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

Sri Lanka Cricket,
No. 35, Maitland Place,
Colombo 07,
represented by:

SC/CHC/APPEAL/23/2023
CHC/168/2015/MR

1. Jayantha Dharmadasa,
President, Sri Lanka Cricket

1(a). Thilanga Sumathipala,
President, Sri Lanka Cricket

1(b). Shammi Silva,
President, Sri Lanka Cricket

2. Nishantha Ranatunga,
Secretary, Sri Lanka Cricket

2(a). Roshan Biyanwala,
Secretary, Sri Lanka Cricket

2(b). Mohan de Silva,
Secretary, Sri Lanka Cricket

3. Mohan de Silva,
Vice-President, Sri Lanka Cricket

3(a). Chryshantha Kapuwatte,
Assistant Secretary, Sri Lanka Cricket

4. K. Mathivanan,
Vice-President, Sri Lanka Cricket

4(a). Jayantha Dharmadasa,
Vice-President, Sri Lanka Cricket

5. Ravin Wickramaratna,
Vice-President, Sri Lanka Cricket

6. Shami Silva,
Treasurer, Sri Lanka Cricket

6(a). Sujeeva Godaliyadda,
Treasurer, Sri Lanka Cricket

7. Lalith Rambukwalla,
Assistant Treasurer, Sri Lanka Cricket

7(a). Lasantha Wickremasinghe,
Assistant Treasurer, Sri Lanka Cricket

8. Kamal Padmasiri,
Secretary, Sports Ministry,
Competent Authority

8(a). Sudath Chandrasekara,
Ministry Representative

All of the above at No. 35, Maitland Place, Colombo 07.
Defendant-Appellant

Vs.

ACL Cables PLC,
No. 21, Norris Canal Road,
Colombo 10.
Plaintiff-Respondent

Before: Hon. Justice Mahinda Samayawardhena
Hon. Justice Arjuna Obeyesekere
Hon. Justice Sampath K.B. Wijeratne

Counsel: Ronald Perera, P.C., with Suren Fernando for the Defendant-Appellant.

Dr. Romesh de Silva, P.C., with Shanaka Coorey and Prashan Gunarathne for the Plaintiff-Respondent.

Written submissions:

By the Appellant on 16.04.2025

By the Respondent on 14.10.2025

Argued on: 06.11.2025

Decided on: 07.09.2026

Samayawardhena, J.

Factual matrix

The Plaintiff Company, ACL Cables PLC, instituted this action in the Commercial High Court against the Defendant, Sri Lanka Cricket, seeking recovery of USD 332,086.01 or its equivalent in Sri Lankan Rupees together with legal interest from the date of institution of the action until payment in full. The Defendant filed answer praying for the dismissal of the Plaintiff's action.

At the trial, the Plaintiff led the evidence of its Executive Director and produced documents marked X1(a) to X11. Although the Plaintiff also called another witness, no material evidence was elicited through him. The Defendant did not call any witnesses but produced, through cross-examination of the Plaintiff's first witness, copies of the plaint and answer filed in another action, marked D1 and D2.

After trial, by judgment dated 12.05.2023, the learned Judge of the Commercial High Court entered judgment for the Plaintiff. Hence, this appeal by the Defendant.

The Plaintiff's case, as unfolded through the evidence of its Executive Director, is as follows.

The Plaintiff is a company engaged in the manufacture and supply of electrical cables in Sri Lanka. The Plaintiff and the Defendant entered into a written agreement dated 14.10.2010 marked X4, relating to the supply of electrical cables required for the floodlighting systems of the Pallekele International Cricket Stadium and the Khettarama International Cricket Stadium for the World Cup 2011. The Defendant had entered into contracts with the State Engineering Corporation for the design, supply, installation, testing, commissioning and maintenance of those floodlighting systems. The State Engineering Corporation had, in turn, subcontracted part of the work to M/s DIMO Siteco Joint Venture. A document dated 22.07.2010 relating to this arrangement was marked X8(a).

Pursuant to the agreement marked X4, the Plaintiff issued two pro forma invoices for USD 203,044.64 and USD 129,041.37 respectively, aggregating USD 332,086.01. These invoices were marked X5(a) and X5(b). According to the Plaintiff, the electrical cables covered by those invoices were duly supplied for the Pallekele and Khettarama projects.

