

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

CA 496/99 F

DC Colombo 18030/MR

**LANKA MILK FOODS LTD,
WELISARA,
RAGAMA.
PLAINTIFF-APPELLANT**

**KOLONNAWA MULTIPURPOSE
COOPERATIVE SOCIETY LTD,
22, KOLONNAWA ROAD,
WELLAMPITIYA.
DEFENDANT-RESPONDENT**

Before: AWA SALAM, J

**COUNSEL : PRASANNA JAYAWARDENA P.C WITH ANISHA
NAWARATNA FOR THE PLAINTIFF-APPELLANT AND S W
PREMARATNA FOR THE DEFENDANT-RESPONDENT.**

DECIDED ON : 05.04.2013.

A W A SALAM, J

This appeal has been preferred against the order of the learned additional district judge of Colombo dismissing the plaintiffs' action on the basis that the cause of action referred to in the plaint (vide paragraph 4 of the plaint) is prescribed law.

The facts relevant to the appeal are that the plaintiff filed action against the defendant to recover a sum of RS 519,458/50 due and owing to the plaintiff on account of milk foods supplied to Kotikawatta multipurpose co-operative society Ltd the liability of which the defendant has taken over.

As has been submitted by the Learned President's Counsel the sum of money due to the plaintiff is said to be "a debt" as pleaded in the plaint. Nowhere in the plaint the plaintiff has averred that the monies are due on account of the sale of any items. As such, it is quite clear that the period of prescription should be three years from the date of the cause of action. In the circumstances, it would be seen that the period of prescription should be reckoned under Section 7 or Section 10 of the Prescription Ordinance.

In any event, in terms of paragraph 9 and 10 of the plaint the plaintiff has specifically pleaded that the last part payment of the monies due has been made by the defendant firstly on 5

January 1994 and the letter of demand for payment has been made on 13 December 1995. The plaint has been filed on 30 May 1996.

Therefore, it would be seen that the action against the defendant has been instituted within the period of prescription and the learned district judge was incorrect when he held that the cause of action has prescribed. Consequently, the impugned order of the learned district judge is set aside and the case is sent back for retrial. There shall be no costs.

Judge of the Court of Appeal

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