

596/99(F)

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

Yasoma De Rosiro,  
14, Jayagath Road, Nawinna,  
Maharagama.

**Plaintiff-Appellant**

**C.A. Case No:-596/99(F)**

**D.C.Colombo Case No:-14942/MR**

**V.**

1) S.N.A.Lanka (Pvt) Ltd.

405, Nawala Road,

Rajagiriya.

2) Peoples Bank

Head Office, 75,

Chittampalam A. Gardinar

Mawatha, Colombo 2.

3) Manager,

Peoples Bank,

York Street, Colombo 1.

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

**Counsel:-Palitha Yakgahavita and Jayantha Dolawatta for the  
Plaintiff-Appellant**

1<sup>st</sup> defendant-Respondent absent and unrepresented.

Rasika Dissanayake with C. Induruwa for the 2<sup>nd</sup> and 3<sup>rd</sup>

Defendant-Respondents

**Argued On:-03.06.2014**

**Decided On:-18.02.2016**

**H.N.J.Perera, J.**

The plaintiff-appellant instituted action seeking among substantive reliefs that she is not liable to pay a sum of Rs. 400,000/- to the 1<sup>st</sup> defendant-respondent but only a sum of Rs.109,083.85. As an interim relief she prayed for an interim injunction to restrain the 3<sup>rd</sup> defendant-respondent from paying the full sum of the bank guarantee (Rs. 400,000/-) to the 1<sup>st</sup> defendant-respondent who claimed the said amount as the sum due to it from the plaintiff-appellant.

The plaintiff-appellant was acting as an agent of the 1<sup>st</sup> defendant-respondent for the purpose of sale of Sun flower oil, Soya oil, and other food items in Sri Lanka and received a commission from the 1<sup>st</sup> defendant-respondent from the said sales. The agents called and known as stockist had to purchase goods on credit facilities provided to them and they were paid commissions. The plaintiff-appellant being one of the 1<sup>st</sup> defendant-respondent's agent stockist purchased goods on the terms and conditions set out in P1. The plaintiff-appellant also had to furnish a bank guarantee for a sum of Rs.400,000/- as security for the 1<sup>st</sup> defendant-respondent to recover any outstanding amount due to the 1<sup>st</sup> defendant-respondent from the plaintiff-appellant. It is the position of the plaintiff-appellant that in pursuant to the furnishing of the said bank guarantee the 1<sup>st</sup> defendant-respondent stocked goods with the plaintiff-appellant and she sold the same to the customers with the assistance of the 1<sup>st</sup> defendant-respondent's sales representatives

without any dispute until 31.03.1994 and made payments to the 1<sup>st</sup> defendant-respondent as per document marked P4a and P4b. Thereafter a dispute arose between them with regard to the damaged goods which were returned by the plaintiff-appellant to the 1<sup>st</sup> defendant-respondent and as a result of the said dispute the plaintiff-appellant was compelled to request the 1<sup>st</sup> defendant-respondent to inform her the actual amount due from her as according to her calculations It was only a sum of Rs. 109,083.85, but the 1<sup>st</sup> defendant-respondent failed to reply the said letter and insisted that the 3<sup>rd</sup> defendant-respondent should pay the entire sum of Rs.400,000/- in the bank guarantee as the sum due to the 1<sup>st</sup> defendant-respondent. The plaintiff-appellant thereafter made representation to the 3<sup>rd</sup> defendant-respondent and attempted to prevent the 3<sup>rd</sup> defendant-respondent from releasing the said sum of Rs.400,000/- to the 1<sup>st</sup> defendant –respondent as all her attempts failed she instituted this action and obtained an interim injunction against the 3<sup>rd</sup> defendant-respondent from releasing the said money to the 1<sup>st</sup> defendant-respondent.After trial the learned Additional District Judge delivered judgment on 13.07.1999 holding that the plaintiff-appellant is liable to pay a sum of Rs.192,654.51 together with legal interest to the 1<sup>st</sup> defendant-respondent. Aggrieved by the said judgment of the learned trial Judge the plaintiff-appellant has preferred this appeal to this court.

When this matter was taken up for argument before this court the 1<sup>st</sup> respondent was absent and unrepresented. After the conclusion of the oral submissions of the Counsel for the plaintiff-appellant, as the dispute was between the plaintiff-appellant and the 1<sup>st</sup> defendant-respondent the Counsel appearing for the 2<sup>nd</sup> and 3<sup>rd</sup> defendant-respondents informed court that they will not be making submissions before this court.

