

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

In the matter of an Appeal under Section 754(1) of
the Civil Procedure Code against the judgment of
the District Court

C.A. Case No. 735/1999 (F)

D.C. Colombo Case No.
17007/MR

Euro Finance Enterprises S.A.
of Padilla & Associates Building,
32nd East Street,
No.3-32, Panama

PLAINTIFF

-Vs-

The Attorney General,
Attorney General's Department,
Hilftsdorp, Colombo 12.

DEFENDANT

AND NOW

The Attorney General,
Attorney General's Department,
Hilftsdorp, Colombo 12.

DEFENDANT-APPELLANT

-Vs-

Euro Finance Enterprises S.A.

of Padilla & Associates Building,
32nd East Street,
No.3-32, Panama

PLAINTIFF-RESPONDENT

BEFORE : A.H.M.D. Nawaz, J.

COUNSEL : Milinda Gunatilaka, DSG for the Defendant-
Appellant
Shivaan Kanag-Isvaran with Anuradha Peiris for
the Plaintiff-Respondent

Decided on : 11.02.2019

A.H.M.D. Nawaz, J.

A motor vessel called "Onyx" was arrested in Sri Lankan seas for non-payment of dues due upon a mortgage to the Plaintiff-Respondent - a Panamanian Bank and the ship was subsequently put up for an auction sale.

The Plaintiff-Respondent (hereinafter referred to as "the Plaintiff") deposited a sum of US Dollars 50,000/- with the Marshall of the High Court on 08.08.1993 - a deposit that a prospective bidder at the auction was mandated to pay for the credit of the Admiralty Account of the High Court. In other words the sum in question which approximated to Sri Lankan Rs.2,401,970/- was credited to the Admiralty Account as a deposit to participate and bid at the auction for the sale of the motor vessel.

This deposit become repayable to the Plaintiff since he was the successful bidder at the auction and this auction was instituted in the District Court of Colombo by the Plaintiff to recover a balance sum of Rs.1,515,659 out of the deposit of US Dollars 50,000/-.

The Plaintiff averred that the said balance was due and owing to it, after setting off US Dollars 8,000/- paid by the Plaintiff from and out of the deposit as ordered by the High

Court of Colombo in respect of claims in another action pending before Court namely Action in Rem No.21/93 and a part payment of Rs.500,000/- paid to the Plaintiff by the High Court on 11.01.1995.

In fact, the learned High Court Judge at the time, Justice F.N.D. Jayasuriya made an order directing that a cheque should be drawn for the part payment of Rs. 500,000/- to the Plaintiff and this cheque was accepted by the Attorneys-at-Law for the Plaintiff on 11.01.1995 as the respective journal entries dated 10.01.1995 and 11.01.1995 bear out.

The Plaintiff-Respondent instituted this action in the District Court of Colombo against the Defendant-Appellant in respect of three causes of action and the said Court entered judgment in favor of the Plaintiff-Respondent on all three causes of action.

The Defendant-Appellant has preferred this appeal only against the said judgment in respect of the 3rd cause of action.

THE 3RD CAUSE OF ACTION

The 3rd cause of action in respect of which the Defendant-Appellant has preferred his appeal pertains to the case of the Defendant for the recovery of the balance sum of Rs.1,517,659/- out of the sum of US Dollars 50,000/- (equivalent to Sri Lanka Rs. 2,401,970/-) deposited by the Plaintiff Respondent with the Marshall of the High Court of Colombo on 8th August 1993 and credited to the Admiralty Account of the said High Court for the Plaintiff Respondent to participate and bid at the auction for the sale of the motor vessel "Onyx".

The pleaded case of the Plaintiff-Respondent was that the aforesaid said balance is due, after giving credit for US Dollars 8000/- paid by the Plaintiff-Respondent from and out of this sum as ordered by the High Court of Colombo in respect of claims in another action pending before Court namely the Action in Rem No. 21/93 and a part payment of Rs.500,000/- paid to the Plaintiff-Respondent by the said High Court on 11th January 1995 (which was admitted by the Defendant Appellant in paragraph 22 of its Answer).\

The then High Court Judge, Justice F.N.D Jayasuriya had made an order on 10.01.1995 for the part payment of Rs. 500,000 which was marked V2 at the trial. There was also produced before the District Court another Journal Entry of the High Court made on 11.01.1995 evidencing the receipt of a part payment of Rs. 50,000/= in terms of the said order of 10.01.1995. Item 3 of that Journal Entry evidences an order for a cheque for Rs 50,0000 issued in favour of the legal firm which was duly received.

