

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

1. R. A. Tillekeratne Bandara  
Tilakasiri Stores'  
Diyasenpura.
2. K. W. Premaratne of  
'Ratnasiri Stores',  
Wijayapura, Diyasenpura.
3. W. J. Abeyratne of  
'Jayabima Stores',  
Diyasenpura.

C.A 1155/96(F)  
D.C Polonnaruwa 14/96/DR

**DEFENDANT-APPELLANTS**

Vs.

People's Bank  
No. 75, Sir Chittampalam  
A. Gardiner Mawatha,  
Colombo 2.

**PLAINTIFF-RESPONDENT**

**BEFORE:** Anil Gooneratne J.

**COUNSEL:** Defendant-Appellants absent & unrepresented  
R. Dissanayake for Plaintiff-Respondent (People's Bank)

**ARGUED ON:** 16.05.2011

**DECIDED ON:** 02.06.2011

**GOONERATNE J.**

This was an action filed in terms of the Debt Recovery (Special Provisions) Act No. 2 of 1990 as amended by Act No. 9 of 1994 in the District Court of Polonnaruwa. On the dates of hearing of this appeal the Appellants were absent and unrepresented though duly noticed by this court.

Petition of Appeal filed of record seeks to set aside the order of the learned District Judge dated 13.11.1996 by which decree nisi was made absolute. In the body of the Petition of Appeal it is pleaded that the learned District Judge erred since he did not give an opportunity to obtain Leave to Appeal to appear and defend in terms of the above law. Appellants seem to suggest in the Petition of Appeal that the mandatory provisions of Section 12 of the Act No. 9 of 1994 had not been followed. The said section reads thus :

Where the defendant appears in court in response to the decree nisi and does not contest the decree nisi but admits liability and prays to liquidate the debt in installments, the court shall with the approval of both parties to the action, minute the fact on the record and thereafter, make the decree absolute. Such settlement shall operate as a stay of execution of proceeding unless the defendant acts in breach of any of the terms of settlement in which event the institution shall be entitled to execute the decrees .”

The learned Counsel for the Plaintiff-Respondent Bank in his submission to court inter alia supported the order of the learned District

Judge dated 13.11.1996. The learned Judge of the Original Court has made reference to Section 12 of the law and emphasis that the Defendants have agreed to settle the amount due by way of instatements. Although pleaded as above the Trial Judge also states that it is not a genuine attempt by the Appellants since the Appellants also seek a dismissal of the action and for an order of court to file answers. I do not wish to interfere with the findings of the learned District Judge on his observation on this aspect. However the Debt Recovery Act is a special statute enacted on the lines of the summary procedure on liquid claims of the Civil Procedure Code, to expedite litigation on debt recovery. As such one should not on one hand agree to settle by way of instatements and also try to contest the case on the other hand, which is not a genuine attempt as observed by the District Judge, but only an attempt to delay the proceedings.

Documents made available does not suggest or disclose a prima facie sustainable defence in terms of the statute. The respondents have acknowledged that the sums mentioned in the plaint are due and payable. As such court cannot act under Section 6(2) ( c) of the Act. The word 'debt' in the statute is given a very wide meaning. Procedure laid down in the statute need to be strictly followed. A defendant must in terms of the statute if he wishes to contest the case first obtain leave to appear and show cause, by

following the suggested procedure in the Act. In the instant case the Defendant's attempt is not a genuine attempt as observed by the District Judge. His attempt is only to mislead. As such decree nisi being made absolute in the Original Court cannot be faulted. I cannot find a plausible defence with a triable issue, which cannot be summarily disposed on which investigation is required.

I am inclined to follow the Dicta in the case of Ramanayake vs. Sampath Bank Ltd. and others 1993(1) SLR at 153 ... However section 6(2)(c) of the Act expressly provides for the affidavit of the Defendant to deal specifically with the Plaintiff's claim and his defence thereto and what facts are being relied on to support his case thereof. The Defendant has to deal with the Plaintiff's claim on its merits; it is not competent for the defendant to merely set out technical objections. It is also incumbent on the Defendant to reveal his defence, if he has any.

In all the circumstances it is apparent that this is a frivolous appeal. District Court Judgment is affirmed.

Appeal dismissed with costs.

JUDGE OF THE COURT OF APPEAL