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

In the matter of an appeal made in terms of Section 754 of Civil Procedure Code

Marichem Marigases Ltd.
Majuro-Marshal Islands having its European Administration Office at
No. 64, Sfaktirias Street,
Piraeus 185-45,
Greece.

**Plaintiff**

**CA No: CA/ REM/ 05/ 2013**
**High Court of Colombo**
**Action in Rem No: 01/ 2010**

**Against**

1. M.V. "Thermopylae Sierra",
   Now lying at the Port of Colombo
2. Scarlet Shipping Company Limited
   No. 284, Arch. Makarios III Ave.,
   Fortuna Court Block B,
   2nd Floor, Limassol, Cyprus.

**Defendants**

**-AND NOW BETWEEN-**

1. M.V. "Thermopylae Sierra",
   Now lying at the Port of Colombo

2. Scarlet Shipping Company Limited
No. 284, Arch. Makarios III Ave.,
Fortuna Court Block B,
2nd Floor, Limassol, Cyprus.

**Defendants - Appellants**

**-Vs-**

Marichem Marigases Ltd.
Majuro-Marshal Islands having its European
Administration Office at
No. 64, Sfaktirias Street,
Piraeus 185-45,
Greece.

**Plaintiff - Respondent**

**Before :** **S. Thurairaja PC, J**

**&**

**A.L. Shiran Gooneratne J.**

**Counsel :** Murshid Maharoof with S. Ahamed for the Defendants-Appellants

Vinodh Wickremasooriya for the Plaintiff-Respondent

**Written Submissions of the Defendants-Appellants filed on**: 15/05/2018

**Written Submissions of the Plaintiff-Respondent filed on**: 25/06/2018

**Argued on** : 31/10/2018

**Judgment on : 28/11/2018**

**A.L. Shiran Gooneratne J.**

The Defendant-Appellants (hereinafter referred to as the 1st Appellant and 2nd Appellant) has invoked the jurisdiction of this Court, inter alia, to set aside the judgment dated 27/09/2013, entered in terms of Section 2(1) of the Admiralty Jurisdiction Act No. 40 of 1983, by the Judge of the High Court of Colombo exercising Admiralty Jurisdiction. The Plaintiff-Respondent's claim (hereinafter referred to as the Respondent) was based on goods and material supplied in the form of chemicals and other gasses and for services rendered to the 1st Appellant vessel.

The Appellants contend that the delivery of the said items were subject to approval by the Respondent. Therefore, the Respondent has failed to establish that the deliveries were approved and the relevant invoices were sent to the 2nd Appellant. The Appellants also contend that the statement of accounts arriving at the total payment due marked P8, was not produced in evidence through proper custody.

In paragraph 4 of the answer, the Appellant states that "although the plaintiff has provided some services to the defendant vessel, the defendants had disputed the quantity and the items supplied by the plaintiff". The Respondent has led evidence of the sales manager of the Respondent Company, and in cross examination, the Appellant's repeatedly took up the position that the Respondent

failed to provide the information required to satisfy the outstanding payments. It is to be noted that the transaction material to this action was not the only time the Respondent had supplied gas cylinders to the 1st Appellant vessel.

The witness recollects at least five other instances, where the Respondent has supplied gas cylinders to the 1st Appellant vessel on credit notes issued in favour of the vessel, notably when damaged cylinders were discovered. The witness also stated that goods in question supplied by the Respondent Company has been accepted and acknowledged on behalf of the 1st Appellant vessel and the said delivery notes and invoices marked A2B-C, A3A-C, A4A-C, A5A-C, A6A-B and A7, have been stamped and signed by the marshal, on behalf of the 1st Appellant vessel.

As noted earlier, the Appellants stand regarding the outstanding payment was that the Respondent has failed to provide complete details of the quantity and the items supplied to the Appellants.

The Learned High Court Judge after evaluating the available documents tendered in evidence concluded that;

> *"Though the defendant has challenged the admissibility of the documents marked A1 to A7 and A8, the witness as an agent of the plaintiff has testified on the accuracy of the said documents and originals/ certified copies of the originals, in the custody of the*

*plaintiff being produced, I do not see them requiring any further proof, hence admitted."*

In ***De Silva v. Seneviratne, (1981) 2 SLR 7;***

*it was held that where an appellate Court is invited to review the findings of a trial Judge on questions of fact the principles that should guide it should be as follows:*

*"(a) where the findings on questions of fact are based upon the credibility of witnesses on the footing of the trial Judge's perception of such evidence, then such findings are entitled to great weight and the utmost consideration and will be reversed only if it appears to the appellate Court that the trial Judge has failed to make full use of his advantage of seeing and listening to the witnesses and the appellate Court is convinced by the plainest considerations that it would be justified in doing so;*

*(b) that however, where the findings of fact are based upon the trial Judge's evaluation of facts, the appellate Court is then in as good a position as the trial Judge to evaluate such facts and no sanctity attaches to such findings of fact of a trial Judge; and*

*(c) where it appears to an appellate Court that on either of these grounds the findings of fact by a trial Judge should be reversed then the appellate Court "ought not to shrink from that task".*

In the circumstances, we are of the view that the Learned High Court Judge has come to a correct finding that the documents tendered to Court can be accepted with no further proof required. It is our considered view that, when the Appellants admit that the "Plaintiff has provided some services to the defendant vessel", at that point, the Appellants would certainly owe an explanation to Court to substantiate their stand that the Respondent has failed to provide complete details of supplies to the Appellants. It is observed that the Appellant's have failed to disclose their stand on this issue when cross examining the Respondent's witness or by any other documentary or witness evidence.

Therefore, in all the above circumstances, we are of the view that the reasons given in arriving at the impugned judgment should not be disturbed and accordingly, we affirm judgment dated 27/09/2013, and dismiss the appeal without costs.

Appeal dismissed.

**JUDGE OF THE COURT OF APPEAL**

**S.Thurairaja PC, J**

**I agree.**

**JUDGE OF THE COURT OF APPEAL**