

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

K. R. M. Harichchandra Mahageera
Lunuwila.

PLAINTIFF

C.A 374/1998 (F)
D.C. Maravila 723/M

Vs.

W. Antony Fonseka
Kolinjadiya West
Wennappuwa.

DEFENDANT

AND

W. Antony Fonseka
Kolinjadiya West
Wennappuwa.

DEFENDANT-APPELLANT

Vs.

K. R. M. Harichchandra Mahageera
Lunuwila.

PLAINTIFF-RESPONDENT

BEFORE: Anil Gooneratne J.

COUNSEL: Defendant-Appellant & Plaintiff-Respondent
are absent and unrepresented.

DECIDED ON: 22.05.2012

GOONERATNE J.

This appeal was listed in this court on more than five occasions but parties were absent and unrepresented. Registrar of this court on each occasion duly dispatched notices, and it appears that parties and their registered Attorneys are no longer interested in this type of litigation. However this court would proceed to deliver the judgment on the available material.

The plaint filed in the original court was under chapter 53 of the Civil Procedure Code (summary procedure on liquid claims). The case of the Plaintiff-Respondent is that on a 'cash or bearer' cheque for Rs. 15,100/- of

the Defendant-Appellant was received by him and it was presented to the Bank of Ceylon, Wennappuwa for payment and same was dishonoured and returned to Plaintiff on 19.10.1989. The cheque had been issued by the Defendant-Appellant from his Current Account No. 1248. Both parties had several transactions according to the evidence led at the trial. The date appearing on the cheque had been inserted by agreement of both parties. There is a discrepancy in evidence as regards the date of presenting the cheque by Plaintiff. However the Plaintiff has corrected his lapse and gives the date as 2.5.1987. Defendant's position is that he paid the Plaintiff on the amount due on the cheque on 25.6.1989 but there is no supporting or documentary evidence to support that fact. Date of dishonour of cheque is the same date of closing of Defendant's account at the bank. The bank Clerk has given evidence and confirm that the cheque was presented to the bank on 18.10.1989.

I have perused the judgment of the learned District Judge. The Petition of Appeal does not give specific details of grounds of appeal. Only general grounds are urged, such as failure of the trial Judge's evaluation of evidence led etc.

The learned District Judge had rejected the Defendant's version of the case. On a balance of probability Plaintiff's version is more probable. This being a case under chapter 53 of the Civil Procedure Code, being summary procedure on liquid claims the Defendant need to obtain leave of court to enable him to defend the action. Trial Judge has however proceeded with the trial by recording issues and admissions (Section 706 of the Code)

In all the above circumstances, I do not wish to interfere with the Judgment of the learned District Judge. The judgment of the District Judge dated 21.5.1998 is affirmed. Appeal dismissed with costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL