

392/99(F)

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

People's Merchant Bank Limited,
2nd Floor, Jewel Arts Building,
324-5/1, Galle Road, Colombo 3.

Plaintiff

C.A. Case No:-392/99(F)

D.C. Colombo Case No:-16820/MR

V.

Lanka Canneries Limited,
Nawala Road,
Colombo 5.

Defendant

AND NOW BETWEEN

Lanka Canneries Limited,
Nawala Road,
Colombo 5.

Defendant-Appellant

V.

People's Merchant Bank Limited,
2nd Floor, Jewel Arts Building,

Plaintiff-Respondent

Before:- H.N.J.Perera,J.

Counsel:-Raneesha de Alwis for the Defendant-Appellant

**Priyantha Alagiyawanna with Asanka Ranawala for the
Plaintiff-Respondent**

Argued On:-03.07.2014

Written Submissions:-05.08.2014/06.08.2014

Decided On:-02.09.2015

H.N.J.Perera, J.

The Plaintiff-respondent instituted action in the District Court of Colombo against the defendant-appellant praying for recovery of

- (a) a sum of Rs.744,279.60 together with interest at the rate of 18% per annum from the date of Plaint until date of Decree thereupon with legal interest on the aggregate amount of Decree until payment in full;
- (b) a sum of Rs.309,341.16 together with interest thereon at the rate Of 18%per annum from the date of Plaint until date of Decree Thereupon with legal interest on the aggregate amount of Decree until payment in full.

The plaintiff-respondent is a Company duly incorporated under the laws of Sri Lanka inter alia carries on the business of accepting, discounting and dealing in Bills of Exchange. The defendant-appellant which is a duly incorporated Company by letter dated 23rd February 1994 marked "A"

requested for bills discounting facility from the plaintiff-respondent for the purpose of financing trade credit extended by it to C.T.C.(Trading)Company Limited. By a letter dated 23rd February 1994 marked "B", it was agreed between the defendant-appellant and the plaintiff-respondent as follows:-

- (1)that all Bills discounted by the plaintiff-respondent for the defendant-appellant will be settled by the defendant-appellant on the relevant date of maturity,
- (2)that all Bills should be drawn by the defendant-appellant and accepted by C.T.C (Trading) Company Ltd.

Acting upon the said agreement, the plaintiff-appellant discounted two bills of Exchange bearing Nos. 1773 & 1774 for two sum of Rs.744,279.60 and Rs.309,341.16 and the total sum of Rs.1,053,620.76 was payable at forty five days after sight. It was the position of the plaintiff-respondent that though the plaintiff-respondent demanded the said monies from the defendant-appellant, the defendant-appellant had failed to pay the said monies to the plaintiff-respondent.

The Learned Additional District Judge after trial delivered judgment on 28.04.1999 granting the reliefs sought in the prayer to the plaint. Aggrieved by the said judgment of the Learned Additional District Judge of Colombo the defendant-appellant had preferred this appeal to this court.

When this matter was taken up for argument before this court the main contention of the Counsel for the defendant-appellant was that the plaintiff-respondent has not duly presented the said bills of exchange marked P3 and P4 and in any event the plaintiff-respondent has not given the notice of dishonor within the stipulated time period to the defendant-appellant or the said C.T.C (Trading) Company Ltd.

It was contended by the Counsel for the plaintiff-respondent that the plaintiff-respondent instituted action in the District Court by way of regular procedure to recover a total sum of Rs.1053620.76 being the monies due to the plaintiff-respondent on account of Bills discounting facility extended to the defendant-appellant. It was further submitted that the plaintiff-respondent has not sued the defendant-appellant by way of Summary Procedure invoking Chapter L111 of the Civil Procedure Code and since the plaintiff-respondent instituted said action by way of regular procedure with the intention of enforcing the agreements marked P1 and P2 the relevant provisions of the Bills of Exchange Ordinance such as presentment for payment, notice of dishonor etc do not arise.

It was contended on behalf of the defendant-appellant that the plaintiff-respondent has instituted this action only to enforce the rights that are purported to have been accrued to it from the Bills of Exchange P3 and P4 alone, and not to enforce any rights that may have accrued to it in terms of P1 and or P2 or any purported undertakings contained therein.

At the trial it was not disputed that the defendant-appellant had requested the Bills discounting facilities of Rs.1.5 Million by document marked P1 and the defendant-appellant thereafter entered in to Agreement dated 23rd February 1994 marked P2 for the said Bills discounting facility of Rs.1.5 Million.

