

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

People's Bank
No. 75, Srimath Chiththampalam
A. Gardiner Mawatha,
Colombo.

PLAINTIFF

C.A 1021/1998 (F)
D.C. Anuradhapura 16824/M

Vs.

1. W. A. Piyasena,
Govi Sampatha
Thambuththegama.
2. J. H. M. Sunil Herath
"Sunil", No. 119, Bendi Wewa,
Thambuththegama.
3. B. A. Sunil
"Sunil Motors",
Industrial Place,
Thambuththegama.

DEFENDANTS

AND NOW BETWEEN

1. W. A. Piyasena,
Govi Sampatha
Thambuththegama.

1ST DEFENDANT-APPELLANT

Vs.

People's Bank
No. 75, Srimath Chiththampalam
B. Gardiner Mawatha,
Colombo.

PLAINTIFF-RESPONDENT

2. J. H. M. Sunil Herath
"Sunil", No. 119, Bendi Wewa,
Thambuththegama.
3. B. A. Sunil
"Sunil Motors",
Industrial Place,
Thambuththegama.

DEFENDANTS-RESPONDENTS

BEFORE: Anil Gooneratne J.

COUNSEL: E. M. D. Upali with S. Wijayalath for
1st Defendant-Appellant

R. Dissanayake instructed by C. Induruwa for
Plaintiff-Respondents

ARGUED ON: 09.07.2012

DECIDED ON: 27.08.2012

GOONERATNE J.

This was an action filed in the District Court of Anuradhapura under the provisions of the Debt Recovery Law No. 2 of 1990 as amended by Act No. 9 of 1994. The Plaintiff-Respondent is the People's Bank. The 1st Defendant-Appellant is the Principle Debtor and the 2nd and 3rd Defendants are guarantors (P5) to the loan application. The 1st Defendant-Appellant was also having a Current Account bearing No. 1315 at the Thambuththegama branch of the People's Bank. On or about 2nd April 1997 the 1st Defendant-Appellant had applied for a loan from the Plaintiff-Respondent Bank in a sum of Rs. 16,50,000/=. The application is marked P2 annexed to the plaint. In the plaint filed of record it is also pleaded that promissory note P3 was also executed to secure the loan. Loan had been granted and having given credit to the amounts repaid by the 1st Defendant-Appellant the prayer to the plaint shows that a sum of Rs. 1,306,500/- with interest is due to the Plaintiff-Respondent.

The proceedings of 19.8.1998 indicates that the Plaintiff-Respondent application under the Debt Recovery Law was supported on the said date and decree nisi was entered on the same date. At the hearing before this Court the Appellant's position was that the trial Judge has erred by not

granting him leave to proceed as required by the provisions of the Debt recovery Law. (Section 6 of the Law more particularly 6 (2) (c)) The learned Counsel for appellant argued that:

- (1) A loan was obtained by his client from the Plaintiff Bank. On the amount received by way of a loan his client purchased paddy and stored it. The gist of the argument suggest that the stores in question had been locked by the officials of the People's Bank and as a result of delay in giving access to the stores the paddy stored as above had got spoilt. The position demonstrated to court seems to be reflected in paragraphs 17, 18, 19, 20 & 21 of the objections of 3.9.1998 of the 1st Respondent. As such order 'Nisi' should be vacated.
- (2) The affidavit filed in the District court by the People's Bank is defective and in law cannot be acted upon such affidavit. i.e Plaintiff is not a deponent. It is the People's Bank who is the Plaintiff, contrary to Section 183 A of the Civil Procedure Code.

Perusal of all the material and proceedings in the Original Court indicates that the 2nd & 3rd Defendants who were the guarantors had no objection for 'Decree Nisi' being made absolute". I have perused the order of the learned trial Judge who has considered the position of the 1st Defendant-Appellant in the Original Court. Having considered the objections of the 1st Defendant-Appellant the trial Judge very correctly observes that a loan was granted by the Plaintiff-Respondent according to the over draft facility to store paddy (column 14 of P2 O/D). in that no inference could be drawn to give any concessions or relief not to pay the

default sum. As such objection on the lines suggested by Appellant cannot have a direct bearing on his liability to repay. Further the trial Judge takes the view that the objection relate to the question of stocks in the stores and not directly connected to the loan obtained. I would incorporate the following extract from the order of the learned District Judge which indicate that the trial Judge has given his mind to the provisions of the law.

ඊට අමතරව විරෝධතා ලෙස ඉදිරිපත් කළ කරුණු දෙස බැලීමේදීද එයින් උත්තර ගොනු කිරීමට ඉඩදීමට තරම් සැහෙන කරුණු නොවන බව පෙනේ. මීට අමතරව 1 වන විත්තිකරු විසින් මෙම මුදල් ගෙවන බවට හෝ මුදල් තැන්පත් කර උත්තර ගොනු කිරීමට කැමති බවට අධිකරණය ඉදිරියේ ඉල්ලීමක් කර නැත. මේ අනුව විරෝධතා ප්‍රතික්ෂේප කරමි.