The main contention of the Counsel for the plaintiff-appellant was that the learned trial Judge has failed to consider the statement of accounts

submitted by the plaintiff-appellant in proof of a sum of Rs.145,205.80 and the return of goods worth Rs.54,372.80. The learned trial Judge also has rejected the evidence of the witness Priyantha Galappaththi who was an ex-employee of the 1<sup>st</sup> defendant-respondent erroneously.

On perusal of the judgment of the learned trial Judge it is clearly seen that the learned trial Judge after considering the overall evidence that was led in this case has accepted the correctness of the documents submitted by the 1<sup>st</sup> defendant-respondent and more particularly the statements marked 1V1 to 1V3. Furthermore has given cogent reasons for not believing the evidence given by the said witness Galappaththi. It was the 1<sup>st</sup> defendant-respondent's position that he never received any money from the said witness, and if any money had been received by the said witness, he would have invariably issued a receipt for the same. It is very clear that the learned trial Judge has considered the said suggestions put forward by the parties and has opted to believe the 1<sup>st</sup> defendant-respondent.

The plaintiff-appellant's position in this case was that after deducting the value of the goods that she has returned to the defendant-respondent, and the value of the goods that are in her custody at the moment and after deducting the commissions and the other payments which are payable to her by the 1<sup>st</sup> defendant-respondent she only had to pay Rs.109,083.85 to the 1<sup>st</sup> defendant-respondent. The plaintiff-appellant has stated that by 31.12.1993 the plaintiff-appellant has paid the 1<sup>st</sup> defendant-respondent a sum of Rs.145,205.80 for the goods sold. By 18.03.1994 she has returned to the 1<sup>st</sup> defendant-respondent goods to the value of Rs.54,372.80 which was found unsuitable for sale. And she further had with her goods to the value of Rs. 42,834/- as stock in hand. Therefore the Plaintiff-appellant claimed that she owes only a sum of Rs.109,083.85 as shown in her statement of account marked P7 to the 1<sup>st</sup> defendant-respondent.

The 1<sup>st</sup> defendant-respondent denied the payment of Rs.145,285.80 by the plaintiff-appellant. The defendant-respondent claimed that the plaintiff-appellant had paid only Rs.75,000/-by 31.12.1983. It was the position of the defendant-respondent that even if you add the amount of Rs. 45,285.80 shown in the bank statement for the month of January 1984 of the plaintiff-appellant marked P4a, the plaintiff-appellant has paid only a sum of Rs.120,285.80. And even after adding the value of cheques the 1<sup>st</sup> defendant-respondent has received from the other agents amounting to Rs.18,086.13 , the plaintiff-appellant has paid only Rs. 138,371.93 to the 1<sup>st</sup> defendant-respondent. It was also the 1<sup>st</sup> defendant-respondent's position that the plaintiff-appellant has also deducted commission even for goods she has not sold at that time and that she further has goods worth of Rs.42,834/-in her possession and that she has failed to return or deliver the said goods back to the 1<sup>st</sup> defendant-respondent. Therefore the 1<sup>st</sup> defendant-respondent has stated that the statement of accounts marked P7 does not disclose the true position and claimed a sum of Rs.192,654.55 and the interest thereto totaling Rs.395,672.73 as shown in the statement of accounts marked 1V1 by the 1<sup>st</sup> defendant-respondent.

The learned trial Judge has very clearly considered the statements of accounts tendered by both parties and has come to a clear conclusion that the statement of accounts marked and tendered by the plaintiff-appellant as P7 is inaccurate. According to the plaintiff-appellant she has received goods to the value of Rs.424,716.25 between 24.11.1983 and 18.03.1984 from the 1<sup>st</sup> defendant-respondent. And in the statement of accounts marked P7 she has deducted a sum of Rs.21,235.83 as commissions. After deducting the said commission the plaintiff-appellant still owes the defendant-respondent a sum of Rs.403,480.67. Although the plaintiff-appellant has returned goods worth of Rs.54,372.87, the plaintiff has failed to take into account the said sum of

Rs.2718.64 which she has already deducted as commission for the said amount. In 1V1 the defendant-respondent has accordingly has shown the said sum of Rs.2718.64 as a sum owing to him by the plaintiff-appellant.

