

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

Remyko Industries Ltd.
No. 194, Sri Ramanathan Mawatha,
Colombo 13.

DEFENDANT-APPELLANT

C.A 235/1997
D.C Colombo 11525/MR

Vs.

Tootal Thread Colombo (Pvt) Ltd.
No. 33, Staples Street,
Colombo 2.

PLAINITFF-RESPONDENT

BEFORE: Anil Gooneratne J.

COUNSEL: T.G. Gooneratne for Plaintiff-Respondent
Defendant-Appellant absent and unrepresented

DECIDED ON: 01.04.2011

GOONERATNE J.

The Appellant and his registered Attorney was absent and unrepresented on 21.3.2011, though duly noticed by the Registrar of this Court. When this matter came up before this court on the said date, learned Counsel for Plaintiff-Respondent Mr. T.G. Gooneratne moved for rejection of this appeal. It is apparent to this court that the Appellant has failed to exercise due diligence to prosecute this appeal. As such appeal needs to be rejected in terms of rule Nos. 13 & 34 of the Supreme Court Rules.

However I have also considered very briefly the merits of this appeal. Plaintiff Company on the request of the Defendant-Appellant supplied goods (being thread) and also entered into an agreement for such purpose and to supply above on credit facilities (vide P1A & P1B). By document P2 (ledger) it is in evidence that Plaintiff supplied the required thread to Defendant and there was a balance sum of Rs. 288,802.33 due to Plaintiff. The evidence of Plaintiff witness would confirm that by letter P1 which was replied by Defendant by P3, and based on same Plaintiff supplied goods. Plaintiff had from time to time supplied goods and a sum of Rs. 2,27,875/84 was due and owing from Defendant as evident from document

P4. The cheques sent by Defendant to Plaintiff-Respondent marked P5, (with letter P6) P8 & P14 had been dishonoured. Plaintiff's witness marked documents P1 – P14.

Defendant raised the plea of prescription. Transactions established from time to time does not indicate that the plea of prescription would succeed. It is a futile attempt to rely on prescription. This is a running account and P7 clearly indicate the last entry. Plaint filed on 29.10.1991 which is within 1 year.

Defendant did not call any witnesses to testify on their behalf. Not a single document had been produced by the Defendant-Appellant at the trial. In the case of Edrick de Silva Vs. Chandradasa de Silva H.N.G. Fernando J. observed as follows:

..... But where the plaintiff has in a civil case led evidence sufficient in law to prove a factum probandum, the failure of the defendant to adduce evidence which contradict it adds a new factor in favour of the plaintiff. There is then an additional "matter before the Court", which the definition in Section 3 of the Evidence Ordinance requires the Court to take into account, namely that the evidence led by the plaintiff is uncontradicted.

Parties proceeded to trial on 7 issues which had been answered correctly by the learned District Judge, who entered judgment in favour of Plaintiff-Respondent. I see no basis or reason to interfere with the judgment

of the trial Court Judge. Evidence had been correctly considered and analysed. This is a frivolous appeal. As such I dismiss this appeal.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL