

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRILANKA

CA 592/2001 F

DC Matale No. 4349/T

S.SIVAYANAMA,
No 300, Main Street,
Matale and another
PLAINTIFF-APPELLANTS

VS

PEOPLE'S BANK,
Union Place,
Colombo and 7 others
DEFENDANT-RESPONDENTS

Before; A W A Salam, J

Counsel : A R Surendran PC with N Kandeepan for the
plaintiff-appellants and Manohara De Silva PC with Arindra
Wijesurendra for the defendant-respondents.

Written Submissions tendered on: 24.04.2012.

Decided: 15.06.2012.

A W Abdus Salam, J

This appeal relates to the order dismissing the plaintiffs' action upholding the objection raised by the defendants citing section 70 (B) (5) of the State Mortgage and Investment Bank Act. When the appeal came up for argument, preliminary objection was raised as to the maintainability of the appeal on the basis that no final appeal lies as of right against the said order and this court over ruled the preliminary objection.

As a matter of fact the parties had invited court to rule only on the preliminary objection, but apparently by inadvertence the court has delved into the merits of the appeal as well. For this reason alone the order of this court dated 31. 07. 2006 was set aside in SC Appeal No 71/2007 SC Spl. LA 218/2006 by SC minute dated 13.5.2009.

When the appeal came up for argument in this court, in terms of the judgement of the Supreme Court in SC Appeal No 71/2007, the objection with regard to the maintainability of the appeal was once again raised by the defendant-respondents on the same basis. This judgement relates to the said preliminary jurisdictional objection thus re-agitated.

On a perusal of the judgement of the Supreme Court in SC Appeal No 71/2007 aforesaid, no exception has been taken to the approach adopted by this court in delivering the order dated

31.7.2006. The main ground on which the impugned order has been set aside centres on the failure of this court to give the parties a fair hearing on the merits of the appeal.

The defendant-respondents have submitted that the dismissal of the action by the learned district judge should be treated as an order within the meaning of section 754 (2) of the CPC from which an appeal is available with the leave of this court first had and obtained. The learned President's Counsel of the defendant-respondents relies on the judgement in Ranjith Vs Kusumawathie and others reported in 1998 3 SLR page 232.

On the contrary, the learned President's Counsel of the appellants' has placed reliance on the judgement of Sharvananda, J (as he was then) in Siriwardena Vs Air Ceylon Ltd 1984 1 SLR 287, where His Lordship laid down at page 297 the initial requirements necessary to treat an order/judgement as being final.

According to Sharvananda, J, to attribute finality to a judgement and bring it under section 754 (5) of the CPC it must have the effect of finally disposing the rights of the parties and it cannot be treated to as a final order, if the action is still left alive for purpose of determining the rights and liabilities of the parties in the ordinary way. Emphasising further on the qualifications His Lordship laid down that the finality of the order must be determined in relation to the suit and the mere

fact that a cardinal point in the suit has been decided is not enough to make an order a final one.

Taking into consideration the fact that by the dismissal of the plaintiffs' action the learned district judge has finally disposed of the right of the parties and the action not having been left alive any further, I am of the opinion that the impugned order should be treated as one having finally brought the action to an end. For reasons stated above, I am of the view that it is desirable to follow the judgement in *Siriwardena Vs Air Ceylon Ltd (supra)* and overrule the preliminary objection raised with regard to the maintainability of the appeal.

There shall be no costs.

Judge of the Court of Appeal

mds