In support of the supplies made for the Pallekele project, the Plaintiff produced a schedule marked X6(a), together with the corresponding tax invoices and delivery notes marked X6(b)(1) to X6(b)(44). In respect of the Khettarama project, the Plaintiff produced a schedule marked X7(a), together with the corresponding tax invoices and delivery notes marked X7(b)(1) to X7(b)(38).

The Plaintiff's evidence was that the arrangement contemplated exemptions from Customs duty, VAT and NBT. According to the Plaintiff, it qualified under the Scheme for Temporary Importation for Export, under which qualifying transactions were exempt from Customs duty. It was further stated that, in order to obtain those concessions, the invoices had to be addressed to the Defendant, as the principal project owner, and denominated in foreign currency.

The Plaintiff further stated that the VAT exemption contemplated under the agreement marked X4 was subsequently obtained by the Defendant in respect of the invoices marked X5(a) and X5(b). In support of this position, the Plaintiff relied on a letter dated 05.08.2011 addressed by the Ministry of Finance and Planning to the Director General of Sri Lanka Customs, produced marked X9(a).

It was the Plaintiff's position that the amounts payable for the electrical cables supplied were payable directly by the Defendant and not by the State Engineering Corporation or any other party. In support of that position, the Plaintiff relied on a letter dated 02.01.2013 addressed by the State Engineering Corporation to the Defendant marked X9(b).

Particular reliance was placed on the letter dated 30.06.2011 marked X11. According to the Plaintiff, by that letter the Defendant expressly acknowledged that a sum of Rs. 38,527,589.64 was due and payable to the Plaintiff as at 30.06.2011. The Plaintiff relied upon that document as constituting an acknowledgment of debt and an undertaking by the Defendant to pay the said sum.

As payment was not forthcoming, the Plaintiff, through its Attorneys-at-Law, sent a letter of demand dated 17.10.2014 calling upon the Defendant to settle the outstanding amount. The letter of demand and the relevant registered postal articles were produced in evidence marked X10(c) and X10(d). The Defendant failed to respond to the letter of demand or to make payment.

On that basis, the Plaintiff claims to be entitled to recover the sum of USD 332,086.01 or its equivalent in Sri Lankan Rupees. The Plaintiff further pleads that, in the circumstances, the Defendant has been unjustly enriched at its expense.

At the trial, the Defendant raised, by way of issues, the following principal defences:

1. Sri Lanka Cricket is an unincorporated body and, under its Constitution marked X3(b), the Acting Chief Executive Officer had no authority to enter into the agreement marked X4 or to issue the letter of acknowledgment of the debt marked X11. Accordingly, the Defendant is not bound by either document.

2. In any event, the Plaintiff's cause of action is prescribed in law.

Is Sri Lanka Cricket bound by the acts of its Acting Chief Executive Officer?

Let me first consider the principal argument advanced on behalf of the Defendant that Sri Lanka Cricket, being an unincorporated association, was not bound by the agreement marked X4 or the subsequent letter marked X11, as the Acting Chief Executive Officer lacked authority under the Constitution of Sri Lanka Cricket to execute those documents on its behalf.

At the outset, it is necessary to identify the true legal issue that arises for determination. The mere fact that Sri Lanka Cricket is an unincorporated association does not, by itself, preclude contractual relations from being entered into through persons acting on its behalf. The legal effect of acts purportedly done on behalf of an unincorporated association falls to be determined by the ordinary principles of agency and, in particular, by the authority of the person who purported to act on its behalf. The question, therefore, is not whether Sri Lanka Cricket is incorporated, but whether, on the facts of the present case, the Acting Chief Executive Officer possessed the requisite authority to enter into the contract on behalf of Sri Lanka Cricket, or whether Sri Lanka Cricket is otherwise precluded from denying that authority.

The general rule of the law of agency is that a principal is bound by contracts entered into by an agent acting within the scope of his authority. Thus, *Bowstead & Reynolds on Agency* (17th edition) states at page 459 that "*where a person contracts as an agent for a principal, the* *contract is the contract of the principal and not that of the agent; and, prima facie, at common law the only person who may sue is the principal and the only person who can be sued is the principal.*"

Learned President's Counsel for the Defendant relies heavily upon the Constitution of Sri Lanka Cricket, particularly Clauses 13(d), 24(c) and 27(b), to contend that the powers of the Acting Chief Executive Officer were confined to administrative functions and that he lacked authority to enter into the agreement marked X4 or to issue the letter of acknowledgment marked X11.

