

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

Peoples Bank,  
No 75, Sir Chittampalam A Gardinar  
Mawatha,  
Colombo 02.

Plaintiff

C.A. No. 77 / 2000 F  
D.C. olombo No. 406 / DR

Vs.

Manuel Santhiyago Puvanendran  
Victoria,  
No 17 A, Pathima Road,  
Makola,  
Kiribathgoda.

Defendant

**AND NOW BETWEEN**

Manuel Santhiyago Puvanendran  
Victoria,  
No 17 A, Pathima Road,  
Makola,  
Kiribathgoda.

Defendant Appellant

Vs

Peoples Bank,  
No 75, Sir Chittampalam A Gardinar  
Mawatha,  
Colombo 02.

Plaintiff Respondent

BEFORE : UPALY ABEYRATHNE, J.  
COUNSELS : Defendant Appellant- Absent and unrepresented  
Rasika Dissanayake with Chandrasiri  
Wanigapura for the Plaintiff Respondent

ARGUED ON : 16.01.2012

DECIDED ON : 14.02.2012

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. 201,454.05 and the interest thereon under and in terms of the Debt Recovery (Special Provisions) Act No 02 of 1990.

Accordingly a decree nisi has been entered against the Appellant as prayed for in the prayers to the plaint. The Appellant, upon the receipt of the said decree nisi, has preferred an application seeking permission of court to appear and defend the case unconditionally. The learned Additional District Judge after inquiry has refused the said application of the Appellant. Being aggrieved by the said order of the learned Additional District Judge dated 27.01.2000 the Appellant has preferred the instant appeal to this court.

The Appellant has admitted that he had obtained an overdraft facility of Rs. 150,000/- from the Respondent Bank. In paragraph 05 of the petition of appeal, the Appellant has set out several grounds of appeal.

The learned Counsel for the Respondent submitted that nowhere in the Debt Recovery (Special Provisions) Act it has been provided that a party dissatisfied with an order or judgment made under and in terms of the said Act has a right of appeal. I am in agreement with the said submission. The Debt Recovery (Special Provisions) Act No 02 of 1990 does not provide the aggrieved party a right of appeal. The right of appeal is a statutory right. It should be expressly created and granted by the statute.

In the case of Martin Vs Wijewardena (1989) 2 SLR 409 (SC) it was held that “A right of appeal is a statutory right and must be expressly created and granted by statute. It cannot be implied. Article 138 is only an enabling Article and it confers the jurisdiction to hear and determine appeals to the Court of Appeal. The right to avail of or take advantage of that jurisdiction is governed by the several statutory provisions in various Legislative Enactments.”

In the case of Bandara Vs The Peoples Bank (2002) 3 SLR 25 it was held that “The Debt Recovery (Special Provisions) Act is an Act which has created special jurisdiction and it is a procedure whereby no right of appeal has been bestowed on a party aggrieved by a decree absolute.”

In the aforesaid circumstances I see no reason to interfere with the judgement of the learned District Judge dated 29.08.2000. Therefore I dismiss the appeal of the Appellant with costs.

*Appeal dismissed.*

Judge of the Court of Appeal