

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

CA 1092/96F

D.C.Colombo Case No. 40939/MHP

Union Trust And Investment Ltd,
347, Union Place,
Colombo 2

plaintiff-appellant

Vs.

1. Miles Morris Xavier Roche,

2. A W S P Khan

3. Brian Peter Obeysekara

carrying on business

under partnership

name and style of Filos Travels

defendant-respondents

BEFORE : A.W.A. SALAM, J.

COUNSEL : Rajendra Jayasingha for the plaintiff-
appellant and Shanaka De Livera for the defendant-
respondents

ARGUED ON : 18 .03.2011.

WRITTEN SUBMISSIONS TENDERED ON 11.05.2011.

DECIDED ON : 28.08.2012

The plaintiff's action was dismissed by the plaintiff after trial on 19 December 1996. Being aggrieved by the said dismissal the plaintiff-appellant has preferred the present appeal against the said judgment. On a perusal of the

impugned judgment it is quite clear that the action has been dismissed by reason of the non-availability of the vital documents tendered by the plaintiff-appellant at the trial.

The learned counsel for the plaintiff-appellant has pointed out that the learned district judge has inadvertently considered the plaintiff appellant as having failed to produce the vital documents whereas it has in fact produced documents as directed by court. On a perusal of the list of documents tendered by the plaintiff-appellant it appears that documents marked as P1 to P19 have been tendered by the plaintiff-appellant on 13 December 1996. The said documents are found in the brief from page 169 to 204. In the circumstances, the judgment of the learned district judge cannot be regarded as one in which every material relevant to the dispute has been considered.

As this has resulted in great prejudice caused to the plaintiff-appellant, I have no alternative but to set aside the judgment and then send the case back to the district court for retrial. Accordingly, the judgment is set aside and the learned district judge directed to rehear the case.

Judge of the Court of Appeal

WC/-