The existence of limitations upon an agent's actual authority does not necessarily conclude the inquiry. The law draws a distinction between actual authority (whether express or implied) and ostensible authority (also known as apparent authority).

The distinction between actual authority, on the one hand, and ostensible or apparent authority, on the other, was authoritatively explained by Diplock L.J. in *Freeman & Lockyer (A Firm) v. Buckhurst Park Properties (Mangal) Ltd.* [1964] 2 QB 480. The distinction was further elucidated by Lord Denning M.R. in *Hely-Hutchinson v. Brayhead Ltd.* [1968] 1 QB 549. Actual authority and apparent authority are distinct and independent concepts, although they frequently coexist. Actual authority is a legal relationship between the principal and the agent created by a consensual agreement to which they alone are parties. It may be either express or implied. Express authority arises where authority is conferred by express words, for example, by a resolution of the board of directors. Implied authority, on the other hand, is inferred from the conduct of the parties or the surrounding circumstances, as where a board appoints one of its directors as managing director, thereby conferring upon him the authority ordinarily incidental to that office.

Ostensible or apparent authority, by contrast, does not depend upon authority actually conferred by the principal. Rather, it arises where the principal, by words or conduct, represents that the agent has authority to act on its behalf, and a third party, acting in good faith, relies upon that representation. In such circumstances, the principal is estopped from denying the agent's authority and is bound by the acts of the agent performed within the scope of the apparent authority so represented. In short, the doctrine is founded upon the broader principle of estoppel.

Thus, Handley, in *Estoppel by Conduct and Election* (Thomson Sweet & Maxwell, 2006), states at page 3:

> *Where a representor by his words or conduct has made a representation which justified the representee in believing that a certain state of fact exists, and in that belief the representee altered his position, the representor is not permitted to affirm against the representee that a different state of fact existed at that time if the representee would be materially prejudiced by his change of position if a departure from the representation were permitted.*

The representation giving rise to ostensible authority can be made by conduct. In *Armagas Ltd. v. Mundogas SA (The Ocean Frost)* [1986] AC 717, Robert Goff L.J. explained the principle in the following terms:

> *The representation which creates ostensible authority may take a variety of forms; but the most common is a representation by conduct, by permitting the agent to act in some way in the conduct of the principal's business with other persons, and thereby representing that the agent has the authority which an agent so acting in the conduct of his principal's business usually has.*

Likewise, *Anson's Law of Contract* (Sir Jack Beatson, Andrew Burrows and John Cartwright, 31st edition, Oxford University Press, 2020) explains the doctrine in the following terms at page 687:

> *The principal may, by words or conduct, create an inference that an agent has authority to act on behalf of the principal even though no authority exists in fact. In such a case if the agent contracts within*

> *the limits of the apparent authority, although without any actual authority, the principal will be bound to third parties by the agent's acts.*

Actual authority and ostensible authority may coincide, but they are not necessarily co-extensive. In particular, the ostensible authority of an officer may extend beyond the limits of his actual authority where those limits have not been made known to the third party dealing with him. Lord Denning M.R. explained this distinction in *Hely-Hutchinson v. Brayhead Ltd.* [1968] 1 QB 549 at 583:

> *Ostensible or apparent authority is the authority of an agent as it appears to others. It often coincides with actual authority. Thus, when the board appoint one of their number to be managing director, they invest him not only with implied authority, but also with ostensible authority to do all such things as fall within the usual scope of that office. Other people who see him acting as managing director are entitled to assume that he has the usual authority of a managing director. But sometimes ostensible authority exceeds actual authority. For instance, when the board appoint the managing director, they may expressly limit his authority by saying he is not to order goods worth more than £500 without the sanction of the board. In that case his actual authority is subject to the £500 limitation, but his ostensible authority includes all the usual authority of a managing director. The company is bound by his ostensible authority in his dealings with those who do not know of the limitation.*

In *Abeywickrema v. Pathirana and Others* [1986] 1 Sri LR 120, it was recognised that, in an appropriate case, a principal may be precluded from denying the authority of an agent where, by his words or conduct, he has induced another to act upon the belief that such authority existed.

