

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

1. Sri Lanka Transport Board
200, Kirula Road
Colombo 05

1st Defendant-Appellant

2. Secretary to the Treasury
Ministry of Finance, Planning Ethnic &
National Integration Secretariat
Colombo 1.

C.A.No.456/98 (F)
D.C.COLOMBO 4528/SPL

3rd Defendant-Appellant

3. Secretary
Ministry of Transport, Environment &
Women Affairs
D.R.Wijewardane Mawatha
Colombo 10.

4th Defendant-Appellant

4. Registrar of Companies
Samagam Medura
No.400, D.R.Wijewardane Mawatha
Colombo 10

5th Defendant-Appellant

5. The Attorney General
Attorney General's Department
Colombo 12.

6th Defendant-Appellant

Vs.

1. S.P.Kusumawathie
No.5/2, Ratnawella Road
Kalubowila
Dehiwela

Substituted-Plaintiff-Respondent

2. Sri Lanka Transport Board
No.200, Kirula Road
Colombo 08.

2nd Defendant-Respondent

BEFORE : **K.T.CHITRASIRI, J.**
W.M.M.MALINIE GUNARATNE, J.

COUNSEL : Ranjith Ranawaka with Kosala Perera for the
1st Defendant-Appellant
M.Fernando, A.S.G. with Nayomi Kahawiata, S.C. for the
3rd, 4th, 5th and 6th Defendant-Appellants
Rajitha Hathurusinghe for the
Substituted-Plaintiff-Respondent
Ranjith Ranawaka with Kosala Perera for the
2nd Defendant-Respondent

ARGUED ON : 09.10.2014

WRITTEN : 07.11.2014 by the 1st Defendant-Appellant-Petitioner

SUBMISSIONS : 17.11.2014 by the Substituted-Plaintiff-Respondent
28.01.2015 by the 1st, 3rd, 4th, 5th and the 6th Defendant-Appellants

DECIDED ON : 03.03.2015

CHITRASIRI, J.

1st, 3rd, 4th, 5th and the 6th defendant-appellants (hereinafter referred to as the appellants) filed this appeal seeking to have the judgment dated 28.05.1998 of the learned District Judge of Colombo set aside. By filing this appeal, the appellants also have sought to have the plaintiff's action dismissed or in the alternative they have moved for a re-trial. In the original court, learned District Judge granted the reliefs that were prayed for in paragraphs 4, 5 and 6 in the prayer to the plaint whilst refusing to give the first three reliefs referred to therein. As a result, the plaintiff-respondent was awarded Rupees Five Hundred Thousand (Rs.500,000/-) as damages though the claim made to have a declaration as to the legality in respect of the termination of his services as a Member of the Board of Directors of the 1st defendant company, namely Seemasahitha Maharagama Janatha Santhaka Pravahana Sevaya, had been refused.

In the plaint filed by the plaintiff-respondent, two causes of action have been disclosed. The first cause of action alleged by the plaintiff-respondent is that he was unlawfully removed from the post of Director in the Directorate of Seemasahitha Maharagama Janatha Santhaka Pravahana Sevaya, [1st defendant-appellant] for the reasons morefully set out in the plaint. The second cause of action is to obtain damages caused to the Plaintiff-Respondent as a result of the termination of services referred to in the first cause of action. The aforesaid two causes of action have been amply described in paragraphs 22 and 25 in the plaint dated 23.09.1995 which had been filed on 22.01.1996 in the District Court of Colombo. Issues of the plaintiff-respondent were framed in accordance with the aforesaid two causes of action

referred to in paragraphs 22 and 25 in the plaint. Those are the issues bearing Nos.12 and 15 raised on behalf of the plaintiff-respondent.

Those two issues are as follows:

12. සමාගම් ආඥා පනත යටතේ පැමිණිලිකරු අධ්‍යක්ෂ ධුරයෙන් ඉවත් කිරීමට භාණ්ඩාගාර ලේකම්ට බලයක් ඇත්ද?

