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

S. A. S. Karunawathie Epa
No. 245/3, D.S. Senanayake Veediya
Kandy.

DEFENDANT-APPELLANT

C.A 267/1997 (F)
D.C. Kandy 10559/MS

Vs.

G. Francis Direckze
No. 30, Kahalla,
Katugastota.

PLAINTIFF-RESPONDENT

BEFORE: Anil Gooneratne J.

COUNSEL: Defendant-Appellant absent and unrepresented

D. Obeysekera with S. Dissanayake
and S.A. Rajapaksa for the Plaintiff-Respondent

ARGUED ON: 26.05.2011

DECIDED ON: 17.06.2011

GOONERATNE J.

This was a suit filed in the District Court of Kandy on three promissory notes in terms of chapter 53 of the Civil Procedure Code. (summary procedure on liquid claims). Judgment was entered in favour of the Plaintiff-Respondent on or about 3.2.1997 and the Defendant-Appellant preferred an appeal to this court. On the date of hearing Appellant was absent and unrepresented. On that ground alone this appeal is liable to be rejected, on the failure of the Appellant to exercise due diligence to prosecute this appeal. However this court heard submissions of learned counsel for the Plaintiff-Respondent, who assisted court in the disposal of this appeal.

The Journal Entry No. 6 of 25.9.1992 refer to granting of leave by the original court as required by chapter 53 of the Code. Parties proceeded to trial on 23 issues. Petition of Appeal merely incorporate the issues raised in the original court but does not specifically plead the grounds of appeal. The Petition of Appeal in it's paragraph 1 suggest that Plaintiff filed action in the original court on the following basis and aver such material in paragraph 2 to 5 in the Petition of Appeal. As such I had to

gather the position of the Appellant from the material in the original record and on submissions of learned counsel for Respondent. The following points are noted.

(a) Defendant-Appellant had not given evidence in the District Court
(b) Defendant had filed action bearing No. X/11672
(c) Defendant obtained a loan of Rs. 40,000 from Plaintiff.
(d) Defendant transferred a property to Plaintiff on account of the above loan.
(e) Plaintiff admits that the above loan of Rs. 40,0000/- was settled by Defendant – Folio 57, 58,60 of brief
(f) The above action No. X/11672 was filed by Defendant against Plaintiff to recover the property transferred to Plaintiff on account of the said loan
(g) Case No. X/11672 was settled – proceedings marked vi in the District Court. It was evidence in this case; Plaintiff admits v2
(h) Defendant disputes two of the promissory notes and imputes fraud on the part of the Plaintiff. (2nd & 3rd promissory notes to be fraudulently executed)
(i) Defendant though marked in evidence through the Plaintiff's documents vi-v3 above had not been tendered to court.

One of the main points urged by learned Counsel for Plaintiff-Respondent was that though the Defendant-Appellant took up the position that the above mentioned two promissory notes were fraudulently executed, Defendant never led evidence in the District Court to prove that point. In other words no expert evidence of Examiner of Question and Document was led, to prove that the promissory notes were either forged, fraudulent or not genuine. It was the position of the Plaintiff-Respondent that failure to

produce a report from E.Q.D would be a lapse on the part of the Defendant and that such an allegation is bogus and unacceptable.

Plaintiff gave evidence in the original court and marked vital documents which favour his case. There was no objection by the Defendant when documents P1 – P5 were marked in evidence. As such these documents would be evidence for all purposes to prove the case of the Plaintiff- vide Sri Lanka vs Ports Authority Vs. Jagolina 1981 (1) SLR 18 at 24.

The Letter of Demand P4 was not challenged or disputed by Defendant.

The silence of the defendants amounts to an admission of the truth of the allegations contained in the Letter of Demand (P4). As regards failure to reply to letters. E.R.S.R. Coomaraswamy, P.C. in his "The Law of Evidence, 2nd Edition, 1980 Volume I, at page 237, has this observation to make.

"Both in England and in Sri Lanka, the view has been taken in business matters, in certain circumstances, the failure to reply to a letter amounts to an admission made therein. Thus in Weideman Vs. Walpola (1891) 2 QB 534, Lord Esher, M. R. said –

> "Now, there are cases – business and mercantile cases – in which the courts have taken notice that, in the ordinary course of business, if one man of business states in a letter to another that he has agreed to do certain things, the person who receives that letter must answer it, if he means to dispute the fact that he did so agree. So, where merchants are in dispute one with the other in the course of carrying on some business negotiation, and one writes to the other, 'but you promised me that you would do this or that,' if the other does not answer that

letter, but proceeds with the negotiations, he must be taken to admit the truth of the statement."

In Saravanamuttu Vs. De Mel, 49 N.L.R 529, Dias, J held that in business matters, if a person states in a letter to another that a certain state of facts exists, the person to whom the letter is written must reply if he does not agree with or means to dispute assertions Otherwise, the silence of the letter amounts to an admission of the truth of the allegation contained in that letter.

The learned District Judge refer to documents D1 to D3 and state that though these documents were marked in evidence by the Defendant, same had not seen proved by calling witnesses to prove the documents. Further the Defendant had not given evidence stating that she did not sign the promissory notes, P1 to P3. Trial Judge observed that the Plaintiff has proved his case on a balance of probability. This court notes the following extract from the judgment.

පැමිණිලිකරු මුදල් පොලියට දෙන අයෙකු බව ඔප්පු කිරීම සඳහා කිසිදු සක්ෂියක් ඉදිරිපත් කර නැත. පැමිණිලිකරුගෙන් හරස් ප්‍රශ්න ඇසීමේදි මුද්දර උඩ ඇති අත්සන් වෙනස් නොවේදැයි ප්‍රශ්ණ කල නමුදු එසේ වෙනසක් නොපෙනෙන බව ඔහුගේ සාක්ෂියෙන් සඳහන් කර ඇත. සමථයට පත් වූ අනෙක් එක්ස් 11672 දරණ නඩුව පවතින අතරතුර මෙම නඩුවද පැවතුනු බව පැමිණිලිකරුගේ සාක්ෂියෙන් කියා ඇත. නමුත් පැමිණිල්ලෙන් සඳහන් කරන පරිදි මෙම නඩුවට අදාලවද එම නඩුම සමථයකට එලඹුනු බවට කිසිදු සක්ෂියක් විත්තියෙන් ඉදිරිපත් කර නැත.

The promissory notes in question were not disputed or objected when marked in evidence. Therefore the intention to make the note cannot be challenged. Law does not require a particular form to be used, in a promissory note. No particular form of words is essential to the validity of a note, but the form must be such as to show the intention to make a note. 16 NLR at 480. Every undertaking in writing to pay a sum of money is not necessarily a promissory note but where the intention of the maker of the document is manifestly that it should be and take effect as a promissory note the document is a promissory note.29 NLR at 293 – English Law governs this subject. It is to be noted that, where money has been lent on a note a claim for money lent can be maintained apart from the note 24 NLR 487; 22 NLR at 344.

In all the above circumstances this court observes that Plaintiff-Respondent has established his case. No proper grounds are urged in both courts to consider the case of the Defendant-Appellant. This is a frivolous appeal. Judgment of the District court is affirmed.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL