

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

In the matter of an application in terms of
Section 754(3) of the Civil Procedure Code
read with Section 5(a) of the High Court of
the Provinces (Special Provisions) Act No. 10
of 1996.

SC/CHC/Appeal No. **38/2023**
Case No. 384/2012/MR

DFCC Bank PLC (formerly known as DFCC
Vardhana Bank Limited),
No. 73/5, Galle Road,
Colombo 03.

PLAINTIFF

vs

Pasan Madanayake
No. 31, De Fonseka Road,
Colombo 05.

DEFENDANT

And Now Between

Pasan Madanayake
No. 31, De Fonseka Road,
Colombo 05.

DEFENDANT-APPELLANT

vs

2. DFCC Bank PLC (formerly known as DFCC
Vardhana Bank Limited),

No. 73/5, Galle Road,
Colombo 03.

PLAINTIFF – RESPONDENT

BEFORE : P. Padman Surasena, C.J.
Kumudini Wickremasinghe, J.
M. Sampath K. B. Wijeratne, J.

COUNSEL : Ronald Perera, P.C. with Chandimal Mendis
Instructed Chandana Siriwardana for the
Defendant - Appellant.

Chandaka Jayasundera, P.C. with Milinda
Jayathilaka instructed by Thejaka Perera for
the Plaintiff - Respondent.

ARGUED ON : 13.02.2026

DECIDED ON : 26.03.2026

M. Sampath K. B. Wijeratne J.

Introduction

The Defendant-Appellant (hereinafter ‘Defendant’) maintained two current accounts bearing Nos. 0120001002093 and 012001002467, as well as some foreign currency accounts with the Plaintiff-Respondent bank (hereinafter ‘Plaintiff’). He was granted an overdraft facility by the Plaintiff Bank on the current account bearing No. 0120001002093, initially with a limit of Rs. 30,000,000, which was later increased to Rs. 165,000,000. The Defendant was also granted an overdraft facility on current account No. 012001002467 for an amount of Rs. 25,000,000.

At the time of obtaining the aforementioned overdraft facilities, the Defendant, as security, provided a lien over NRFC Fixed Deposit Account No. 012253000013 for a sum of USD 500,000 together with a letter of set-off as security for the overdraft facilities obtained through Current Account No. 0120001002093. The Defendant also provided a primary mortgage over a land situated in Nawala, depicted as Lots 3, 4, 5, 14, 15, 17, 22, 23, 24 and 25 in Plan No. 2006/342 dated July 11, 2006, as security for the overdraft facilities obtained through Current Account No. 012001002467. The terms and conditions of these overdraft facilities have been renewed and/or modified from time to time, as evidenced by the documents marked 'A' to 'I'.

The Defendant from time to time instructed the Plaintiff bank to utilize the funds available in his foreign currency savings accounts to set-off the outstanding balance of the overdraft facilities. In addition, the Defendant also offered to sell two properties in Nawala, one belonging to himself and the other to his company, which included all the portions previously mortgaged to the bank, and further 3 lots to partly settle the outstanding amounts in the overdraft facilities obtained. The Plaintiff bank purchased the aforementioned two properties by executing Deed of Transfer No. 1691 ("P 21") for a value of Rs. 82.8 million, and Deed of Transfer No. 1692 ("P 22") for a value of Rs. 22.2 million. These transfers were used to partly settle the Defendant's outstanding amounts as agreed.

Subsequently, the Plaintiff sent a letter of demand, dated June 19, 2012, marked as "K," to the Defendant, demanding settlement of the remainder of the outstanding amounts due from the overdraft facilities obtained, to which the Defendant did not respond.

Since the Defendant did not oblige, the original Plaintiff instituted this action in the Commercial High Court of the Western Province (exercising civil jurisdiction), held in Colombo (commonly known as the 'Commercial High Court'), against the Defendant to recover the outstanding balance due under the two overdraft facilities, together with interest. Following the amalgamation of DFCC Vardhana Bank PLC with DFCC Bank PLC, DFCC Bank PLC (Plaintiff-

Respondent) was substituted in place of the original Plaintiff, without any objection from the Defendant.

The Defendant filed an answer denying liability and also presented a claim in reconvention against the Plaintiff, alleging that the Plaintiff Bank had breached the trust, confidence, and duty of care owed to the Defendant and had not acted in the Defendant's best interests.

The trial proceeded on three admissions, fourteen issues for the Plaintiff, eight issues for the Defendant, four consequential issues, and five issues arising from the Plaintiff's replication. After the trial, the learned Commercial High Court Judge delivered judgment in favour of the Plaintiff Bank.

