

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

Goonatilake Abeywickrema,
No. 76, Wanatha Road,
Gangodawila, Nugegoda.
Presently of
No. 428/3, Old Kesbewa Road,
Udahamulla, Nugegoda.

C.A. No. 454 / 2000 F
D.C. Colombo No. 14005 / MR

Plaintiff

Vs.

Distilleries Company of Sri Lanka
Limited,
110, Norris Canal Road,
Colombo 10.

Defendant

And Now Between

Goonatilake Abeywickrema,
No. 76, Wanatha Road,
Gangodawila, Nugegoda.
Presently of
No. 428/3, Old Kesbewa Road,
Udahamulla, Nugegoda.

Plaintiff-Appellant

Vs

Distilleries Company of Sri Lanka
Limited,
110, Norris Canal Road,
Colombo 10.

Defendant -Respondent

BEFORE : UPALY ABEYRATHNE, J.

COUNSEL : E.M.D. Upali Hemantha Boteju for the
Plaintiff Appellant
Prasanna Jayawardena PC with Anosha
Yasaratne for the Defendant Respondent

WRITTEN SUBMISSIONS : 15.01.2013

ARGUED ON : 29.01.2013 and 27.02.2013

DECIDED ON : 27.08.2013

UPALY ABEYRATHNE, J.

The Plaintiff Appellant (hereinafter referred to as the Appellant) has instituted an action against the Defendant Respondent (hereinafter referred to as the Respondent) in the District Court of Colombo seeking a judgment to recover sum of monies as prayed for in prayer a, b, c and d of the plaint. The Respondent has prayed for a dismissal of the Appellant's action and a judgment as prayed for in prayer b and c of the answer. The case proceeded to trial on 21 issues. After trial the learned Additional District Judge has delivered a judgment in favour of the Respondent. Being aggrieved by the said judgment dated 23.06.2000 the Appellant has preferred the instant appeal to this court.

According to the facts of the case, the Appellant had entered in to an agreement with the Respondent on 15.10.1991 and in terms of the said agreement the Appellant had agreed and undertaken to construct and complete official quarters for managers at a site situated in Dankotuwa Distillery within 12 weeks from the date of agreement. The Appellant has further stated that by March 1992, he had constructed the building up to roof level and when he was about to complete the roof the Respondent instructed him to stop work. Upon the said basis the Appellant has claimed the full contract sum of Rs 536,772/- upon the first cause of action, a sum of Rs 26,836/- as retention monies upon the second cause of action and a sum of Rs 400,000/- as damages upon the third cause of action.

The Respondent has filed an answer denying the Appellant's said cause of actions and stating that in terms of the said agreement the Appellant had agreed to carry out the works specified therein, in accordance with the specifications set out in the said agreement and to complete the said works and to hand over the site to the Respondent on or before 13th of January 1992. However the Appellant, in breach of the terms and conditions of the said Agreement has failed to carry out and complete the works and to hand over the building to the Respondent on or before the said date.

It was common ground that the Appellant did not complete the works on or before the agreed date upon the said agreement. It was also common ground that according to the said agreement (P 1) the said works to be completed on or before 13th of January 1992.

The Appellant in an attempt to justify the breach of contract on the part of the Appellant has stated that he received some information from the officers

of the Dankotuwa Distillery that certain officers of the Excise Department had objected to the construction of the building in the Dankotuwa Distillery. In proof of that the Appellant has produced certain documents marked P 3, P 4, P5 and P 6. P 3 was a copy of a letter sent to the Production Manager by the Chief Engineer dated 24.02.1992. The Appellant has not produced any other documentary proof originated prior to the date of completion of the construction of the building namely 13. 01. 1992. It is clear from the said evidence that P 3 was the first document which has disclosed about the alleged objection to the construction of the building at Dankotuwa Distillery.

Upon the said evidence it was clear that the Appellant has failed to complete the work prior to the agreed date under the said agreement. Accordingly the Appellant has failed to adduce any evidence to prove that he was compelled to stop work during the contracted period.

In the said circumstances I am of the view that the Appellant has failed to prove his case on a balance of probability. Hence I see no reason to interfere with the judgement of the learned Additional District Judge dated 23.06.2000. Therefore I dismiss the appeal of the Appellant with costs.

Appeal dismissed.

Judge of the Court of Appeal