

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

L B Finance PLC  
No. 275/75,  
Prof. Stanley Wijesundara  
Mawatha,  
Colombo 07.

**SC/CHC Appeal/56/2013  
CHC (Civil) 202/2009 (MR)**

**Plaintiff**

**Vs.**

Wadduwa Palliyagurunnanselage  
Namal Senanayake,  
“Nihathamani”,  
Ambagahawatta,  
Kaikawala,  
Induruwa.

**Defendant**

**AND NOW BETWEEN**

Wadduwa Palliyagurunnanselage  
Namal Senanayake,  
“Nihathamani”,  
Ambagahawatta,  
Kaikawala,  
Induruwa.

**Defendant-Appellant**

L B Finance PLC  
No. 275/75,  
Prof. Stanley Wijesundara  
Mawatha,  
Colombo 07.

**Plaintiff-Respondent**

**Before** : **E. A. G. R. Amarasekera, J**  
**Yasantha Kodagoda, PC. J**  
**K. Priyantha Fernando, J**

**Counsel** : Prinath Fernando for the  
Defendant-Appellant

Kanchana Peiris with Anjula  
Rajapaksha instructed by Wickrama  
Punchihewa for the Plaintiff-  
Respondent

**Argued on** : 09.05.2023

**Written Submissions** : 07.05.2019 on behalf of the  
**Tendered on** Defendant-Appellant.

07.06.2019 on behalf of the  
Plaintiff-Respondent.

**Decided on** : 14.06.2023

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### **K. PRIYANTHA FERNANDO, J**

1. The defendant-appellant (hereinafter referred to as the appellant) has obtained a loan of Rs. 2,000,000 upon the security of the mortgage of the appellant's property. After paying some installments, the appellant has failed to pay the balance moneys due. Thereafter, the plaintiff respondent (hereinafter referred to as the respondent) filed action in the Commercial High Court of Colombo to recover a sum of Rs. 3,262,938.08 and interest thereon, and to sell the mortgaged property and recover the moneys due if the appellant fails to pay the money.
2. After trial, the learned Judge of the Commercial High Court of Colombo delivered the judgment in favour of the respondent. The instant appeal has been filed by the appellant against the above judgment of the learned Judge of the Commercial High Court dated 25.06.2013.

3. In his petition of appeal, the appellant has averred that the impugned judgment of the learned Judge of the Commercial High Court is contrary to law. In that, it is averred that the land mortgaged as security for the aforestated loan is situated in the district of *Kalutara* and therefore, the Commercial High Court of *Colombo* lacks jurisdiction. It has further been averred that, the witnesses for the respondent have admitted that the appellant has paid a sum of Rs. 1,700,000 to the respondent and therefore the learned Judge of the Commercial High Court has misled himself when he decreed to recover the total amount stated in the prayer of the plaint. It was also averred that the appellant challenged the attestation of the mortgage bond. However, it is observed that neither the Notary Public who attested the bond nor the witnesses to the attestation have been called to give evidence by the appellant on this regard.
4. Although the above points were averred in the petition of appeal, at the hearing, the learned Counsel for the appellant failed to pursue any such ground of appeal against the judgment of the learned Judge of the Commercial High Court.
5. At the hearing of this appeal, the learned Counsel for the respondent submitted that, none of the documents tendered in evidence by the respondent were challenged by the appellant at the trial. Further, the documents were not tendered by the appellant subject to proof. Further, the calculation of the moneys due to the respondent from the appellant were also not challenged and hence, the judgment of the learned Judge of the Commercial High Court cannot be impeached.
6. Although no ground of appeal was pursued by the learned Counsel for the appellant at the hearing of this appeal, I propose to consider and discuss the matters raised in the petition of appeal and the written submissions filed on behalf of the appellant.

7. It is submitted on behalf of the appellant that, according to the issue No. 14 that was raised at the trial, the respondent was unable to prove the validity of the mortgage bond on the basis that the mortgage bond in question has not been attested in terms of section 2 of the Prevention of Frauds Ordinance. This issue has been aptly discussed by the learned Judge of the Commercial High Court in his judgment. As rightly concluded by the learned Judge of the Commercial High Court, the mortgage bond in question has been produced in Court marked P-8 without any objection. It was not produced subject to proof. Hence, the learned Judge of the Commercial High Court, upon citing authorities, has rightly concluded that the mortgage bond has been proved, by the respondent.
8. It is pertinent to consider the transitional provision (section 3) of the Civil Procedure Code (Amendment) Act No. 17 of 2022 that was certified on 23<sup>rd</sup> of June 2022. The said section 3 provides;

*“Notwithstanding anything contained in section 2 of this Act, and the provisions of the Evidence Ordinance, in any case or **appeal** pending on the date of coming into operation of this Act –*

*(a) (i) if the opposing party does not object or has not objected to it being received as evidence on the deed or document being tendered in evidence; or*

*(ii) if the opposing party has objected to it being received as evidence on the deed or document being tendered in evidence but not objected at the close of a case when such document is read in evidence,*

*the court shall admit such deed or document as evidence without requiring further proof;*

*(b) if the opposing party objects or has objected to it being received as evidence, the court may decide*

*whether it is necessary or it was necessary as the case may be, to adduce formal proof of the execution or genuineness of any such deed or document considering the merits of the objections taken with regard to the execution or genuineness of such deed or document.”*

[Emphasis added]

9. When considering the above provision of law in light of this case, as the said mortgage bond was produced at the trial without objection, it is my view that the Court shall admit the same in evidence without requiring further proof. Further, as it is expressly stated in the above provision, this applies to pending appeals as well. Thus, it is applicable to the adjudication of the instant appeal. Hence, the argument raised by the appellant is devoid of merit.
10. In his written submissions, the learned Counsel for the appellant has also taken up the position that the land that was mortgaged as the security for the loan is situated beyond the territorial jurisdiction of the Commercial High Court of *Colombo* and therefore, the Commercial High Court of *Colombo* is not the competent Court to hear and determine this case. This matter has also been sufficiently discussed by the learned Judge of the Commercial High Court in his judgment. The initial contract for granting/obtaining the loan was signed in *Colombo*. Therefore, in terms of section 9 of the Civil Procedure Code, the Commercial High Court of *Colombo* clearly has the jurisdiction to hear and determine this case as the contract sought to be judicially enforced had been entered into within the territorial jurisdiction of Commercial High Court of *Colombo*. Thus, this ground too has no merit.
11. The learned Counsel of the appellant in his written submissions submitted that, the installment payments that were already paid by the appellant has not been given credit. This issue has also been sufficiently considered by the learned Judge of the Commercial High Court.

12. On behalf of the respondent, the accountant of the respondent company has given evidence, and the statement of accounts has also been submitted without any objection. The said document has not been produced subject to proof. No evidence was led by or on behalf of the appellant at the trial to show that the payments that he had already been made were not taken into consideration. Therefore, this ground also fails.
13. At the trial, the respondent has led clear evidence to prove the granting of the loan subject to a mortgage of the property which is mentioned in the mortgage bond and the failure on the part of the appellant to make the necessary installment payments that were due. Therefore, this Court has no reason to interfere with the judgement of the learned Judge of the Commercial High Court of Colombo dated 25.06.2013.

The appeal is dismissed with costs.

**JUDGE OF THE SUPREME COURT**

**JUSTICE E. A. G. R. AMARASEKERA.**

I agree

**JUDGE OF THE SUPREME COURT**

**JUSTICE YASANTHA KODAGODA, PC.**

I agree

**JUDGE OF THE SUPREME COURT**