

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

**CA Case No: CA 331/98(F)**

DC Colombo Case No: 42098/MHP

Alliance Finance Limited,  
No: 84,  
Ward Place,  
Colombo 07.

**-Plaintiff-Appellant-**

**Vs.**

Ilandarige Rohana Pushpakumara,  
6/4, Uswattea Road,  
Natudura,  
Kelaniya.

Ilandarige Ariyasena,  
6/4, Uswattea Road,  
Natudura,  
Kelaniya.

Weeratunga Arachchige Anton Prasad Seram,  
105, Pamunuwa Road,  
Gonawala,  
Kelaniya.

**-Defendant-Respondents-**

C.A.Appeal No. 331/98(F) - D.C. Colombo 42098/HP

Before : **K.T. Chitrasiri, J.**

Counsel : Thanuka Gunawardena for the Plaintiff-Appellant  
Respondent is absent and unrepresented.

Argued &

Decided on : 01.08.2013.

**K.T. Chitrasiri, J.**

When this matter was taken up on the last occasion namely on 16.07.2013, Counsel for the appellant was directed to submit authorities in order to consider the correctness of the answer given to issue No. 12 which had been raised to ascertain whether the plaintiff-appellant had complied with Section 16 of the Consumer Affairs Act No. 29 of 1982. However counsel for the plaintiff-appellant appearing today submits that her senior counsel is not available to make submissions on the above. Counsel for the plaintiff-appellant further submits that they could not find any authorities to support the matters raised in respect of Section 16 of the Consumer Affairs Act.

This is an appeal seeking to set aside the judgment dated 22<sup>nd</sup> April 1998 of the learned District Judge of Colombo. By the said judgment,

the learned District Judge dismissed the action of the plaintiff with costs basically depending on the answer given to the issue No. 12. The issue No. 12 suggested by the defendant reads thus:

“එකී වාහනය නැවත අත් පත් කර ගත් පසු පාරිභෝගික ණය පනතේ 16 වැනි වගන්තිය යටතේ වෙළඳ වරිනාකම ලබා ගැනීම සඳහා හා එහි විධි විධාන අනුව කටයුතු කර ඇත්ද?”

The learned District Judge having considered the contents of Section 16 of the Consumer Credit Act, has decided that the plaintiff has not complied with the said Section 16(6)(i)(ii) of the Consumer Credit Act. The said Section reads thus:

“16 (1) .....

(2) *For the purposes of this section, **the value** of any goods on the date of repossession **shall mean the best price that can be reasonably obtained** for the goods by the owner on that date....”*

(3) .....

(4) .....

(5) .....

(6) *For the purposes of this section, **the best price that can be obtained** for the goods by the owner on the date of repossession shall be-*

(a) *The highest price offered to the owner for the goods in response to advertisements for the sale of the goods published in a newspaper*

*circulating in the Sinhala, Tamil and English languages, such advertisements being published-*

(i) .....

(ii) ***within thirty days of the date of repossession, in any other case;*** (Emphasis added)

In terms of the above Section 16, the person who repossesses the vehicle, he/she being the owner of the leased vehicle shall advertise the sale of the said vehicle in a Newspapers Circulating in the Sinhala, Tamil and English languages, within 30 days from the date of repossession of the vehicle. The learned District Judge has carefully considered this position and has stated thus:

*“ However there was no satisfactorily proof to establish this contention during the one year period where the vehicle was exposed to elements of nature would have caused substantial deprivation of the value of the property. Thus the best price anticipated in section 16 sub-section 6 of the Consumer Credit Act 29 of 1992 could not have been obtained for the defendant by the plaintiff. This is a fatal irregularity that could not be cared with any other excuse. This is a safeguard given to the consumer by the statute.”*

According to the evidence led on behalf of the plaintiff, the date of repossession of the vehicle had been on the 18<sup>th</sup> October 1991. The paper

advertisement was made in the papers published on 23<sup>rd</sup> November 1996. Therefore, it is clear that the publication referred to in terms of Section 16 of the Consumer Credit Act had been made more than five years after the date of repossession of the vehicle.

In the circumstances, it is clear that the plaintiff has not complied with the requirements referred to in Section 16 of the Consumer Credit Act in order to obtain the best price for the vehicle leased to the 1<sup>st</sup> defendant-respondent. This is the basis on which the action was dismissed by the learned District Judge. In the light of the above, I do not see any wrong in the said decision of the learned District Judge.

For the aforesaid reasons this appeal is dismissed with costs.

*Appeal dismissed.*

**JUDGE OF THE COURT OF APPEAL**

/mds