

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

In the matter of an Appeal under Section  
755 of the Civil Procedure Code.

Aranayake Multi-Purposes Co-operative  
Society Ltd. Of Ussapitiya, Aranayake.

**Defendant – Appellant**

**C.A.No. 966/99F**

**Vs.**

**S.C. Kegalle No. 5049/L**

1. Wijayalathpura Dewage Bhadrawathie

Fernando.

2. Malini Sunethra Siriwardena both of

“ Suramya Niwasa”, Welimanna, Aranayake.

**Plaintiff – Respondents**

**COUNSEL**

: Sunil D.B. Abeyratne with  
S.P.P.Samaranayake for the  
Defendant Appellant.  
W.L.S. Gayani for the Plaintiff  
Respondent.

**ARGUED ON**

: 23.10.2014

**DECIDED ON**

: 17.07.2015

**P.W.D.C. Jayathilake, J**

The Plaintiff Respondent had filed this case in the District Court of Kegalle against the Defendant Appellant seeking *inter alia* to eject the appellant from Fuel Filling Station situated in the lands described in the 1<sup>st</sup> and the 2<sup>nd</sup> schedules of the plaint and an order for the appellant to pay Rs. 50000/= as

damages and Rs.10000/= monthly damages until the appellant handed over the possession of the said Fuel Filling Station to the Plaintiff Respondent. The Defendant Appellant answering the said plaint had moved to dismiss the plaint on the ground that the appellant was running the business upon a fuel distribution permit issued to the appellant by the Petroleum Corporation. It had been further stated that the appellant was entitled to get the said lease extended on demand according to the lease agreement entered into by the plaintiff.

The learned District Judge has stated in her judgment that there was no condition in subsequent agreements to the effect of the right to demand for an extension of the period of lease. This is an appeal against the said judgment of learned District Judge filed by the Defendant Appellant. Therefore the main matter to be discussed in this case is whether the appellant is entitled to get the lease agreement extended at its expiry.

In perusing the judgment it is clear that the learned District Judge had carefully considered all the lease agreements executed between the parties. Even though the specific conditions dealing with the right to demand to extend the lease had been included in the 1<sup>st</sup> lease agreement, this condition had not been included in the subsequent lease agreements. This right had not been claimed by the appellant in its letter of reply to the

letter of demand sent by the Respondent's Attorney at Law in 1999. Instead, the Respondent had requested to allow them to carry on their business for one more year by giving an undertaking to hand over the premises within one year from the date of the letter of demand namely 02.01.1991. Therefore there is no necessity to discuss the validity of the above mentioned condition under the common law as it does not arise under the subsequent conduct of the parties.

Accordingly, the opinion of this court is that the conclusion of the District Judge in regard to the question whether the appellant had the right of demand to extend the lease agreement is justifiable. Therefore there is no reason for the court to interfere with the said decision.

The other point raised by the counsel for the Defendant Appellant is whether the position taken by the learned District Judge regarding the distribution of fuel is contradictory. It is clear that the appellant had the licence of fuel distribution issued by the Petroleum Corporation. Similarly, there is evidence that at the time of the first lease agreement there had been a fuel filling station in the premises managed by a relative of the Respondent. It is revealed that the Petroleum Corporation had prepared to transfer the licence of distribution in the name of the Respondent provided that the premises was handed over to the Respondent. The learned District

Judge had taken into consideration the fact that it was during the pendency that the Petroleum Corporation had sold the equipment installed in the fuel station to the appellant. For those reasons the learned District Judge had decided not to make any direction with regard to the fuel distribution right.

As the learned District Judge had answered the issue No. 16 in favour of the Respondent stating that the Respondents are entitled to the damage as prayed for, Rs.50,000/= claimed as the damages in the plaint is also included in the damages ordered in the judgment. The learned counsel for the appellant has quoted a question and an answer in the evidence of the 2<sup>nd</sup> Respondent. The question "you have prayed for Rs.50000/= in the plaint, haven't you?" The answer "It was included as it is the practice that a damage is asked for when filing an action."

Even though the learned District Judge had answered the issue No.16 as mentioned earlier, she had not discussed on what basis the said Rs. 50,000/= damages had been calculated. The opinion of this court is that the Respondent has not explained the matters pertaining to the claim of Rs.50,000/= as damages. Therefore this court decides to amend the answer of the learned District Judge given to issue No 16 by adding the phrase "except the claim of Rs.50000/=".

This court decides to dismiss the appeal with cost subject to the above mentioned amendment.

*Appeal dismissed*

**JUDGE OF THE COURT OF APPEAL**