

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

Mercantile Credit Limited  
No. 55, Janadhipathi Mawatha,  
Colombo 1.

**PLAINTIFF**

C.A 329-330/1997 (F)  
D.C Colombo 40072/MHP

Vs,

1. A. G. Subaida Umma.  
C/o S.A. Sathar  
Olukarande, Kekirawa.
2. S. A. F. Mohamed Nawas  
Jiffriya Stores,  
76, Main Street,  
Kekirawa.
3. Richard Daulagama,  
Saluwadana Walawwa  
Nelliyagama,  
Kekirawa.

**DEFENDANTS**

Mercantile Credit Limited  
No. 55, Janadhipathi Mawatha,  
Colombo 1.

**PLAINTIFF**

Vs.

1. A. G. Subaida Umma.  
C/o S.A. Sathar  
Olukarande, Kekirawa.
2. S. A. F. Mohamed Nawas  
Jiffriya Stores,  
76, Main Street,  
Kekirawa.
3. Richard Daulagama,  
Saluwadana Walawwa  
Nellyagama,  
Kekirawa.

**1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> DEFENDANTS**

1. H. G. Subaida Umma.  
C/o S.A. Sathar  
Olukarande, Kekirawa.
3. Richard Daulagama,  
Saluwadana Walawwa  
Nellyagama,  
Kekirawa.

**1<sup>st</sup> & 3<sup>rd</sup> DEFENDANT-  
APPELLANTS**

Vs.

Mercantile Credit Limited  
No. 55, Janadhipathi Mawatha,  
Colombo 1.

**PLAINTIFF-RESPONDENT**

S. A. F. Mohamed Nawas  
Jiffriya Stores,  
76, Main Street,  
Kekirawa.

**2<sup>nd</sup> DEFENDANT-RESPONDENT**

**BEFORE:** Anil Gooneratne J.

**COUNSEL:** A.L.G. Guruge with Laksiri de Silva  
for 1st Defendant-Appellant

Respondent is absent and unrepresented

**ARGUED ON:** 11.11.2011

**DECIDED ON:** 19.01.2012

**GOONERATNE J.**

These are two appeals filed by the Defendants in a hire purchase case where judgment was entered in favour of the Plaintiff-Respondent by the learned Additional District Judge of Colombo by judgment of 20.3.1997. The 1<sup>st</sup> Defendant-Appellant was the principal debtor and the 2<sup>nd</sup> & 3<sup>rd</sup> Defendant-Appellants were guarantors to the hire

purchase agreement. (Marked 'A' annex to plaint). The Appellant who have filed the Petition of Appeal separately are the 1<sup>st</sup> & 3<sup>rd</sup> Defendants and the 2<sup>nd</sup> Defendant.

This court was informed that the 3<sup>rd</sup> Defendant-Appellant expired pending the hearing of this appeal. The Appellant's counsel who appeared for the 1<sup>st</sup> Defendant-Appellant endeavoured to file substituted papers, but could not complete the task as he could not get material or to trace the heirs of the 3<sup>rd</sup> Defendant-Appellant. As such he informed court that he will only pursue the appeal of the 1<sup>st</sup> Defendant-Appellant. Plaintiff-Respondent was absent and unrepresented at the hearing of this appeal though duly noticed, and at a certain stage counsel appeared for Plaintiff-Respondent (1.9.2011).

Learned counsel for the 1<sup>st</sup> Defendant-Appellant raised the following matters inter alia.

- (1) Jurisdiction of court contested, agreement signed in Kandy and not in Colombo. As such based on document 'A' District Court of Colombo has no jurisdiction.
- (2) Agreement not terminated. Refer to Section 18 & 29 of the Consumer Credit Act.

This court wish to observe that at the trial parties have admitted 1<sup>st</sup> & 3<sup>rd</sup> Defendants signing the agreement relevant to this case and paragraph 4 of the plaint. Both these admissions would be important for the Plaintiff's

case. Further at the closure of the Plaintiff's case documents P1 – P4 were read in evidence without any objections to the documents. As such it becomes for all purposes of the case, evidence of the case. Sri Lanka Ports Authority Vs. Jugolinija – Boal East 1981 (1) SLR at 23/24; Latheef and another vs. Mansoor 2100 Bar Association Law Reports 204...

This court observes that with the admission as above, the 1<sup>st</sup> & 3<sup>rd</sup> Defendants admit the signing of the contract, vehicle in question was taken from Plaintiff for hire and hiring of vehicle was at Colombo. Rentals due in the agreement had to be paid at Colombo. There is sufficient evidence placed before the original court that the 1<sup>st</sup> Defendant defaulted in paying the rentals. As such the cause of action arose at Colombo, on default. This is sufficient compliance with Section 9 of Civil Procedure code, and one of the basic matters in the procedure. As such I am unable to agree with the 1<sup>st</sup> Defendant-Appellant on the question of court not having jurisdiction. For all purposes the District Court of Colombo had jurisdiction to hear and determine this action. I am not in a position to fault the judgment of the learned District Judge on this plea.

Perusing the evidence I find that the notice of termination and letters of termination had been led in evidence for which there was no objection. Further as observed above all Plaintiff's documents are admissible as

evidence for all purposes of the case and especially Plaintiff's case. P12, P11 & P11a had in any event marked and produced in evidence without any objection. Therefore I am unable to accept the Appellant's contention and there is no need to call for any further proof. There is due compliance with the provisions of the Consumer Credit Act No 29 of 1982 and as amended by Act No. 7 of 1990.

Plaintiff's witness has placed material before the District Court and there is no doubt that the 1<sup>st</sup> Defendant-Appellant has breached the hire purchase agreement by defaulting paying the rentals due to Plaintiff-Respondent. Therefore the District Judge very correctly entered judgment in favour of the Plaintiff-Respondent. I see no legal basis to interfere with the judgment. The District Judge has correctly analyzed the evidence and dealt with all primary and important facts of this case, Court of Appeal would not unnecessarily interfere with any factual and or primary facts. 1993(1) SLR 119; 20 NLR 332, 20 NLR 282.

This court regret very much to observe that counsel who appear at some stage of the appeal case does not consistently appear on all dates whether case is listed for mention or hearing. In this case learned counsel appeared for the 1<sup>st</sup> Defendant-Appellant at the hearing and assisted court with his submissions. Plaintiff-Respondent and the 2<sup>nd</sup> Defendant-Appellant

were absent and unrepresented on the date of argument. This seems to be a very unethical practice which is gaining momentum day by day. Attorney-at-Law must be concerned with the paramount interest of the client and duty to assist court. Notwithstanding above this court was able to consider the merits of this appeal with the sole appearance of the 1<sup>st</sup> Defendant-Appellant. Having considered all the facts and law relevant to this appeal I have no alternative but to reject and dismiss the appeals of the 1<sup>st</sup> Defendant-Appellant and that of the 2<sup>nd</sup> Defendant-Appellant.

Appeal dismissed without costs.

JUDGE OF THE COURT OF APPEAL