

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

Anglo – Fert Ltd,
95, Hyde Park Corner,
Colombo 2.

Plaintiff

C.A. No. 1018 / 2000 F

Vs.

D.C. Colombo No. 13846 / MR

G. K. Somasundaram,
Hemas Brothers,
No. 15 A, Central Road,
Batticaloa.

Defendant

AND NOW BETWEEN

G. K. Somasundaram,
Hemas Brothers,
No. 15 A, Central Road,
Batticaloa.

Defendant Appellant

Vs

Anglo – Fert Ltd,
95, Hyde Park Corner,
Colombo 2.

Plaintiff Respondent

BEFORE : UPALY ABEYRATHNE, J.

COUNSELS : A.R. Surendran PC for the Defendant
Appellant
Plaintiff Respondent- Absent and
unrepresented

WRITTEN SUBMISSIONS ON : 08.12.2011

ARGUED ON : 26.03.2012

DECIDED ON : 26.09.2012

UPALY ABEYRATHNE, J.

The Plaintiff Respondent (hereinafter referred to as the Respondent) instituted the said action against the Defendant Appellant (hereinafter referred to as the Appellant) in the District Court of Colombo seeking to recover a sum of Rs. 432,794.81 from the Appellant. The Respondent's position was that the Appellant had purchased fertilizers and agro-chemicals from the Respondent on credit terms and the Appellant had failed to settle the total amount to be paid for the sale of fertilizers and agro-chemicals as shown in the running account produced marked 'B' and thereby a cause of action had arisen to the Respondent to recover a balance sum of Rs. 432,794.81 from the Appellant.

The Appellant had filed answer denying the claim of the Respondent and prayed for a dismissal of the Respondent's action. The Appellant further pleaded that the action of the Respondent was prescribed in law. In addition to that the Appellant had set out a claim in reconvention. The case proceeded to trial on 19 issues. After trial the learned Additional District Judge delivered judgment in

favour of the Respondent rejecting the claim in reconvention. Being aggrieved by the said judgment dated 27.11.2000 the Appellant appealed to this court.

At the trial, the Respondent had produced documents marked P 1 to P 13 in proof of the sales of fertilizers and agro-chemicals and of the payments made by the Appellant. The Appellant had given evidence on his behalf producing the documents marked D 1 to D 32.

It appears from the evidence at page 64 of the brief that the statement of account (P 2) has been produced at the trial without any objection and also without subject to proof. Hence it shows that at the trial the Appellant had not challenged the correctness of the accounts contained in P 2. Although the Appellant had taken up the position that he had paid and settled all the dishonoured cheques mentioned in P 2 he had failed to produce any documentation to that effect. Hence it is right to conclude that P 2 was a correct statement of account.

P 12 and P 13 were the most vital documents produced at the trial. P 12 was a letter sent to the Appellant by the Respondent. P 12 is as follows;

“03rd August 1992

Mr. G.K.Somasundaram,

Hemas Bros,

154, Central Road,

Batticaloa.

Dear Sir,

OUTSTANDING BALANCE

We refer to the sum of Rs. 429,794.81 due to this organization from you.

Although it was agreed by you to settle all your debts prior to end April 92 we regret to note that still an amount of Rs. 429,794.81 remains unpaid.

Please take necessary steps to settle the above outstanding without any further delay.

Thank you.

Yours faithfully

Anglo-Asia Fertilizers Ltd.

In response to the said letter P 12 the Appellant has sent the letter P 13 to the Respondent. P 13 is as follows;

21st August 1992.

Accountant,

M/S Anglo-Asian Fertilizers Ltd.

Colombo 2.

Dear Sir,

Ref. your letter of 3rd Aug. 1992. I am sorry for not settling the outstanding account as promised, as I am unable to collect the outstanding from my dealers. However I am making arrangements to send a part payment by end of September.

I have made number of request for my returned cheques that are subsequently paid. Please send these cheques without any further delay to check up with my records.

Thanking you.

Yours faithfully

Hemas Bros

G.K. Somasundaram.

When I consider the contents of the said letters I am of the view that P 13 was a clear admission made by the Appellant that a sum of Rs. 429,794.81 was due to the Respondent as stated in P 12. The Appellant's position was that he has paid and settled the sum stated in P 12. I have carefully perused the documents D 1 to D 32. These documents do not cover the payments which were due upon P 12.

The Appellant further contended that the claim of the Respondent had prescribed in law. Since the Appellant has admitted the responsibility of payments by P 13 the period of prescription has to be considered from the date of the said letter. P 13 was a letter dated 21.08.1992. Hence the prescription will commence to run from 21.08.1992. Since the present case had been instituted in the District Court on 15.09.1993 it is clear that the claim of the Respondent was well within the prescriptive period.

When I consider the said evidence I am of the view that the learned Additional District Judge has rightly concluded that the Respondent was entitled to a judgment as prayed for in the plaint.

In the said circumstances I see no reason to interfere with the said judgement of the learned Additional District Judge dated 27.11.2000. Therefore I dismiss the appeal of the Appellant with costs.

Appeal dismissed.

Judge of the Court of Appeal