The modern English law continues to recognise the distinction between actual and ostensible authority as discussed above. In *The Law Debenture Trust Corporation plc v. Ukraine* [2023] UKSC 11, the UK Supreme Court reaffirmed those principles, observing at paras 38-39 as follows:

> *38. The general principles of agency relevant to this appeal may be summarised in the following way. The authority of an agent may be actual or apparent. Actual authority describes a legal relationship between principal and agent created by a consensual agreement to which they alone are parties, and pursuant to which the principal grants to the agent the right to enter into legal relations with third parties on the principal's behalf. To this agreement a third party contractor is a stranger: he may be totally ignorant of the existence of any authority on the part of the agent; but if the agent does enter into a contract pursuant to his actual authority, it creates contractual rights and liabilities as between the principal and the contractor: Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd [1964] 2 QB 480, 502, per Diplock LJ. As we will explain further in a moment, actual authority may be express or implied.*
>
> *39. Apparent or ostensible authority, on the other hand, describes a relationship between the principal and a contractor which arises from a representation made by the principal to the contractor that an agent has authority to enter on behalf of the principal into a contract within the scope of that apparent authority. The representation, if acted upon by the contractor, by entering into a contract with the agent, creates an estoppel, preventing the principal from asserting that he is not bound by the obligations which the contract imposes on him: Freeman & Lockyer at 503, per Diplock LJ. For the estoppel to operate the representation must be one upon which the contractor could and did reasonably rely. The doctrine protects a contractor who is entitled to assume that the person with whom he is dealing has the authority which he appears to have. But*

> *the principle cannot be relied upon by a contractor who is put on inquiry, by which we mean that the contractor fails to make the inquiries that a reasonable person would have made in all the circumstances to verify that the person with whom he is dealing does indeed have authority: East Asia Co Ltd v PT Satria Tirtatama Energindo [2019] UKPC 30; [2020] 2 All ER 294 ("PT Satria"), paras 92 and 93.*

However, it shall be clearly understood that, as the House of Lords emphasised in *Armagas Ltd. v. Mundogas SA (The Ocean Frost)* [1986] AC 717, ostensible authority arises from a representation made by the principal, whether by words or conduct, and not merely from the agent's own assertion of authority. An agent cannot create apparent authority by representing that he has authority to act on behalf of the principal. The representation must emanate from the principal, and it is only where the third party has reasonably relied upon such representation that the principal will be estopped from denying the agent's authority.

The principles discussed above shall now be applied to the facts of the present case.

There is no dispute that the agreement marked X4 was executed by the Acting Chief Executive Officer of Sri Lanka Cricket, Mr. Ajith Jayasekara. There is likewise no dispute that the subsequent letter dated 30.06.2011 marked X11, acknowledging the Defendant's liability in the sum of Rs. 38,527,589.64 and undertaking to make payment, was issued on the official letterhead of Sri Lanka Cricket under the signature of the same Acting Chief Executive Officer. The Defendant does not allege that either document is a forgery, nor does it dispute that they were signed by the Acting Chief Executive Officer. Its sole contention is that, under the Constitution of Sri Lanka Cricket, the Acting Chief Executive Officer lacked authority to execute those documents.

That submission proceeds upon an unduly narrow conception of the law of agency.

The uncontroverted evidence of the Executive Director of the Plaintiff Company was that, throughout the transaction, the Acting Chief Executive Officer was the officer who dealt with all parties concerned, including the State Engineering Corporation, negotiated the transaction on behalf of Sri Lanka Cricket, executed the agreement marked X4 and thereafter issued the acknowledgment contained in document X11. The Plaintiff negotiated throughout with the Acting Chief Executive Officer as the authorised representative of Sri Lanka Cricket. The agreement was executed openly in that capacity, and the Plaintiff thereafter supplied the electrical cables required for the floodlighting systems of the Pallekele International Cricket Stadium and the Khettarama International Cricket Stadium in accordance with that agreement. Those supplies were accepted and utilised for the Defendant's projects. Indeed, the arrangement under which the invoices were addressed to Sri Lanka Cricket and denominated in United States Dollars was adopted in order to obtain the Customs and tax concessions available for the project, and the Defendant subsequently obtained the VAT exemption contemplated by the agreement. These are not the acts of a stranger purporting to bind the Defendant without its knowledge. They are acts carried out in furtherance of a project undertaken for and on behalf of Sri Lanka Cricket itself.