Therefore the contention of the Defendant-Appellants that no evidence was placed before the District Court in order to establish that an order had been made by the High Court in relation to the sum claimed under the 3rd cause of action and as such the Plaintiff Respondent is not entitled to receive any sums of money deposited in the said High Court is unsustainable.

As rightly pointed out in the course of the argument, the Defendant Appellant had admitted in paragraphs 20,21 and 23 of its Answer the following in respect of in respect of the 3rd cause of action,

- a)that the Plaintiff Respondent had deposited the money mentioned in paragraph 20 of the Plaint with the Marshall of the High Court of Colombo and it had been credited to its Admiralty Account (Admission 9);
- b) that the sum of money mentioned in paragraph 22 of the Plaint had been paid to the Plaintiff Respondent by the said High Court (Admission 10); and
- c)that the Plaintiff Respondent had demanded the balance money and that had not been paid (Admission 11).

The paragraph 11 of the answer of the Defendant-Appellant was to the effect that that certain irregularities had been committed in respect of the money deposited in the said High Court and that after investigation into those irregularities, action would be taken according to the law against the persons who were suspected to have committed those irregularities (Admission 6).

As it turned out, it was common ground that that the money deposited in the High Court Admiralty Account had been misappropriated and the deposits were no longer lying in the Admiralty Account. The above position was supported by the Defendant-Appellant at the trial and is contained at the Paragraph 2(d) and 30 of the Defendant-Appellants written submissions to the District Court of Colombo dated 14th October 1998.

Upon a perusal of the pleadings in the District Court and the arguments placed before this Court, it is clear that the Plaintiff-Respondent instituted this action against the Attorney General as representing the State, to recover the monies due to the Plaintiff-Respondent from the monies deposited by the Plaintiff Respondent in the said High Court.

The Learned District Court Judge after having heard evidence in the case including that of the Deputy Registrar of the High Court came to the finding that the Plaintiff has a cause of action to institute this action against the Attorney General as representing the state in order to recover back its money lying in the escrow of the state. The cause of action is to recover the balance that has been ordered to be paid by the learned High Court judge himself. The order has become incapable of execution as a result of the depletion of the money in the admiralty account. Regulations framed under the Admiralty Act would not act as a fetter to shut out the cause of action that had accrued to the Plaintiff-Respondent. This was the reasoning of the learned District Judge of Colombo and I see no reason to disturb this conclusion.

The Plaintiff-Respondent has contended that the admitted fact that a part payment of Rs. 500,000 was ordered to be paid out to the Plaintiff-Respondent on 11th January 1995 and had been made out of the deposit of US Dollars 50,000 which was credited to the Admiralty Account, clearly indicates that there was an order to pay money to the Plaintiff-Respondent by Court out of the said deposit in the Admiralty Account.

It would appear that the balance payment could not be recovered from the said High Court as admittedly the money in the Admiralty Account of the said High Court had been misappropriated and were no longer available and not due to the lack of an order from the learned High Court Judge as was contended.

It is pertinent to observe at this stage that Issues 11 and 15, which related to the 1st and 2nd causes of action, the District Court held in favour of the Plaintiff-Respondent

(a) that the High Court which exercised admiralty jurisdiction did not have sole and exclusive jurisdiction to deal with the money deposited in the High Court (Issue 11).

(b) that no order is necessary in terms of Regulation 140 of the Admiralty Regulations for payment of money to a party (Issue 15). These issues were answered against the Plaintiff-Appellant and it was in the course of answering these issues that the learned District Judge of Colombo stated that a cause of action had accrued to the Plaintiff-Respondent.

The Defendant-Petitioner has abided by the decision of the District Court on the said 2 issues which relate to the 1st and 2nd causes of action which it has not sought to challenge in this appeal. In the same manner the recovery of money sued for upon the third cause of action is sustainable as this money is due from the state and should be deemed to have been placed in an escrow payable to the depositor as it remains his money up to date. As I have stated above, this was money placed as a deposit with the Court to participate in an auction and which funds are repayable as money had and received. The deposit which has remained in safe custody with the State has to be returned to the depositor and any unlawful deprivation will attract the assertion that the state has been unjustly enriched. The Admiralty Rules have no application to this case and the rules cannot prevent the Plaintiff-Respondent from vindicating his right in a regular action in the District Court.

The cause of action is traceable to several heads of liability such as money had and received or unjust enrichment or even the funds that are lying in an escrow with the

State could be invested with the attributes of trust funds which cannot be trumped by subordinate legislation framed under an Act. Common law remedies cannot be shut out by the concurrent existence of rules which are framed under an Act.

In the circumstances I would proceed to affirm the judgement of the learned District Judge of Colombo and dismiss the appeal .

JUDGE OF THE COURT OF APPEAL