This court observes that 'Debt' as defined in Section 30 of the Debt Recovery Law is given a very wide meaning which is a sum of money ascertainable and capable of being ascertained at the time of institution of the action. The loan granted is not denied, by the Appellant. A Debtor under the said law is bound to resort to the provisions of the law and cannot deviate from the provisions contained therein to contest the position of a lending Institution as regards a debt. The 1st Defendant-Appellant has not disclosed in the pleadings filed in the Original Court a defence which should be prima facie sustainable. As a rule in terms of the above statute leave is granted unconditionally, only if a prima facie case is established or triable

issue suggested. Plaintiff-Respondent claim had not been dealt by the Appellant on its merits and as required by law.

In Ramanayake Vs. Sampath Bank Ltd. and others 1993 (1) SLR at pg. 153...

Per Wijeyaratne J.

The principles applicable to the granting of leave to defend or to show cause under the two procedures are somewhat similar. However section 6(2)(c) of the Act expressly provides for the affidavit of the defendant to deal specifically with the plaintiff's claim and his defence thereto and what facts are being relied on in support thereof. The defendant has to deal with the plaintiff's claim on its merits; it is not competent for the defendant to merely set out technical objections. It is also incumbent on the defendant to reveal his defence, if he has any.

Then the important question arises as to what is meant by the word "an issue or question which ought to be tried".

I am of the view that they mean nothing more than a plausible defence with a triable issue; that is to say an issue which cannot be summarily disposed of on the affidavits, but requires investigation and trial. For this purpose the defendant is bound under section 6(2)(c) to deal specifically with the plaintiff's claim on its merits and his defence thereto and what facts are relied on as supporting such defence. Hence the court is in an advantageous position to examine the defendant's affidavit and any other material to find out whether a plausible defence with a triable issue is disclosed, in which event leave may be granted unconditionally under section 6(2)(c). On the other hand mere technical objections and evasive denials will not suffice".

People's Bank v. Lanka Queen INT'L Private Limited. 1999 (1) SLR – Pg. 233...

The learned Additional District Judge allowed the defendants to appear and show cause against the Decree Nisi entered in terms of section 6 (2) of Act No. 2 of 1990 as amended by No. 4 of 1994. The defendant-respondent did not file an application for leave to appear and show cause

Held:

1. Act No. 2 of 1990 was amended by Act No. 4 of 1994. S. 6(2) of the original Act was repealed and the word 'Application' which appeared in the original section has been qualified with the following words:

“Upon the filing of an application for leave to appear and show cause supported by affidavit.” Thus it is mandatory for the defendant to file an application for leave to appear and show cause, further such application must be supported by an affidavit which should deal specifically with the plaintiff's claim and state clearly and concisely what the defence to the claim is and what facts are relied upon to support it.

2. Amended S. 6(2) does not permit unconditional leave to defend the claim, the minimum requirement according to S. 6 (2) C is for the furnishing of security.

Per De Silva, J.

“In the absence of an application to show cause in writing, it is possible to say that there is no proper application supported by an affidavit before court.”

The dicta in the above cases provides acceptable answers to meet the case of the Appellant, and I could confidently observe that there is no merit in this appeal.

The other submission of learned counsel for 1st Defendant-Appellant was that the affidavit filed by the Bank along with the plaint was defective. In *Sooriya Enterprises International Vs. Michael White & Co. Ltd.* 202 (3) SLR 371. Mark Fernando J. held substitution of an oath for an affirmation or vice versa will not invalidate proceedings or set aside evidence. The fundamental obligation of a witness or the deponent is to tell the truth and the purpose of an oath or affirmation is to enforce that obligation.

The Deponent is the Manger, People's Bank of the relevant Branch Office. The Plaintiff is the People's Bank. Merely because the deponent in the affidavit states that he is the deponent and the Plaintiff does not mean that the deponent is unaware of the loan transaction. He is no doubt the representative of the Plaintiff Bank, who could step into the shoes of the Plaintiff in the context of this case. This court cannot permit technicalities to take the truth away from the case and allow technical objections to lend support to the Appellant in the way counsel urge. The oath

is correctly stated. The Bank Manger of the branch is more than competent and qualified to testify to the facts of the case and the loan transaction. As such I reject the contention of the appellant.

In all the circumstances of the case the learned District Judge being satisfied with the material placed by the Plaintiff-Bank and having examined all the documents annexed to the plaint has entered 'Decree Nisi' according to the provisions of the Debt Recovery Law. The 1st Defendant-Appellant was not successful in dealing with the Plaintiff Bank claim, and present a plausible defence, in terms of the law. The matters urged by Defendant-Appellant does not give any clue to contest the material contained in documents P1 to P5. Document P2 is the loan application which does not suggest or leave room for the debtor to plead any one or more of the matters urged in paragraphs 4 to 22 of the affidavit and the corresponding averments in his objection. There is no merit in this appeal. I affirm all orders of the learned District Judge. Appeal dismissed without costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL