

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

Seylan Bank Limited.,  
No. 33,  
Sir Baron Jayathillaka Mawatha,  
Colombo 1.  
Plaintiff-Appellant

**CA CASE NO: CA/1061/1998/F**

**DC ANURADHAPURA CASE NO: 15706/M**

Vs.

Subainghe Kankanamlage  
Padmasiri Subasinghe,  
“Kalyanie”,  
Kuda-Kekirawa,  
Kekirawa.  
Defendant-Respondent

Before: Mahinda Samayawardhena, J.

Counsel: Shaheem Wazeer for the Plaintiff-Appellant.

Harith de Mel for the Defendant-Respondent.

Decided on: 08.03.2019

Samayawardhena, J.

The plaintiff bank filed this action in the District Court of Anuradhapura seeking to recover a sum of Rs. 234,047/78 with interest. The defendant customer filed the answer seeking dismissal of the action on the basis that the plaintiff's action is prescribed. After trial the learned District Judge dismissed the plaintiff's action. Hence this appeal by the plaintiff bank.

At the trial the only issue raised by the plaintiff bank was whether the defendant has defaulted the payment of a sum of Rs. 234,047/78 obtained as an overdraft facility between 15.04.1995-01.10.1995. Conversely, the only issue raised by the defendant at the trial was notwithstanding a cause of action has accrued to the plaintiff against the defendant, whether it is prescribed. (පැමිණිලිකරුට යම් නඩු නිමිත්තක් උද්ගතව ඇත්, එය කාලාවරෝධී වී තිබේද?)

At the trial, an officer from the bank gave evidence for the plaintiff and marked the certified copies of the Ledgers relevant to this transaction as A1 and A2 without any objection and without subject to proof. The plaintiff in fact tendered these certified copies of the Ledgers marked A1 and A2 with the plaint itself. When summons was served on the defendant, together with a copy of the plaint, these documents have also been served on the defendant. Those certified copies clearly show that as at 30.09.1995 the defendant was liable to pay to the bank a sum of Rs.234,047/78. When I go through the evidence of the plaintiff's witness, it is clear that, the said officer has, when giving evidence, brought to Court the originals of the Ledgers as

well.<sup>1</sup> With that evidence, the case for the plaintiff has been closed reading in evidence the said documents marked A1 and A2 without any objection.

The defendant has neither given evidence nor called any witnesses.

In a similar case, namely, *Bank of Ceylon v. Aswedduma Tea Manufactures (Pvt) Ltd*<sup>2</sup>, filed on an overdraft facility, on behalf of the Supreme Court, Goonaratne J. (with the agreement of Jayawardena J. and Malalgoda J.) had this to say:

*Respondent (customer) never led evidence to establish their position. Law permits to draw necessary inferences in the event of the Respondent's failure to lead evidence.*

*Rodrigo v. Anthony's Hardware Stores [1995] 1 SLR 7*

*"The 1<sup>st</sup> defendant did not give evidence and the court is entitled to draw the presumption that had he given evidence, such evidence would have been unfavourable to the case of the Defendants—see section 114 illustration (f) of the Evidence Ordinance."*

The learned District Judge in the Judgment has rightly rejected the defendant's plea of prescription. There is no cross appeal against the said finding.

However, the learned District Judge has dismissed the plaintiff's action on the basis that the plaintiff bank has not produced the cheques on which moneys were paid to the defendant to establish that the defendant's Current Account was overdrawn

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<sup>1</sup> Vide last line of page 37 of the Appeal Brief.

<sup>2</sup> SC (LA) Appeal 175/2015 decided on 27.10.2017

on payments of those cheques.<sup>3</sup> I must say that such kind of specific position (i.e. the plaintiff bank failed to produce cheques) was not taken up by the defendant at the trial.

The plaintiff's case was not based on cheques. It was based on the overdraft facility, which the defendant stated cannot now be recovered as the cause of action was prescribed. When a bank files a case on an overdraft facility, it was held by the Supreme Court in *Bank of Ceylon v. Aswedduma Tea Manufactures (Pvt) Ltd* (supra) that presentment of cheques to Court is not an indispensable requirement.

*I do agree with the learned counsel for the bank that the bank does not rely on section 50 of the Civil Procedure Code, which requires a litigant who relies on a document to produce the document or even annex it to the plaint. This was an arrangement between the plaintiff bank and the respondent. This being an overdraft facility the bank need not annex a document or the several cheques since there is evidence of the several bank statements placed and produced before court. These documents, i.e. the statement of A/C were produced in court and had been compared by witness No.2 for the bank with the relevant ledger. This is not an action based on a cheque but an overdraft facility.*

In this case, the defendant did not seriously challenge the amount *per se* the bank wanted to recover. By looking at the issue which he raised, and quoted by me above, it is clear that, he accepted that a cause of action has arisen to the bank to sue him, but his defence was that the plaintiff's action was prescribed.

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<sup>3</sup> Vide the last page of the Judgment at page 56 of the Appeal Brief.

There was sufficient, if not overwhelming, evidence for the learned Judge to enter Judgment for the plaintiff once he decided to dismiss the defendant's plea of prescription. When the Ledgers were brought and certified copies were marked without objection to establish the granting of the relevant overdraft facility and default on it, what more the District Judge expect from the bank? Those certified copies, in terms of section 90A read with 90C of the Evidence Ordinance, present *prima facie* evidence without further proof. Regarding the production of bankers' books, in the above case, the Supreme Court stated that:

*There cannot be an objection for leading secondary evidence. Further the statements produced at the trial is permissible to be led in terms of section 90A of the Evidence Ordinance.....Section 90A of the Evidence Ordinance has made provisions to deal with bank books, ledgers, statements etc. Court must consider the proper utilization of the provisions in the Evidence Ordinance.*

This is not a criminal case to prove beyond reasonable doubt, and to argue that if one link in the chain is missing, the prosecution's case shall fall apart.

I set aside the Judgment of the District Court and direct the incumbent Judge to enter Judgment for the plaintiff bank as prayed for in the prayer to the plaint.

This is a simple case filed by the plaintiff bank as far back as in the year 1996 to recover a specific sum of money. Up to now, 23 long years have passed. This provides a classic example of laws delays.

Between then and now, Sri Lankan Rupee has depreciated unprecedentedly, and inflation has gone up by leaps and bounds. These are relevant matters the Court shall *inter alia* take into account in awarding costs.

The defendant shall pay to the plaintiff a sum of Rs. 100,000/= as costs of the appeal.

Appeal is allowed.

Judge of the Court of Appeal