

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

In the matter of an Appeal made in terms of Article 127 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

SC / CHC / APPEAL / 47 / 2019

HC / CIVIL / 468 / 13 / MR

Bank of Ceylon,

Bank of Ceylon Square,

No.01, Bank of Ceylon Mawatha,

Colombo 01.

PLAINTIFF

-Vs-

Bulathge Himali Nimali Nilmini

Abey Suriya,

No.37, Isuru Uyana,

Guwan Pedesa,

Kotuwegoda,

Ja-Ela

DEFENDANT

AND NOW BETWEEN

Bulathge Himali Nimali Nilmini

Abey Suriya,

No.37, Isuru Uyana,
Guwan Pedesa,
Kotuwegoda,
Ja-Ela

DEFENDANT – APPELLANT

-Vs-

Bank of Ceylon,
Bank of Ceylon Square,
No.01, Bank of Ceylon Mawatha,
Colombo 01.

PLAINTIFF – RESPONDENT

Before : S. Thurairaja, PC, J.
A.H.M.D. Nawaz, J. &
Sampath B. Abayakoon, J.

Counsel : Rajinda Kandegedara with Rukshan Mendis
instructed by Jayamuditha Jayasooriya for the
Defendant - Appellant.

Navodi De Zoysa, SC instructed by Rizni Firdous
for the Plaintiff - Respondent.

Argued &
Decided on : **04.08.2025**

A.H.M.D. Nawaz, J.

We have heard both the learned counsel for the Defendant - Appellant and the learned State Counsel.

This matter arises out of two loans that were disbursed to the Defendant. On the first loan which had been granted on the 02 December 2011, a sum of Rs. 4.5 million had been disbursed to the Defendant in stages. The loan was advanced over the security of a mortgage. That bond was executed on the 02 December 2011 and it had specified an interest rate of 15.5% per annum. The second loan, a sum of Rs. 1 million was obtained on 08 February 2012, and the relevant mortgage bond specified an interest rate of 16% per annum.

Both these loans were granted over the same subject matter mortgaged to the Bank. It appears from the proceedings in the case that the Defendant began to default on payment and there were letters of demand that were sent to the Defendant which were not replied to as was in the case of *P. Saravanamuttu v. R.A. De Mel*¹.

Thereafter, the Bank of Ceylon, the Plaintiff in this case sued this Defendant in the Commercial High Court by a plaint dated 20/12/2013.

The Plaintiff led the evidence of one witness and marked documents from "P1" to "P12(a)" and closed its case. The Defendant opted not to lead any evidence and thereafter, the matter was fixed for written submissions.

As one looks at the proceedings dated 09 March 2015, three admissions had been recorded between the parties namely,

- a) Jurisdiction,
- b) The loan application and
- c) The documents marked "P1", "P2" and "P3".

¹ 49 NLR 281

Thereafter, seventeen issues were recorded on behalf of the Plaintiff and four issues had been recorded on behalf of the Defendant.

Only one witness gave evidence on behalf of the Bank and it is worthy of note that the testimony of this witness has not been contradicted by way of any contrary evidence.

In this connection, this Court wishes to cite the case of *Cinemas Limited v. Sounderarajan*² which endorsed the decision of former Chief Justice H. N. G. Fernando in the case of *Edrick De Silva Vs. Chandradasa De Silva*.³ These cases are to the effect that when one party leads evidence and the other party does not lead any contrary evidence, the evidence that has been led on behalf of the Plaintiff has to be accepted as true.

In the circumstances, in the absence of any contrary evidence led on behalf of the Defendant, it is quite clear that the Plaintiff has established its case against the Defendant based on the documents and the oral evidence. However, the only point of contention that seems to arise between the parties is the question of interest that has to be imposed.

It is true that the loan application, mortgage bond and the statement of accounts all referred to different rates of interest. However, the learned High Court Judge has chosen to accept the interest rate that has been imposed in the statement of accounts, namely, the rate of 17.15%.

It is worthy of note that even though the Defendant was not sued on the mortgage bonds, the Defendant had agreed with the Plaintiff Bank to a variable rate of interest. In terms of clause (f) of the mortgage bond, it is specifically stated that the interest on the aforesaid outstanding sums of money could be fixed at “*such other or higher rate or rates as may from time to time be fixed or charged by the Bank or by the direction of or by the General Manager for the time being of the Bank according to the sole and absolute*

² [1998] 2 Sri LR 16

³ 70 NLR 169 at p 174.

discretion of the said General Manager and according to the usual course of business to be computed from the date or respective dates of such loans advances or payments being made or of the overdrafts being allowed or of the promissory notes.....”

This clause makes it quite clear that the Bank could impose the variable rate of interest found in the statement of accounts. The Plaintiff and the Defendant have agreed to this course of action being adopted and therefore, since no issues have been raised on the unconscionability of this clause, this Court takes the view that this cannot form a question of law either before this Court.

The learned Commercial High Court judge himself has considered this aspect of the matter at page 06 of his judgment dated 26 of April 2019 and concluded that the imposition of this interest is not illegal.

In the case of *Paragon Finance v. Nash*⁴, it has been established that Banks and financial institutions do enjoy the discretion to impose variable rates of interest on their loan agreements but the discretion has to be exercised reasonably.

In the circumstances, we find that the case of the Plaintiff has been proved and that the High Court Judge has arrived at a correct finding and we see no reasons to interfere with the judgment rendered by the Commercial High Court. We affirm the judgment and we proceed to dismiss the appeal preferred by the Defendant - Appellant.

We place on record our appreciation of the arguments placed before this Court by the young Attorney-at-Law, Mr. Rajinda Kandegedara who represented the Defendant – Appellant.

Judge of the Supreme Court

⁴ [2001] EWCA Civ 1466

S. Thurairaja, PC, J.

Judge of the Supreme Court

I agree.

Sampath B. Abayakoon. J.

Judge of the Supreme Court

I agree.