Equally significant is the Defendant's subsequent conduct. Document X11 was issued nearly eight months after the execution of the agreement. By that document, the Acting Chief Executive Officer expressly acknowledged the Defendant's indebtedness and undertook to settle the outstanding sum. If, as the Defendant now contends, the Acting Chief Executive Officer had acted wholly without authority, one would have expected Sri Lanka Cricket to repudiate both documents promptly. No such repudiation was forthcoming. There is no evidence that, at any stage during the transaction or thereafter, Sri Lanka Cricket questioned the Acting Chief Executive Officer's authority, informed the Plaintiff that he lacked authority to act on its behalf, or notified the Plaintiff that it should not rely upon documents X4 and X11. Nor is there any evidence that Sri Lanka Cricket instituted any disciplinary inquiry or took any other action against the Acting Chief Executive Officer for having allegedly exceeded his authority. On the contrary, Sri Lanka Cricket remained silent whilst retaining the full benefit of the Plaintiff's performance.

The totality of this evidence demonstrates that Sri Lanka Cricket itself held out the Acting Chief Executive Officer as possessing the authority ordinarily incident to his office.

Learned President's Counsel for the Defendant further submitted that the Plaintiff was in possession of the Constitution of Sri Lanka Cricket and was therefore aware, or ought reasonably to have been aware, of the limitations imposed upon the authority of the Acting Chief Executive Officer. Accordingly, it was argued that the Plaintiff could not rely upon the doctrine of ostensible authority.

It is true that a person dealing with another cannot shut his eyes to circumstances which would put a reasonable person upon inquiry. As the UK Supreme Court observed in *The Law Debenture Trust Corporation plc v. Ukraine* [2023] UKSC 11 at para 39, the doctrine of ostensible authority "cannot be relied upon by a contractor who is put on inquiry", that is to say, where the contractor fails to make the inquiries which a reasonable person would have made in all the circumstances to verify that the person with whom he was dealing possessed the requisite authority. The same principle was recently reaffirmed by the King's Bench Division of the High Court in *Logix Aero Ireland Ltd. v. Siam Aero Repair Co. Ltd.* [2025] EWHC 1283 (KB).

In my view, however, the Plaintiff was not put on inquiry merely because it was in possession of the Constitution of Sri Lanka Cricket. Mere possession of the Constitution does not, without more, put a contracting party on notice that the officer with whom it is dealing lacks authority to bind the organisation. Whether a person has been put on inquiry depends upon the whole of the circumstances surrounding the transaction and not upon a single fact viewed in isolation.

The Plaintiff was entitled to assume that Sri Lanka Cricket had complied with its own internal requirements before permitting its Acting Chief Executive Officer to execute a commercial agreement and thereafter acknowledge liability under its official letterhead. The Plaintiff was not required to investigate whether every internal approval or authorisation contemplated by the Constitution had in fact been obtained. The law does not ordinarily impose such a burden upon a person dealing in good faith with an organisation.

Although the *Turquand Rule*, originating in *Royal British Bank v. Turquand* (1856) 6 E & B 327; 119 ER 886, and reflected in sections 21 and 22 of the Companies Act, No. 7 of 2007 do not directly govern an unincorporated association such as Sri Lanka Cricket, they nevertheless reflect an important principle of commercial law, namely that persons dealing in good faith with an organisation should not ordinarily be prejudiced by undisclosed defects or irregularities in its internal management. That policy reinforces, rather than supplants, the common law doctrines of agency and estoppel applicable in the present case. A similar approach is discernible in *Jupiter Cigarette & Tobacco Co. Ltd. v. Soysa* (1971) 74 NLR 241, where the Privy Council was reluctant to permit internal procedural irregularities to defeat the legitimate expectations of a third party dealing in good faith.

Against that legal background, the provisions of the Constitution relied upon by the Defendant undoubtedly regulate the internal administration of Sri Lanka Cricket and define the limits of the Acting Chief Executive Officer's actual authority. They are therefore relevant in determining whether he possessed express or implied authority to enter into the transaction. They do not, however, necessarily determine whether Sri Lanka Cricket is bound, as against an innocent third party, by an apparent authority created by its own conduct. To hold otherwise would be to conflate the distinct concepts of actual authority and ostensible authority.