The learned trial Judge after perusing the said statements of accounts tendered by the parties had stated that it is clearly seen that the payments of Rs.50,000/-, Rs25,000/- and 45,285.80 the plaintiff-appellant has made to the defendant-respondent are properly been given credit to in the statement of account marked 1V1. Further the learned trial Judge has stated that although the plaintiff-appellant has claimed that she has paid a sum of Rs.120,285.80 to the 1<sup>st</sup> defendant-respondent even the documents tendered by the plaintiff-appellant marked as P4a, P4b or by the bank statements do not support the said position. The 1<sup>st</sup> defendant-respondent has clearly denied that he received the said sum from the plaintiff-appellant.

The learned trial Judge has further held that the plaintiff-appellant has failed to prove that she has paid a sum of Rs.19,911.15 to the 1<sup>st</sup> defendant-respondent and further the amount claimed by the plaintiff-appellant in her statement P7 cannot be accepted and is incorrect and that the court cannot act on the said statement P7. The learned trial Judge has also stated that the plaintiff-appellant also has failed to explain and prove how she became entitled to receive a sum of Rs.30,550/- as shown in the statement P7.

The plaintiff-appellant has stated that she has in her custody goods to the value of Rs.40834/- and that the 1<sup>st</sup> defendant-respondent has failed to send its agents to collect the same. The learned trial judge has held that the plaintiff-appellant should have returned the said goods to the 1<sup>st</sup> defendant-respondent and as she has failed to do so and as the goods

are still in her custody she has to pay the 1<sup>st</sup> defendant-respondent the said amount.

As regard the Rs.25,000/- , the amount the plaintiff-appellant claimed that she has paid through an agent named Priyantha Galappaththi, after considering the evidence of the said witness and the plaintiff the learned trial Judge has held with the 1<sup>st</sup> defendant-respondent. The 1<sup>st</sup> defendant-respondent has denied receiving any money from the said witness and also has clearly stated that if the money has been paid by the plaintiff-appellant through the said witness there should have been a receipt issued for the said amount.

In this case the learned trial Judge after having considered the documents and the evidence placed before court by both parties have clearly held that the plaintiff-appellant has failed to prove that the defendant.-respondent owes her the said amount stated in P7 and also that the plaintiff has failed to substantiate the same with any documentary evidence. The learned trial Judge has accepted the statement of account marked 1V1 by the defendant-respondent to be accurate and true and has held that the plaintiff-appellant owes the defendant-respondent a sum of Rs. 192,654.51 with interest.

The learned trial Judge has also held that as per the agreement marked P1 the defendant-respondent is not entitled to claim an interest of 15%. The defendant-respondent too has conceded the said fact. Therefore the learned trial Judge has held that the defendant-respondent is entitled to legal interest on the said sum.

This court finds that the learned Additional District Judge has evaluated and considered in detail all the evidence that has been led by parties in arriving at the conclusion she did in this case. The learned trial Judge had dealt with all the points in issue in the case and pronounced definite findings on the issues. The learned trial Judge in her judgment has held

that the plaintiff-appellant has failed to prove by documentary evidence or otherwise, her statement of accounts marked P7 and prove that she owed the defendant-respondent only the amount as pleaded in the plaint. The learned trial Judge has clearly held that the plaintiff-respondent owes the defendant-respondent the sum stated in the statement of accounts marked as 1V1 by the defendant-respondent. On a balance of probability the learned trial Judge accepted the evidence of the 1<sup>st</sup> defendant-respondent. I have considered the entire judgment, and see no reason to interfere and the trial Judge has given cogent reasons. Primary facts have been considered and this court has no reason to interfere with primary facts.

In M.P.Munasinghe V. C.P.Liyanage 69 N.L.R 97 it was held that:-

“If there is no evidence to support a particular conclusion (and this is really a question of law) the Appellate Court will not hesitate so to decide. But if the evidence as a whole can reasonably be regarded as justifying the conclusion arrived at the trial, and especially if that conclusion has been arrived at on conflicting testimony by a tribunal which saw and heard the witnesses, the Appellate Court will bear in mind that it has not enjoyed this opportunity and that the view of the trial Judge as to where credibility lies is entitled to great weight.”

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

Appeal dismissed.

**JUDGE OF THE COURT OF APPEAL**