

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

Thilakamuni Patrick de Silva,
No. 142 (160) Negombo Road,
Wattala.

Plaintiff

Vs.

Peoples' Bank,
Peoples' Bank Headquarters,
Sir Chittampalam A Gardinar Mawatha,
Colombo 2.

Defendant

C.A. No. 1003 / 2000 F

D.C. Colombo No. 10170 / MR

And Now Between

Thilakamuni Patrick de Silva,
No. 142 (160) Negombo Road,
Wattala.

Plaintiff-Appellant

Vs

Peoples' Bank,
Peoples' Bank Headquarters,
Sir Chittampalam A Gardinar Mawatha,
Colombo 2.

Defendant -Respondent

BEFORE : UPALY ABEYRATHNE J.

COUNSEL : Dr. Sunil Cooray with Buddhika Gamage for
the Plaintiff Appellant
Sunil Abeyrathne with Buddhika Alagiyawanna
for the Defendant Respondent

ARGUED ON : 14.09.2011

WRITTEN SUBMISSIONS : 22.09.2011

DECIDED ON : 30.09 2011

UPALY ABEYRATHNE, J.

The Plaintiff Appellant (hereinafter referred to as the Appellant) instituted an action against the Defendant Respondent (hereinafter referred to as the Appellant) in the District Court of Colombo seeking a judgment to recover a sum of Rs. 2281229/= as damages. The Respondent prayed for a dismissal of the Appellant's action. The case proceeded to trial on 21 issues. The learned Additional District Judge after trial dismissed the Appellant's action with costs. Being aggrieved by the said judgment dated 24.11.2000 the Appellant preferred the instant appeal to this court.

According to the Appellant he had made an application for a loan to the Regional Manager of the Industrial Development Board of Sri Lanka (IDB), Kurunegala Branch, for his industrial project. The IDB had approved the Appellant's project and had agreed to grant a loan of Rs. 150000/-. Thereafter the

Appellant had commenced work of the said project on 01.01.1979 and the Regional Manager of the IDB and the Regional Manager of the Defendant Respondent had carried out a joint inspection of the project on 20.03.1979 and had approved an advance payment of Rs 25,000/-. The Appellant had further stated that the Respondent who was the Branch Manager of the Puttalam Branch refused to release the said advance of Rs. 25000/- to him due to personal reasons and therefore he happened to obtain the approval of the Assistant General Manager of the Respondent to have the said advance released.

In paragraph 10 of the Petition of Appeal the Appellant has stated that when the Respondent credited the advance of Rs. 25000/- to the Appellant's current account No. 2430 at the Puttalam Branch on 08.06.1979, on the instruction of the IDB a loan contract was formed between the Appellant and the Respondent. Thereafter on 21.09.1979 the Appellant entered in to a formal written loan agreement with the Respondent at its regional office at Kurunegala, where the terms and conditions on which the said loan of Rs. 150,000/- was to be granted to the Appellant by the Respondent were set out.

The Appellant's action has been based on the breach of terms and conditions of the said loan agreement. The Respondent's position was that there was no such loan agreement entered between the parties and the document produced marked X 1 which was the loan application was the one and only document had in respect of the aforesaid loan. The Appellant could not produce any such loan agreement at the trial. On the other hand it appears from paragraph 10 of the petition of appeal that a sum of Rs. 25000/- of the said loan of Rs. 150,000/- had been released to the Appellant on 08.06.1979. It is also stated in the same paragraph that the Appellant entered in to a formal written loan agreement

with the Respondent on 21.09.1979. Said facts clearly show that even at the time of releasing the first payment of Rs. 25000/- of the said loan there had been no such loan agreement entered between the Appellant and the Respondent.

The learned counsel for the Appellant further submitted that due to extraneous and personal reasons Puttalam Branch Manager of the Respondent Bank took revenge from the Appellant and harassed him by releasing the said loan of Rs. 150,000/- in 100 instalments. But the Appellant, at the trial (page 151 and 160 of the brief) has admitted that he received the entire loan amount of Rs. 150,000/- in 06 instalments and he received the last loan instalment on 20.12.1980.

It also appears from D 7 and D 8 that the Appellant had made defaults in payment of loan instalments. D 7 is a letter dated 01.07.1989 which had been sent to the Regional Manager Kurunegala branch of the Respondent Bank by the Appellant. Said letter had been sent after 10 years from the date, namely; 08.06.1979, on which date the Appellant received the first payment of Rs. 25000/- of the said loan. The Appellant had stated in D 7 as follows; "I must thank you sincerely for all your great kindness in deciding to reschedule this longstanding loan which has kept me fogging daily since 10 years."

D 8 too is a letter dated 12.09.1989 which had been sent to the Chairman of the Respondent Bank by the Appellant. The Appellant had stated therein as follows; "It is more than seven years since this mill was completely destroyed by some political rivals on 21st October 1982, and I am anxious to have it reconstructed. I shall be very much obliged if you will grant me permission to settle the past due loan of Rs. 150,000/- without interest in the manner suggested above." It appears from the said statements that the Appellant

had received total loan amount by 21.10.1982 and the construction of the mill had been concluded by that time.

When I consider said two documents in the light of the said premise the most surprising part of the conduct of the Appellant is that his quieten with regard to the alleged harassment when he made D 7 and D 8. He did not utter a word in D 7 or D 8 about the alleged harassment or taking revenge from him.

In the said circumstances I am of the view that the Appellant has failed to prove his case on a balance of probability. Hence I see no reason to interfere with the judgement of the learned Additional District Judge dated 24.11.2000. Therefore I dismiss the appeal of the Appellant with costs.

Appeal dismissed.

Judge of the Court of Appeal