

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

D. M. S. Office Products Ltd.,
165, Dharmapala Mawatha,
Colombo 7.

DEFENDANT-APPELLANT

C.A 756/1998 (F)
D.C. Colombo 13332/MR

Vs.

D. Manikkam
157/2, Sri Kadireshan Street,
Colombo 13.

PLAINTIFF-RESPONDENT

BEFORE: Anil Gooneratne J.

COUNSEL: Udaya Bandara for the Plaintiff-Respondent
Defendant-Appellant is absent and unrepresented

ARGUED ON: 08.06.2012

DECIDED ON: 08.08.2012

GOONERATNE J.

Plaintiff-Appellant filed action in the District Court of Colombo against the Defendant-Respondent in a sum of Rs. 105,000/- with interest as prayed for in the plaint on the basis of a defective “Nashua Plain Paper Copier” machine purchased by the Plaintiff on 23rd April 1992, which machine was sold and delivered to the Plaintiff by the Defendant Company. It was Plaintiff’s case that having purchased the above photo copy machine the Plaintiff used it for a short period and the machine failed to work properly due to a inherent mechanical defect. Plaintiff’s cause of action is more particular on Defendant Company’s failure to repair and bring it back to normal or replace it with another machine or repay the value of same estimated at Rs. 105,000/-.

Parties proceeded to trial on 14 issues and 2 admissions (paragraphs 2 & 3 of plaint). By the admission of paragraph 3 of the plaint the transaction between parties are admitted. Plaintiff has produced documents P1 to P11 and the Defendant D1 – D22. Whatever the produce or goods it has to be of a merchantable quality. The Defendant has also set forth a claim in reconvention for Rs. 5000/-. Defendant-Appellant’s position seems to be that several warnings were given to Plaintiff and as confirmed in

V22 improper environment would make the machine not suitable for good performance due to dust and heat and the machine in question was open to sunlight and had not been properly protected by the Plaintiff-Respondent also in evidence state that whenever the Plaintiff made a complaint about the machine, Defendant Company attended to same. There were also periodical checks or services by the Defendant Company.

Plaintiff-Respondent in evidence state that on the date of delivery of the photocopy machine itself the machine was broken. Although repairs were done it generated defects. In cross-examination of Plaintiff, he admitted that the only defect was that the dark copies generated by the machine.

However perusal of the evidence I find that the Defendant witness also admitted in cross-examination that from the day the machine was purchased by Plaintiff, there had been complaints about the non performance of the photo copy machine, and it being repaired several times.

I have perused the judgment of the learned District Judge. Trial Judge's views are definitely supported by evidence led at the trial. This is a photo copy machine that had caused enough and more problems for the Plaintiff due to it's improper performance. On several occasions it had to be repaired inclusive from the date of purchase and delivery. A consumer of an

article or goods cannot be put into such an inconvenience due to defects in the items purchased. Trial Judge has considered both versions and held with the Plaintiff on a balance of probability. This court need not unnecessarily interfere with opinions or views expressed by the trial Judge on very many primary facts.

The following extract from the judgment would indicate very fairly as to how the trial Judge considered the evidence.

විත්තිකාර සමාගම විසින් පැමිණිලිකරුට භාර දෙන ලද මෙම යන්ත්‍රයේ කල වර්ණයෙන් පායා පිටපත් ගැසීමට යන්ත්‍රය සර්වස් කිරීමේදීද මගහරවා ගත හැකි තත්ත්වයකි. නමුත් ඊට අමතරව ඉදිරිපත් වී ඇති ලේඛන අනුව පෙනී යන්නේ මෙම යන්ත්‍රය කිප වටක්ම අලුත්වැඩියාවක් කර ඇති බවයි. එයින් පැහැදිලි වන්නේ මෙම අලුත්වැඩියාවක් කිරීමට හේතුව එම යන්ත්‍රය තිබූ ස්ථානයේ වාතාවරණය නොව යන්ත්‍රයේ තිබූ දෝෂ නිසා බවයි. මෙලෙස ප්‍රථම වරට අලුත්වැඩියාවක් කරන ලද්දේ යන්ත්‍රය සවි කොට මාස 7 ක් ඇතුලතය.

මෙම නඩුවේ විත්තිය වෙනුවෙන් මෙම නඩුවට අදාළ යන්ත්‍රය සවි කිරීමට ගිය කාර්මක නිලධාරීද සාක්ෂි දෙන ලදී. ඔහුගේ සාක්ෂිය වූයේද 1992.4.23 වැනි දින ඔහුට පැමිණිලිකරුගේ මෙම ස්ථානයට ගොස් පායා පිටපත් යන්ත්‍රය සවි කල බවයි. කෙසේ වෙතත් දැනට ඉදිරිපත් වී ඇති සාක්ෂි අනුව පෙනී යන්නේ විත්තිකරුවන් විසින් මෙම යන්ත්‍රය සවිකර සුලු කාලයක් ඇතුලතදී එය දෝෂ සහිත වූ බවයි. මෙම දෝෂ එම යන්ත්‍රයෙන් කල වර්ණ පිටපත් හිඟත් වීමට අමතරවයි.

In terms of the Sale of Goods Ordinance goods of a description and accordance with the description, it has to be of a merchantable quality. If not the buyer has the option to reject it. In the case in hand the Plaintiff-

buyer had numerous difficulties and I would hold that he is entitled to be duly compensated for the loss caused to him due to the defect in the machine.

Charles Worth's Mercantile Law – 12th Ed. Pg. 209 ...

Merchantable quality means “that the goods in the form in which they were tendered were of no use for any purpose for which goods which complied with the description under which these goods were sold would normally be used, and hence were not saleable under that description” (per Lord Reid in *B. S. Brown & Sons Ltd. v. Craiks Ltd.* (1970) 1 W.L.R 752, 755). Consequently, goods are not of merchantable quality if, in the state in which they are tendered, (1) they have defects unfitting them for their ordinary use, or (2) their condition is such that no reasonable buyer, with knowledge of their true condition, would accept them in performance of the contract. The fact that the defect can be easily cured, e.g. by washing an irritant out of woolen underwear or by making some trifling repair, is immaterial. Merchantable quality does not mean that there will be purchasers ready to buy the goods, or that the goods will comply with the law of a foreign country, so as to be saleable there. (*Summer, Permain & Co. v. Webb & Co.* (1922) 1 K.B. 55).

In all the circumstances of this case I do not wish to interfere with the views of the learned District Judge. I affirm the judgment of the learned District Judge. Appeal dismissed without costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL