

**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. 124 / 2000 F

Vs.

D.C. Kurunegala No. 10 / DR

1. Pahalawatte Avuragedara Abeyratne,

'Mihira',

Nabata, Melsiripura.

2. Kaluarachchige Ajith Gajanayake,

Nabata, Melsiripura.

Defendants

AND NOW BETWEEN

Pahalawatte Avuragedara Abeyratne,

'Mihira',

Nabata, Melsiripura.

1st Defendant Appellant

Vs

Peoples Bank,

No 75, Sir Chittampalam A Gardinar
Mawatha,

Colombo 02.

Plaintiff Respondent

Kaluarachchige Ajith Gajanayake,
Nabata, Melsiripura.

2nd Defendant Respondent

BEFORE : UPALY ABEYRATHNE, J.

COUNSELS : Jacob Joseph with Mohomad Rusmy for the
Defendant Appellant

Rasika Dissanayake for the Plaintiff Respondent

ARGUED ON : 25.11.2011

DECIDED ON : 24.01.2012

UPALY ABEYRATHNE, J.

The Plaintiff Respondent (hereinafter referred to as the Respondent) instituted the said action against the 1st Defendant Appellant (hereinafter referred to as the Appellant) and the 2nd Defendant Respondent in the District Court of Kurunegala seeking to recover a sum of Rs. 497,290.43 and the interest thereon. The Respondent had instituted the said action under and in terms of the provisions of the Debt Recovery (Special Provisions) Act No 02 of 1990.

Accordingly the learned District Judge has issued a decree nisi against the Appellant and the 2nd Defendant Respondent as prayed for in the prayers to the plaint. The Appellant, upon the receipt of the said decree nisi, has preferred an application seeking permission of court to appear and defend the case unconditionally. The learned District Judge after inquiry has refused the said

application of the Appellant. Being aggrieved by the said order of the learned District Judge dated 11.02.2000 the Appellant preferred the instant appeal to this court.

The Appellant's contention before this court was that he was a protected person under Section 2 of the Public Servants (Liabilities) Ordinance No 2 of 1899. I now consider the said submission. Section 2(2) of the said Ordinance stipulates that Section 2 does not apply to the case of a public servant who at the date when the liability sought to be enforced is contracted is in receipt of a salary in regard to his fixed appointment of more than five hundred and twenty rupees a month. Hence the Appellant should prove his case by documentation that he, being a public servant, was drawing a salary less than five hundred and twenty rupees a month. There was no such proof before court. Hence the Appellant is not entitled to seek the protection under the said Ordinance.

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 said circumstances I see no reason to interfere with the judgement of the learned District Judge dated 29.08.2000. Therefore I dismiss the appeal of the Appellant with costs.

Appeal dismissed.

Judge of the Court of Appeal