15. පැමිණිලිකරු මුදල් අධ්‍යක්ෂ තනතුරෙන් තොරව හැරීම නිසා පැමිණිලිකරුගේ කීර්තිනාමයටත්, සමාජයීය පැවැත්මටත්, මානසික තත්ත්වයටත්, ආර්ථිකයටත් අලාභහානි සිදුවූයේද?

[Vide at page 88 in the appeal brief]

Answers given to those two issues are as follows:

12. නැත. සමාගමේ ව්‍යවස්ථාවලිය අනුව බලය ඇති බවට පිළිගෙන ඇත.

15. ඔව්.

[Vide at page 138 in the appeal brief].

Plain reading of the issue 12 referred to above and the answer given thereto show that the learned District Judge has concluded that the 3rd defendant-appellant namely, the Secretary to the Treasury had the power to remove the plaintiff-respondent from the post of Director in the 1st defendant company in accordance with article 10 of the Articles of Association of that company. The first defendant company, namely Seemasahitha Maharagama Janatha Santhaka Pravahana Sevaya was later absorbed to the Sri Lanka Transport Board and accordingly Sri Lanka

Transport Board was substituted in the room of the said Seemasahitha Maharagama Janatha Santhaka Pravahana Sevaya for the purpose of proceeding with this appeal. Having decided so by the learned District Judge, he has answered the issue No.15 affirmatively and proceeded to make order awarding damages to the plaintiff-respondent though the issue No.15 is an issue consequential to the issue 12.

As mentioned hereinbefore, the cause for the plaintiff-respondent to file this plaint claiming damages had been solely the termination of his position as a Director from the Board of Directors of the 1st defendant company. Such a position is clearly seen by looking at the item No.4 in the prayer to the plaint. Said item No.4 reads thus:

4. පැමිණිලිකරුව එරෙහිව කරන ලද මෙවැනි ක්‍රියා නිසා සිදුවූ අලාභ වශයෙන්

රු.500000/- (පන්ලක්ෂයක්) ලබාදෙන ලෙසටත් එය එකීය වශයෙන් සහ සමස්ථයක් වශයෙන් සියළු වින්තිකරුවන්ගෙන් මෙම අලාභය අයකර දෙන ලෙසට ඉල්ලා සිටින නඩු චින්ද්‍රවක් සහ....

[vide at page 36 in the appeal brief].

In the circumstances, it is clear that the plaintiff-respondent becomes entitled to claim damages only upon establishing that his services as a Director were terminated unlawfully. Decision of the learned District Judge on the issue of termination of service is against the Plaintiff-Respondent. In his decision he has clearly held that the termination of his services was lawful in view of the article 10 of the Articles of Association of the 1st defendant Company. (vide at page 172 in the

appeal brief) Decision so made by the trial judge is found in the answer to the issue No.12 as well and is found at page 138 in the appeal brief.

Therefore, it is clear that the learned District Judge when he awarded damages to the plaintiff-Respondent has failed to address his mind to the aforesaid matters found in item 4 referred to in the prayer to the plaint. Neither has he given reasons as to why he awarded damages, after having decided that the termination of services had been within the Rules. Hence, it is seen that the learned District Judge somewhat arbitrarily and without assigning reasons, has decided to award damages even though the plaintiff-respondent is not entitled for same in view of the pleadings read with the answer given to the issue No.12.

Moreover, the Plaintiff-respondent has not even filed an appeal to challenge the decision made on the question of termination of his services. Such inaction on the part of the Plaintiff-Respondent prevents this Court considering the merits on the question of termination of his services as a Director. Under those circumstances, plaintiff-respondent cannot claim damages relying upon Clause 10 of the Articles of Association and it is more so when the decision of the learned District Judge is that the termination of services of the plaintiff-respondent was lawful. It is further established by looking at the manner in which the plaint was drafted and the issues were framed.

In view of the aforesaid reasons, I am of the opinion that the learned District Judge was not entitled in law to award damages to the Plaintiff-Respondent. Therefore, the judgment of the learned District Judge cannot be allowed to stand.