Being aggrieved by the judgment of the Commercial High Court, the Defendant filed the instant appeal before the Supreme Court.

Analysis

The principal outstanding questions raised in this case can be summarized as follows:

1. Whether Plaintiff is entitled to recover amounts claimed on two causes of action mentioned therein.
2. Whether Defendant suffered any losses due to breach of any duty of care by the Plaintiff.

Whether Plaintiff is entitled to recover amounts claimed on two causes of action mentioned therein

There is no dispute that the Defendant was granted two overdraft facilities by the Plaintiff bank. However, issue here is whether the Defendant has fully settled the debt incurred to the bank, or whether he still owes the Bank a sum of Rs. 123,695,681.58, together with interest, on the overdraft facility granted on

current account No. 012001002093 (1st cause of action), and a sum of Rs. 943,502.94, together with interest, on the overdraft facility granted on current account No. 012001002467 (2nd cause of action).

The Defendant, in his evidence, has admitted and relied on the statements of his current account No. 012001002093 (“P 11”) and current account No. 012001002467 (“P 25”). Moreover, under section 90C of the Evidence Ordinance, “*Subject to the provisions of this Chapter, a certified copy of any entry in a banker' book shall in all legal proceedings be received as prima facie evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions, and accounts therein recorded in every case where, and to the same extent as the original entry itself is now by law admissible, but not further or otherwise.*”

The Defendant has produced no evidence to show that the entries in the bank statements are incorrect or false.

Further Defendant has failed to send any reply to letter of demand, dated June 19, 2012 (“K”) sent by the Plaintiff’s bank demanding that the Defendant settle the outstanding amounts due from the overdraft facilities obtained. In the ordinary course of business, if a person asserts in a letter to another that a certain state of facts exists, the person receiving such business letter or a letter of demand must reply, if he does not agree with the assertions. The failure to do so, would amount to an admission to a claim made therein.

This is very well articulated in *Saravanamuttu vs de Mel*¹ in the following manner.

“In business matters, if a person states in a letter to another that a certain state of facts exists, the person to whom the letter is written must reply if he does not agree with or means to dispute the assertions. Otherwise, the silence

¹ 49 NLR 529,

of the latter amounts to an admission of the truth of the allegations contained in that letter”

In the Court of Appeal case of ***K.A.S. Auto International (Pvt) Ltd and Another vs. Sampath Bank Plc and Others***² Samayawardhane J. dealing with the issue of customer not replying to banking correspondence, emphasized that although failure to reply alone cannot decide the whole case, in business matters, if the party receiving such correspondence, disputes the assertions contained in it, he must reply, for failure to do so can be regarded as an admission of the claims made therein.

In the case of ***The Colombo Electric Tramways and Lighting Co. Ltd. vs Pereira***³ also it was observed;

“It has been held in Wiedeman v. Walpole [1 (1891) 2 Q. B. 534] that in certain circumstances the failure to reply to a letter amount to an admission of a claim made therein. Lord Esher M.R. there said: - Now there are cases-business and mercantile cases- in which the Courts have taken notice that, in the ordinary course of business, if one man of business states in a letter to another that he has agreed to do certain things, the person who receives that letter must answer it, if he means to dispute the fact that he did so agree. So, where merchants are in dispute one with the other in the course of carrying on some business negotiations, and one writes to the other, " but you promised me that you would do this or that," if the other does not answer that letter, but proceeds with the negotiations, he must be taken to admit the truth of the statement.”

Considering the facts of the instant case, I see no reason to depart from the general rule that failure to answer a business letter amounts to an admission of the contents therein. Accordingly, the failure of the Defendant to reply to the

² [2020] 2 Sri LR 112.

³ 25 NLR 193.

letter of demand sent by the Plaintiff bank ought to be considered as acceptance of the content therein.

The main contention of the Defendant is that the Plaintiff bank was acting on behalf of the Defendant when it purchased the properties in Nawala and subsequently sold them to recover the amounts due. The Defendant further claims that the Plaintiff bank has not credited any amount to the Defendant's account, despite having recovered sums in excess of the outstanding amounts under the overdraft facilities.

However, upon examining the evidence, it is clear that the properties in question were transferred to the Plaintiff bank through the execution of two deeds of transfer, partly to settle the outstanding amounts on the banking facilities, upon an agreed consideration. The recital of "P 21" reads as follows:

"AND WHEREAS the vendor has agreed to part settle the outstanding on the banking facilities obtained by the said mortgage bonds by conveying the said allotments of land."

The attestation of "P 21" also confirms that the conveyance was executed solely for the partial settlement of the loan.

