

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

Ceylinco Profit Sharing Investment
Corporation Limited
No. 153/1/1, Dharmapala Mawatha,
Colombo 7.

PLAINTIFF

C.A 177/2013 (Revision)
CHC Case No. 186/10/MR

Vs.

1. Green Flower Manufacturers (Pvt.) Ltd.,
No. 52B, "Dutugemunu Mawatha",
Kalubowila, Dehiwela.
2. M. L. A. M. Hizbullah
Telecom Road,
Kaththankudi - 01.

DEFENDANTS

AND NOW BETWEEN

M. L. A. M. Hizbullah
Telecom Road,
Kaththankudi - 01.

2ND DEFENDANT-PETITIONER

Vs.

1. Ceylinco Profit Sharing Investment Corporation Limited
No. 153/1/1, Dharmapala Mawatha,
Colombo 7.

PLAINTIFF-RESPONDENT

2. Green Flower Manufacturers (Pvt.) Ltd.,
No. 52B, "Dutugemunu Mawatha",
Kalubowila, Dehiwela.

1ST DEFENDANT-RESPONDENT

Ceylinco Profit Sharing Investment Corporation Limited
No. 153/1/1, Dharmapala Mawatha,
Colombo 7.

PLAINTIFF

Vs.

C.A. 178/2013 (Revision)
CHC Case No. 188/10/MR

1. Happy Day Lanka (Pvt.) Limited,
No. 52B, "Dutugemunu Mawatha",
Kalubowila, Dehiwela.
2. M. L. A. M. Hizbullah
Telecom Road,
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DEFENDANTS

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M. L. A. M. Hizbullah
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2ND DEFENDANT-PETITIONER

Vs.

1. Ceylinco Profit Sharing Investment Corporation Limited
No. 153/1/1, Dharmapala Mawatha,
Colombo 7.

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2. Happy Day Lanka (Pvt.) Limited,
No. 52B, "Dutugemunu Mawatha",
Kalubowila, Dehiwela

1ST DEFENDANT-RESPONDENT

BEFORE: Anil Gooneratne J. &
Deepali Wijesundera J.

COUNSEL: Chrismal Warnasuriya with Dushantha Kularatne
and Sonali Wanigabaduge for the 2nd Defendant-Petitioner

SUPPORTED ON: 01.07.2013

DECIDED ON: 03.07.2013

GOONERATNE J.

We have heard learned counsel for the 2nd Defendant-Petitioner in support of this revision application. The 2nd Defendant-Petitioner seeks to revise order marked X13 of 2.5.2013, of the learned High Court Judge Colombo.

This court observes that the Petitioner has failed to comply with Part IV of the Rules of the Supreme Court, more particularly Rule 46 i.e original record or a certified copy of same not tendered to court, as required in terms of the said Rule. The said Rule require that the petition should be accompanied by originals of documents or duly certified copies of same. In this application an incomplete set of documents are tendered to court and this court is at an disadvantage to verify the position of the Petitioner as regards issue No. 7, which the learned counsel for the Petitioner strenuously argued that he has been deprived of a fair hearing and the trial Judge has relied upon a report sent by the Registrar of Companies to permit the recording of such issue. The learned counsel submits that it is not pleaded in relation to any cause of action. As such it seeks to alter the scope and character of the action and thereby prejudice his client.

We also note that document X2 tendered to court is also incomplete and X2 consists of pgs 1, 2, 7 & 8. Pgs 3 – 6 are not included and tendered. As such

Journal Entries contained therein are not in a proper order. On the other hand issues recorded by court, where the trial Judge has accepted and filed of record, also cannot be traced with the limited documents submitted to this court.

At the hearing learned counsel drew the attention of this court to document X14, to demonstrate his inability to obtain the record. This court cannot inquire into such allegations. Requirements of Rule 46 need to be strictly complied with in all revision application, and failure to comply with same would be fatal.

Nevertheless the order X13 refer to issue No. 7 which reads thus “1 වන විචාරකරු නීතිය ක්‍රියාත්මක වීමෙන් පැවැත්මක් නැති වී ඇත්ද? The 2nd Defendant’s position in the trial court according to the order X13 is that, “whether the Plaintiff could proceed to recover from the 2nd Defendant the amount due without taking steps to recover the same from the principal debtor the Plaintiff. (Issue also raised in the High Court by the 2nd Defendant). This is an issue that should decide the liability of the 2nd Defendant-Petitioner, in the context of the case in hand. It is an issue that could bring in very many factual or mix questions of fact and law to cater to the position of the 2nd Defendant-Petitioner, which position was argued on his behalf by his learned counsel before

this court. We do not see a legal basis to strike out issue No. 7. When the fiscal reports to court as in the case in hand that summon cannot be served and that the 1st Defendant is not in the address given to court (as in plaint), merely because more details were provided to court by the Plaintiff from the Registrar of Companies, it would not in any way prejudice the case and stance of the 2nd Defendant-Petitioner. The issue suggested as above by the 2nd Defendant is wide in its application and cannot shut out the case of the 2nd Defendant merely by ascertaining the truth of the matter from the Registrar of Companies. Sometimes such information might even assist the 2nd Defendant? This court is of the view that the Petitioner cannot be prejudiced. Nor does it change the character of the suit, as the High Court would have to consider both factual and legal position in a case of this nature, in order to decide the liability of the Petitioner, even in the absence of the 1st Defendant, according to law.

We wish to state that framing of issues are not necessarily restricted to pleadings A.Kareeza Vs. Jayasinghe 1986(1) CALR 109; A case must be tried upon the issues on which the right decision appears to the court to defend and it is well settled that the framing of such issues is not restricted to pleadings. Bank of Ceylon Vs. Chellaipilli 64 NLR 25. An issue of law which goes to the very root of

the case should be allowed in the interest of Justice even though it does not arise out of the pleadings. Dharmadasa Vs. Goonewardene 11 CLW 385.

Either party would have a right to raise consequential issues. The test is whether such issue arise from an issue raised by the opposing party.

Having heard learned counsel for the Petitioner, this court whilst thanking him for assisting court with his submissions and authorities cited in the course of arguments is of the view that trial in the High Court should proceed to the end to enable the trial Judge to decide the case on its merits and all acceptable evidence. As such we refuse to issue notice. Both applications dismissed without costs.

Applications refused and dismissed.

JUDGE OF THE COURT OF APPEAL

Deepali Wijesundera J.

I agree.

JUDGE OF THE COURT OF APPEAL