For all the above reasons, I hold that, notwithstanding any limitation contained in the Constitution of Sri Lanka Cricket upon the actual authority of its Acting Chief Executive Officer, the Defendant is bound by the agreement marked X4 and the acknowledgment contained in document X11. The learned Judge of the Commercial High Court was therefore correct in rejecting the Defendant's first defence.

Is the Plaintiff's cause of action prescribed?

This leads me to consider the Defendant's next contention that the Plaintiff's cause of action is prescribed.

Learned President's Counsel for the Defendant submitted that, notwithstanding the written agreement marked X4, the Plaintiff's cause of action was, in substance, one for the recovery of the price of goods sold and delivered. Since the electrical cables had admittedly been delivered by November 2010 and the present action was instituted only on 31.03.2015, it was argued that the claim was prescribed under section 8 of the Prescription Ordinance, No. 22 of 1871, which requires actions for goods sold and delivered to be instituted within one year from the date the debt became due.

I am unable to accept that submission.

The Plaintiff's action is founded principally upon the written agreement dated 14.10.2010 marked X4. The rights and obligations of the parties arise under that written agreement. The mere fact that the agreement contemplated the supply of goods does not alter the true nature of the Plaintiff's cause of action. Where the cause of action is founded upon a written contract, the applicable provision is section 6 of the Prescription Ordinance, which requires such an action to be instituted within six years from the date of the breach.

The distinction between sections 6 and 8 of the Prescription Ordinance has received judicial consideration on several occasions. In *Ceylon Insurance Co. Ltd. v. Diesel and Motor Engineering Co. Ltd.* (1978) 79 NLR 5, the Supreme Court reaffirmed the long-established principle that where the rights of the parties arise under a written contract, section 6 applies notwithstanding that the claim may relate to work performed or goods supplied pursuant to that contract. The Court rejected the contention that section 8 invariably governs claims relating to work and labour or goods sold and delivered. It held that, in the case of written contracts, section 6 is the governing provision.

That conclusion is consistent with the earlier decision in *Adamjee Lukmanjee & Sons Ltd. v. Abdul Careem Hallaje* (1961) 63 NLR 407. In that case, although the original debt arose in respect of goods sold and delivered, the debtor subsequently addressed a letter acknowledging the debt and unequivocally promising to pay it. It was held that such a letter constituted not merely an acknowledgment within the meaning of section 12 of the Prescription Ordinance, but a written promise to pay, with the consequence that section 6, and not section 8, governed the action.

The reasoning in those decisions applies with equal force to the present case.

Even assuming, for the sake of argument, that the Plaintiff's original claim could be characterised as one for goods sold and delivered, the matter does not end there. By letter dated 30.06.2011 marked X11, Sri Lanka Cricket expressly acknowledged that a sum of Rs. 38,527,589.64 was due to the Plaintiff and unequivocally undertook to settle that liability. That document constitutes far more than a mere acknowledgment of an existing debt. It contains an express written promise to pay the amount admitted to be due. Such a promise attracts the operation of section 6 of the Prescription Ordinance.

Accordingly, whether the Plaintiff's cause of action is viewed as arising directly under the written agreement marked X4 or under the subsequent written acknowledgment and promise to pay contained in X11, the applicable prescriptive period is six years. Since the present action was instituted on 31.03.2015, well within six years of both X4 and X11, the plea of prescription is unsustainable.

The learned Judge of the Commercial High Court was therefore correct in rejecting the Defendant's plea of prescription.

Failure to respond to the letter of demand

The Plaintiff, relying upon *Seneviratne and Another v. Lanka Orix Leasing Company Ltd.* [2006] 1 Sri LR 230 and *Metal Packing Ltd. and Another v. Sampath Bank Ltd.* [2008] 1 Sri LR 356, contended that the Defendant's failure to respond to the letter of demand dated 17.10.2014 amounts to an admission of the matters stated therein.

I am unable to accept that proposition in its entirety. Mere failure to respond to a letter of demand does not, by itself, establish liability or amount to a conclusive admission of the truth of every allegation contained therein. A plaintiff cannot succeed solely because the defendant elected not to respond to the letter of demand. Liability shall ultimately be determined upon the totality of the evidence.

Nevertheless, the unexplained failure to respond to a business letter asserting material facts is a relevant evidentiary circumstance. Section 114 of the Evidence Ordinance provides:

> *The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case.*

Accordingly, where a commercial entity or an organisation engaged in commercial dealings receives a letter asserting a substantial monetary claim which it knows to be unfounded, the ordinary course of business would require it to deny the claim or offer an explanation without undue delay. An unexplained failure to do so may justify the Court in presuming that the recipient had no genuine answer or explanation to the demand. Such a presumption is, however, rebuttable and shall be considered together with all the other evidence in the case.

In the present case, however, the learned Judge of the Commercial High Court did not base his decision solely upon the Defendant's failure to reply. The Plaintiff's case is independently supported by the written agreement marked X4, the written acknowledgment and promise to pay contained in document X11, and the other documentary evidence adduced at the trial. The Defendant's failure to respond to the letter of demand constitutes an additional evidentiary circumstance which, when considered together with the totality of the evidence, lends further support to the Plaintiff's case. In those circumstances, I find no error in the learned Judge attaching due evidentiary significance to the Defendant's failure to respond to the letter of demand.

Failure of the defendant to adduce evidence

The Plaintiff further submitted that, having established a strong *prima facie* case through oral and documentary evidence, the Defendant's failure to call any witness or adduce any evidence entitled the Court to draw an adverse inference against it under section 114(f) of the Evidence Ordinance. In support of that submission, reliance was placed upon *Rodrigo and Others v. St. Anthony's Hardware Stores Ltd.* (1995) 1 Sri LR 7. The Defendant, on the other hand, contended that no such burden arose because the Plaintiff had failed to establish the validity of the agreement relied upon and because several documents had been marked subject to proof. I am unable to accept that submission of the Defendant.

The legal burden of proving the Plaintiff's case undoubtedly remains upon the Plaintiff throughout the trial. That burden never shifts. However, once the Plaintiff adduces evidence establishing a *prima facie* case, an evidential burden shifts to the Defendant to adduce evidence in rebuttal or explanation. Although the Defendant bears no legal burden of disproving the Plaintiff's claim, the failure to do so is a circumstance to which the Court is entitled to attach due weight. The distinction between the legal burden of proof and the evidential burden is well recognised.

In *Edrick De Silva v. Chandradasa De Silva* (1967) 70 NLR 169 at 174, H.N.G. Fernando C.J. explained the principle in the following terms:

> *But 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.*

As I stated earlier, section 114 of the Evidence Ordinance empowers the Court to presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business. Illustration (f) thereto embodies the well-established principle that where evidence which could readily have been produced is withheld by a party, the Court may presume that, if produced, such evidence would have been unfavourable to that party.

The Plaintiff led the evidence of its Executive Director and produced the written agreement marked X4, the pro forma invoices, the schedules of supplies together with the corresponding tax invoices and delivery notes, the documentary evidence relating to the Customs and VAT concessions, the correspondence exchanged between the parties and, most significantly, the letter marked X11 acknowledging the Defendant's liability and undertaking to make payment. That evidence plainly established a strong *prima facie* case. The Defendant, however, elected not to call any witness. Instead, the Defendant sought to challenge the Plaintiff's case principally through cross-examination and by insisting that the Plaintiff's documents be marked subject to proof. In the circumstances of this case, that approach was both inadequate and unacceptable. The Defendant's failure to adduce evidence constituted an additional evidentiary circumstance which fortified the Plaintiff's otherwise well-established case.

Conclusion

For the foregoing reasons, the appeal fails and is accordingly dismissed. The judgment of the learned Judge of the Commercial High Court is affirmed, save and except paragraph 59 thereof, which is set aside for want of clarity in relation to costs. The Plaintiff is entitled to judgment as prayed for in the plaint. The Plaintiff shall also be entitled to the taxed costs of this appeal and the taxed costs in the Court below.

Judge of the Supreme Court

Arjuna Obeyesekere, J.
I agree.

Judge of the Supreme Court

Sampath K.B. Wijeratne, J.
I agree.

Judge of the Supreme Court