"I further certify and attest that the consideration of Rs. 82, 800, 000 was made in part settlement of the outstanding on the banking facilities obtained by the vendor"

The attestation of "P 22" similarly confirms that the conveyance was executed solely for the partial settlement of the loan.

"I further certify and attest that the consideration of Rs. 22, 200, 000 was made in part settlement of the outstanding on the banking facilities obtained."

In these circumstances, the contention of the Defendant that the Plaintiff bank was acting as his agent is untenable.

Therefore, once the two properties were transferred, ownership vested in the Plaintiff bank, and as a result, the bank has no obligation to return any excess amount based on the consideration specified in the instruments. Moreover, there is no evidence to establish that the Plaintiff bank received any amount in excess of the debt.

The Defendant, in giving evidence, stated as follows:

Q: Then, you have been asked that you never complained about the price at which these transfers were affected?

A: Yes

Q: And for which you have answered "I had no need to complain because I took their word"

A: Yes

Q: What do you mean by that?

A: Because prior to transferring these deeds, we had a meeting with the higher officers of the Bank including the Managing Director then and Head of Credit. So, they came up with figures and they in fact showed me a Central bank directive which was submitted I guess in March this year and honourable Court is listed it. They showed me that document annexed plaint, the per settlement doesn't end there at the transfer value but the Bank has a responsibility and obligation to resell that property because by mandate Banks don't have the right to trade or purchase lands for trading purposes so they said as per the Central Bank directive and the Banking Act, they will immediately dispose of the land and refund the balance money to me and from the balance money they will recover whatever due to them as outstanding and even return the balance to me but it never happened

(Page 601- 602 of the appeal brief)

The procedure stated above by the Defendant pertains to *parate* execution. However, as correctly noted by the learned High Court Judge, the two properties were not acquired by the Plaintiff bank through *parate* execution, but pursuant to a personal arrangement between the parties to settle part of the outstanding amount. The amounts so settled are expressly stated as the consideration in the two deeds.

Once the genuineness and authenticity of a commercial transaction is established, the Court cannot attribute a supposed underlying motive to alter its character. In the present case, the proper execution of “P 21” and “P 22” has already been admitted by the Defendant. Consequently, the Defendant can no longer contest the transaction based on a hidden or secret motive.

Accordingly, the Plaintiff is entitled to recover the amounts due under the two overdraft facilities granted to the Defendant, after deducting the amounts already settled through the execution of the two deeds of transfer and the sums recovered from his two foreign currency accounts.

Whether Defendant suffered any losses due to breach of any duty of care by the Plaintiff Bank?

In his counter-claim, the Defendant alleges that he suffered a loss of Rs. 55 million due to the Plaintiff acting without his instructions by switching currencies between the two foreign currency accounts maintained by him. However, he has produced no evidence to support this claim. Furthermore, he has failed to take any meaningful action against the alleged improper transactions conducted by the bank until now.

On the other hand, in his evidence, the Defendant himself admits that he consented to set-off the outstanding amounts due on his overdraft facilities from his foreign currency accounts.

"Q: Shown the documents P12 and P13. You have signed this?"

A: Yes.

Q: Now, P12 and P13 are more or less identical letters of set off?

A: Yes

Q: By this document you have authorized the Plaintiff Bank, DFCC Wardhana as it was then to set off an appropriate all monies lying to your credit with DFCC Bank to recover any monies that are due from you to the Plaintiff Bank

A: Yes

Q: And you have stated in both documents that this authority that you're giving the Plaintiff Bank is irrevocable?

A: Yes

Q: And will continue to be in full force and virtue until expressly revoked consent of the Plaintiff Bank?

A: Yes

Q: Up to today you have not produced a single document by which you requested the Plaintiff Bank to revoke these two letters of set off?

A: Yes

Q: So, P12 and P13 actually remaining force until today?

A: Yes

(Page 584 of the appeal brief)

Accordingly, I am of the view that the Defendant has failed to establish that he suffered any loss as a result of the conduct of the Plaintiff, or that the Plaintiff bank acted in any manner contrary to the instructions provided by the Defendant.

Accordingly, I hold that the Defendant is not entitled to succeed in his cross-claim.

Conclusion

For the foregoing reasons, I affirm the judgment of the Commercial High Court.
The appeal is dismissed, with costs in both Courts.

JUDGE OF THE SUPREME COURT

P. Padman Surasena, C.J.

I agree.

CHIEF JUSTICE

Kumudini Wickremasinghe, J.

I agree.

JUDGE OF THE SUPREME COURT