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

The Finance Company Limited
Kalutara Branch Office,
No. 202, Main Street,
Kalutara.

PLAINTIFF

C.A 227/1998 (F)
D.C. Kalutara 3510/MR

Vs.

1. Gunatilleke Abeywickrama
No. 428/3, Old kottawa Road,
Udahamulla, Nugegoda.

2. Roland Edward Weerakoone
Roland Hotel, No. 221,
Galle Road, Kalutara North,
Kalutara.

3. Mahakumarage Abeysinghe
No.75, Gemunu Mawatha,
Matugama.

DEFENDANTS

AND BETWEEN

1. Gunatilleke Abeywickrama
No. 428/3, Old kottawa Road,
Udahamulla, Nugegoda.

2. Roland Edward Weerakoone
Roland Hotel, No. 221,
Galle Road, Kalutara North,
Kalutara.

3. Mahakumarage Abeysinghe
No.75, Gemunu Mawatha,
Matugama.

DEFENDANTS-APPELLANTS

Vs.

The Finance Company Limited
Kalutara Branch Office,
No. 202, Main Street,
Kalutara.

PLAINTIFF-RESPONDENTS

BEFORE: Anil Gooneratne J.

COUNSEL: E.M.D Upali for the Defendnat-Appellant

R. Mahindaratne for the Plaintiff-Respondnet

ARGUED ON: 19.06.2012

DECIDED ON: 05.10.2012

GOONERATNE J.

This was an action filed in the District Court of Kalutara to recover certain monies due on a hire purchase agreement (P1), pertaining to vehicle No. 28 Sri 1461. The 1st Defendant-Appellant was the hirer in terms of agreement P1, and the 2nd & 3rd Appellants are the guarantors. At the trial it was admitted that parties entered into the hire purchase agreement P1. (annexed to the plaint). Parties proceeded to trial on 7 issues. Plaintiff's position was that sums of money were due and owing to the Plaintiff company according to paragraphs 8 to 10 of the plaint and that the Defendant evaded payment. The Defendant on the other hand took up the position that by 14.6.1986 Defendant had paid the Plaintiff in full the amount due on the agreement. Defendant had also pleaded prescription.

Plaintiff had produced documents P1 – P7 without objection and at the closure of Plaintiffs case there was no objection for these documents when the documents were read in evidence. As such it becomes evidence for all purposes of the case and in law 1981 (1) SLR 18; 31 NLR 385; 58 NLR 246; 1997 (2) SLR 101. I found that the trial Judge has considered the evidence especially the evidence of the Plaintiffs witness and given his mind to the question of default of the Defendant-Appellants and to an irregularity or malpractice from which the 1st Defendant-Appellant had got pecuniary benefit.

The witness from Plaintiff-Appellant company had testified about the payments that were received by the Plaintiff company and the default of payment as from 7.1.1988. Plaintiff-Respondent had sent notice of termination dated 18.8.1998 (P2) and subsequently terminated the agreement (P3 of 15.10.1998). It was the position of the Respondent that the agreement was duly terminated. In the evidence witness also stated that the above vehicle met with an accident on 9.1.1988 and the Sri Lanka Insurance Corporation agreed to pay the claim on the basis of the total loss and that such a claim should be paid to the Respondent company. Certificate of insurance marked P4. Witness further testified that by letter P5 addressed to the 1st Defendant-Appellant (copied to Plaintiff) were received by Respondent. The Sri Lanka Insurance Corporation requested for all documents pertaining to the vehicle to be handed over and the Respondent company handed over all letters and documents by 14.6.1988. Witnesses also testified that the claim was not received by the Plaintiff company and complained to the Insurance Corporation by letter P5 about a malpractice pertaining to the claim. Plaintiff-Respondent alleged that the 1st Defendant-Appellant fraudulently obtained documents handed over to the Insurance Corporation and submitted them to the Registrar of Motor Vehicles and cancelled the absolute ownership of the Respondent company. It is also the evidence of the above witness that the 1st Defendant-Appellant had obtained the proceeds from Insurance Corporation. Though letter P7 was issued the

1st Defendant-Appellant failed to satisfy the claim of the Plaintiff company. The evidence available is sufficient to infer some form of fraud.

The witness called by the Plaintiff company seems to have corroborated the witness of the corporation and confirm that the Insurance Corporation agreed to pay a sum of Rs. 1,40,000/- and that said sum was paid to the 1st Defendant-Appellant. I would incorporate the concluding findings of the learned District Judge from the following extract in the judgment.

ඊදිරිපත් කරන ලද සාක්ෂි අනුව මෙම අදිකරණය නිගමනය කරනුයේ අදාළ වාහනය අනතුරට භාජනය විම හේතුවෙන් රක්ෂණ සමාගම විසින් පුර්ණහානි වන්දිය ගෙවනු ලැබීමේ කාර්ය පටිපාටිය තුල පැමිණිලිකාර සමාගමේ ද, රක්ෂණ සමාගමේ ද විධමත් ක්‍රියාකාරකම් තුලවු වාසිය 1 වන විත්තිකරු විසින් ලබාගෙන ඇති බවය. කෙසේ වෙතත් පැමිණිලිකාර සමාගම විසින් පරම අයිතිය මුදාගැනීමේ ලිපිය නිකුත් කරනු ලැබීම මුදල් ගණුදෙනු පහසු කරලීමේ කාර්යයන් වශයෙන් සිදුකරන ලද විදිබද්ධතිය කටයුත්තක් ලෙස මෙම අධිකරණය කිගමනය කරමි. 1988.10.15 වන දින ගිවිසුම අවලංගු කරන අවස්ථාව වනවිට මෙම වාහනය අනතුරට භාජනය වි ඇති බව පැමිණිලිකාර සමාගමේ පිලිගනු ලැබ අතර ගිවිසුම අවලංගු කරන අවස්ථාවේ සමාගමට අයවිමට තුබුනේ රුපියල් 40,444 ශත 85 බව පැමිණිලිකාර සමාගම වෙනුවෙන් ඉදිරිපත් කරන ලද සාක්ෂියේදී කියා සිටනු ලැබ ඇති බැවින් 1 වන විත්තිකරු විසින්

පැමිණිලිකාර සමාගමට ගෙවිය යුතු මුදල එම මුදල බවට මෙම අධිකරණය තිරණය කරමි.

In the brief judgment of the learned District Judge I find that he has correctly analysed the evidence before him and decided the case based solely on evidence and awarded the restricted sum to the Plaintiff-Respondent. All primary facts are well considered and this court need not disturb those findings. As such I affirm the judgment and dismiss this appeal with costs.

Dismissed.

JUDGE OF THE COURT OF APPEAL