At the trial the defendant-appellant recorded admissions and paragraph 1,2,3 and 5 of the plaint was admitted by parties. It was further admitted that the defendant-appellant has signed the document dated 23rd February 1994 filed with the plaint marked B and that the defendant-appellant had drawn the Bills of Exchange filed with the plaint marked C and D. It was further admitted that the Bills

of Exchange marked C and D have been purchased by the plaintiff-respondent from the defendant-appellant for a valuable consideration and the plaintiff-respondent is the holder in due course.

Therefore it is common ground in this case that the defendant-appellant had requested the Bills discounting facilities of Rs.1.5 Million by document marked P1 and the defendant-appellant thereafter entered in to agreement dated 2nd February 1994 marked P2 for the said Bills discounting facility of Rs.1.5 Million.

The document marked P1 states that the said Bills discounting facility is requested to finance the trade credit extended to the buyer CTC (Trading) Company Ltd. By the condition 4 of P1 the defendant-appellant had agreed to honour all the Bills of exchange even if the drawer dishonours a Bill by him with interest chargeable by the Plaintiff-respondent Bank. And by the condition 3 of P2 the defendant-appellant had further agreed to settle the bills discounted on the relevant dates of maturity.

The plaintiff-respondent had led the evidence of the Director of the Respondent Bank Mr.Wehalle's evidence on behalf of the plaintiff-respondent and the defendant-appellant did not lead any evidence at the trial. The learned District Judge after trial has held that the plaintiff-respondent by the said oral evidence and documentary evidence marked P1 to P9 had established the case against the defendant-appellant and had entered judgment in favour of the plaintiff-respondent against the defendant-appellant as prayed for in the prayer to the plaint.

It is very clear that the plaintiff-respondent had by the said oral evidence and documentary evidence established that acting upon the agreement marked P2, Bills of Exchange bearing Nos. 1173 and 1174 marked P3 and P4 were drawn by the defendant-appellant for value

of Rs.744,279.60 and Rs.309,341.16 and the same were duly accepted by the C.T.C (Trading) Company Ltd. It had also been clearly established by evidence that the defendant-appellant presented the said bills for payment to the plaintiff-respondent and the plaintiff-respondent accepted the said Bills and paid the monies mentioned therein to the defendant-appellant acting upon the said agreement marked P2. And by the said agreement marked P2 the defendant-appellant had agreed that the Bills discounted under the said facility will have to be settled by the defendant-appellant on the relevant date of maturity the defendant-appellant failed to repay the said monies to the plaintiff-respondent. Therefore this court cannot agree with the submission made by the Counsel for the defendant-appellant that the question of whatever rights as may have accrued to the plaintiff-respondent in terms of documents marked P1 or P2 is totally irrelevant to this action. The defendant-appellant's contention that the plaintiff-respondent has come to court not on the basis of a contract based on the documents marked P1 and P2 but on the two Bills of Exchange marked P3 and P4 cannot be accepted.

It is clear on a close examination of the totality of the evidence that the Learned Additional District Judge is correct in entering judgment for the plaintiff-respondent as prayed for in the plaint. I see no reason to interfere with the said conclusion arrived by the Learned Additional District Judge in this case. I have considered the entire judgment and see no reason to interfere with the said judgment since the trial Judge has given cogent reasons.

In *Munasinghe V. C.P.Vidanage* 69 N.L.R 98 it was held that the jurisdiction of an appellate court to review the record of the evidence in order to determine the conclusion reached by the trial Judge upon evidence should and has to be exercised with caution.

Further in *Gunewardene V. Cabral and other* (1980) 2 Sri.L.R 220, it was held that the appellate court will set aside inferences drawn by the trial Judge only if they amount to findings of facts based on :-

(a) Inadmissible evidence; or

(b) After rejecting admissible and relevant evidence; or

(c) if the inferences are unsupported by evidence; or

(d) if the inferences or conclusions are not rationally possible or

Perverse.

In the case before me I do not see that the findings of the learned Additional District Judge and the inferences drawn by him are vitiated by any of these considerations. In my view there is no justification for interfering with the conclusions reached by the Learned Additional District Judge which I perceive are warranted by the evidence that was before him.

For the above reasons I see no reason to disturb the judgment of the Learned Additional District Judge. Accordingly the appeal of the defendant-appellant is dismissed with costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL