

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

Peoples Bank,
No 75, Sir Chittampalam A Gardinar
Mawatha,
Colombo 02.

Plaintiff

C.A. No. 14-15-16 / 2000 F
D.C. Balangoda No. 888 / MS

Vs.

1. Denagama Vidanalage Yaparadne,
"Thilona Rice Mill"
Galahitigama, Balangoda.
2. Udaha Mahannalage Piyadasa,
Pinnawala Wine House,
Balangoda.
3. Hewa Thotagamuwage Shantha
Davapriya,
"Tissa Chemical"
Meda Bedda, Kaltota.

Defendants

AND NOW BETWEEN

1. Denagama Vidanalage Yaparadne,
"Thilona Rice Mill"
Galahitigama, Balangoda.
2. Udaha Mahannalage Piyadasa,
Pinnawala Wine House,
Balangoda.
3. Hewa Thotagamuwage Shantha
Davapriya,
"Tissa Chemical"
Meda Bedda, Kaltota.

Defendant Appellants

Vs

Peoples Bank,
No 75, Sir Chittampalam A Gardinar
Mawatha,
Colombo 02.

Plaintiff Respondent

BEFORE : UPALY ABEYRATHNE, J.

COUNSEL : 1st and 2nd Defendant Appellant- Absent and
unrepresented
Pradeep Kumarasinghe for the 3rd Defendant
Appellant
Rasika Dissanayake with Chandrasiri
Wanigapura for the Plaintiff Respondent

ARGUED ON : 22.03.2012

DECIDED ON : 12.07.2012

UPALY ABEYRATHNE, J.

The Plaintiff Respondent (hereinafter referred to as the Respondent) instituted the said action against the 1st 2nd and 3rd Defendant Appellants (hereinafter referred to as the Appellants) in the District Court of Balangoda seeking to recover a sum of Rs. 750,000/- and the interest under and in terms of the Debt Recovery (Special Provisions) Act No 02 of 1990. The Respondent stated

that the 1st Appellant was the principal debtor and the 2nd and 3rd Appellants were the guarantors to the said loan.

Accordingly a decree nisi has been entered against the Appellants as prayed for in the prayers to the plaint. The Appellants, upon the receipt of the said decree nisi, have preferred an application seeking permission of court to appear and defend the case. The learned District Judge after inquiry has allowed the said application of the Appellants subject to the payment of money mentioned in the decree *nisi*. Being aggrieved by the said order of the learned District Judge dated 15.12.1999 the Appellants have preferred the instant appeals to this court.

The Appellants have admitted that the 1st Appellant had borrowed a sum of Rs. 750,000/- from the Respondent Bank. The Appellants had taken up the position that the amount claimed by the Respondent Bank did not tally with the 1st Appellant's bank statement and they had realized that the bank had filed the action in respect of the current account which had been fully settled by the 1st Appellant.

I have noted that although the Appellants had pleaded that the 1st Appellant had settled the said loan none of the said three Appellants had produced single document to prove the so called payments. On the other hand since the Appellants in their petitions had not sought leave to appear and defend unconditionally the learned District Judge was right in imposing conditions in the said order.

The learned Counsel for the Respondent submitted that nowhere in the Debt Recovery (Special Provisions) Act it has been provided that a party dissatisfied with an order or judgment made under and in terms of the said Act has

a right of appeal. I am in agreement with the said submission. The Debt Recovery (Special Provisions) Act No 02 of 1990 does not provide the aggrieved party a right of appeal. The right of appeal is a statutory right. It should be expressly created and granted by the statute.

In the case of Martin Vs Wijewardena (1989) 2 SLR 409 (SC) it was held that "A right of appeal is a statutory right and must be expressly created and granted by statute. It cannot be implied. Article 138 is only an enabling Article and it confers the jurisdiction to hear and determine appeals to the Court of Appeal. The right to avail of or take advantage of that jurisdiction is governed by the several statutory provisions in various Legislative Enactments."

In the case of Bandara Vs The Peoples Bank (2002) 3 SLR 25 it was held that "The Debt Recovery (Special Provisions) Act is an Act which has created special jurisdiction and it is a procedure whereby no right of appeal has been bestowed on a party aggrieved by a decree absolute."

In the aforesaid circumstances I see no reason to interfere with the judgement of the learned District Judge dated 15.12.1999. Therefore I dismiss the appeal of the Appellants with costs.

Appeal dismissed.

Judge of the Court of Appeal