Learned Deputy Solicitor General has also submitted that the claim referred to in item 4 in the prayer to the plaint is basically a monetary relief that had been made even against the 3rd defendant-appellant. Accordingly, she contended that such a claim against the 3rd defendant-appellant cannot be sustained since the 3rd Defendant namely Secretary to the Treasury is not a juristic person.

Admittedly, the learned District Judge having answered the issue bearing No. 20 has held that the plaintiff-respondent cannot file and maintain this action against the 3rd and the 6th defendant-appellants. Issue No.20 and the answer thereto read thus:

20. පැමිණිල්ලේ 5වන විසඳිය යුතු ප්‍රශ්නයට පිළිතුරු 'නැත' යනුවෙන් ලැබෙන්නේ නම් 3, 4, 5 සහ 6 විත්තිකරුවන්ට විරුද්ධව මෙම හමුව පවරා පවත්වා ගෙන යාහැකිද?

[vide at page 89 in the appeal brief]

Answer:

20. 3ට හා 6ට විරුද්ධව පවරා ගෙන යා නොහැක.

(vide at page 139 in the appeal brief).

Therefore, it is seen that the learned trial judge himself was of the view that the 3rd defendant-appellant is not a juristic person. However, in the body of the judgment, he has stated that the plaintiff-respondent is entitled to obtain damages from the 3rd defendant-appellant as well. Relevant sentence in the judgment is as follows:

මේ අනුව ඉදිරිපත් වූ කරුණු අනුව, පැමිණිලිකරු, 1වන, 2වන සහ 3වන විත්තිකරුවන්ගෙන් රුපියල් ලක්ෂ 5ක් සහ නඩු ගාස්තු ලබා ගැනීමට හැකි වන පරිදි ඉදිරිපත් වූ විසඳිය යුතු ප්‍රශ්ණ වලට පහත සඳහන් අන්දමට පිළිතුරු දෙමින් පැමිණිලිකරුගේ වාසියට නඩු තීන්දුව වාර්තාගත කරමි.

[vide the last paragraph at page 137 in the appeal brief]

Such discrepancy found in the judgment show that the learned District Judge had factually fell into error when it comes to the status of the 3rd defendant from whom the damages have been claimed. Therefore, I agree with the contention of the learned Additional Solicitor general. Hence, it is clear that the learned District Judge has misdirected himself by awarding damages payable by the 3rd Defendant particularly when there is a monetary claim been made against the said 3rd defendant who is neither a natural person nor a legal person.

The matters referred to above clearly show that the learned District Judge has misdirected when he decided to award damages in favour of the plaintiff-respondent. In the circumstances, I decide to set aside the judgment dated 28.05.1998 of the learned District Judge of Colombo. Also, I make order that the plaint of the plaintiff-respondent shall stand dismissed in view of the answer given to the issue No.12.

At this stage, it is necessary to note that the appellants in their petition of appeal have also prayed for an order for re-trial as a relief alternative to the relief prayed to have a dismissal of the plaint. In this regard, it is pertinent to note that the learned District Judge having looked at the Articles of Association of the 1st Defendant Company has clearly held that the termination of services of the plaintiff-

respondent as a Director is within the provisions contained in the said Articles of Association of the 1st Defendant Company. That decision has not been appealed against. As discussed hereinbefore in this judgment, 4th to the 6th reliefs depend on the decision on the principle relief namely the relief on the question of termination of services of the plaintiff-respondent referred to in the first three items in the prayer to the plaint. Indeed, last three reliefs are consequential to the first three reliefs.

When no appeal is filed as to the decision in respect of the principle relief, the decision so made will remain and the appellate courts will not interfere with such a decision. Therefore, this Court is not in a position to make an order to have a *trial de novo*. However, question of having a re-trial will not arise in this instance since this Court has made order dismissing the plaint.

For the aforesaid reasons, this appeal is allowed. Action filed by the Plaintiff-Respondent is dismissed. Learned District Judge of Colombo is directed to enter decree accordingly. Considering the circumstances of the case, I make no order as to the costs of this appeal as well as the costs in the Court below.

Appeal allowed.

JUDGE OF THE COURT OF APPEAL

MALINIE GUNARATNE, J.

I agree

JUDGE OF THE COURT OF APPEAL