

**IN THE COURT OF APPEAL OF THE DEMOCRATIC**

**SOCIALIST REPUBLIC OF SRI LANKA**

In the matter of an application for Leave to  
Appeal in terms of Section 757 of the Civil  
Procedure Code.

**\*\*\*\*\***

K.M. Prabath  
"Mangala", Indiparape  
Mirigama.

**Plaintiff**

**Vs**

Ceylinco Insurance Company Ltd.  
"Ceylinco House"  
No. 69, Janadhipathi Mawatha  
Colombo 01.

**Defendant**

**And now between**

**C.A. L.A 394/2006**

**D.C. Attanagalla 421/M**

**Vs**

Ceylinco Insurance Company Ltd.  
"Ceylinco House"  
No. 69, Janadhipathi Mawatha  
Colombo 01.

**Defendant-Petitioner**

Vs

K.M. Prabath

"Mangala"

Idiparape, Mirigama.

**Plaintiff-Respondent**

**BEFORE**

: Deepali Wijesundera J.

M.M.A. Gaffoor J.

**COUNSEL**

: I.S.De Silva with Deeptha Perera

For the Defendant-Petitioner

Seevali Delgoda for the

Plaintiff-Respondent

**ARGUED ON**

: 01<sup>st</sup> September, 2015

**DECIDED ON**

: 22<sup>nd</sup> January, 2016

**Deepali Wijesundera J.**

The plaintiff respondent filed action against the defendant petitioner seeking to enforce the insurance policy no. WP02DV000012 marked P1 (A) entered into with the defendant petitioner company. The plaintiff respondent in his plaint had stated that his business premises

which was insured in the petitioner company was burgled on 31/07/2013 and after he made a claim on the said insurance policy it was rejected by the defendant petitioner company and alleged that the defendant petitioner company failed to honour the obligations under the said insurance policy and claimed damages. The defendant petitioner answering the plaintiff respondent had stated that the action was time barred since the claim was rejected in terms of clause 18 of the policy where the liability of the company ceased at the expiry of three months from the date of the rejection. The case was fixed for trial and parties have framed issues and the defendant petitioner has moved court to try the legal issues 14 (a) 14 (b) and 15 as preliminary issues. Parties have filed their written submissions and court has delivered the findings on 09/09/2006 rejecting the defendant petitioner's application and fixed the case for trial. The defendant petitioner being aggrieved by the said order has filed the instant application.

The petitioner in his submission stated that the learned District Judge has erroneously come to the conclusion that evidence should be led before answering the said issues based on the premise that clause 18 of the policy applies only if the claim is based on fraudulent documents. The petitioner stated that clause 18 is very clear and that when a claim is made and is rejected the action has to be filed within

three months. The petitioner argued that the present claim was made and rejected and such a situation is governed by clause 18 and not 20.

The defendant petitioner submitted that the claim was rejected by letter dated 18/11/2003 and the plaintiff respondent filed the case on 29/07/2004 which is not within three months of the date of rejection.

It was submitted on behalf of the plaintiff respondent that under clause 20 the respondent came to court within a period of one year and in such a situation it is clause 20 and not 18 that would be applicable. The respondent stated that clause 18 is clearly intended to cover situations where there is fraud on the part of the insured and can not be construed as a catchall provision and that it could only be intended to inflict severe consequences on an insured who commits a fraud.

The respondent stated that clause 20 is the general provision governing the time limit for liability under the policy which the respondent is entitled to rely upon unless and until it is proven and established that he has committed a fraud in making his claim.

The respondent citing the judgment in **Jagath Sooriyarachchi vs Laksiri Peiris CALA 170/2003 DC Moratuwa 958/M** said that it was held in this case that if an issue of law arises upon facts those facts must be ascertained either by way of admission or by proving them at the trial.

**Clause 18 of the said policy states thus;**

***FRAUD***

***If the claim be in respect fraudulent, or if any false declaration be made, or used in support thereof or if any fraudulent means or devices are used by the insured, or one acting on his behalf to obtain any benefits under this policy or if the loss or damage be occasioned by the willful act, or with the connivance of the insured or if the claim be made and rejected and an action or suit be not commenced within three months after such rejection or in case of arbitration taking place in pursuance of the 19<sup>th</sup> condition of this policy within three months after the arbitrator, arbitrators or umpire shall have made their award all benefit under this policy shall be forfeited.***

**Clause 20 of the said policy states thus;**

***TIME LIMIT FOR COMPANY'S LIABILITY***

***In no case whatever shall the Company be liable to any loss or damage after the expiration of twelve months from the happening of the loss or damage unless the claim is the subject of pending action or arbitration.***

Clause 18 of the policy speaks of situations where the claim is fraudulent where a false declaration is made to support the claim or where the loss is caused willfully.

Clause 20 is the general provision governing the time limit for liability under the policy under which the plaintiff respondent has filed his case.

The applicability of clause 18 of the policy of insurance can only be determined after ascertaining whether or not the claim is tainted by fraud which entails considering the facts of the case regarding which the parties are clearly at variance. In such a situation the trial judge should exercise the discretionary powers conferred by Sec. 147 of the Civil

Procedure Code and go into merits of the case as rightfully held by the learned District Judge in her order delivered on 19/09/2006.

For the afore stated reasons I see no legal basis or logical reason to allow the petitioner's application. Application of the defendant petitioner is refused with costs fixed at Rs. 100,000/=.

**JUDGE OF THE COURT OF APPEAL**

**M.M.A. Gaffoor J.**

**I agree.**

**JUDGE OF THE COURT OF APPEAL**