE SUPREME COURT

Kumudini Wickremasinghe, J.

I agree.

JUDGE OF THE SUPREME COURT