

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

National Film Corporation,
No. 224, Baudhaloka Mawatha,
Colombo -07.

Defendant-Appellant

CA - DCF 870/99(F)

D.C. Kaluthara Case No. 3644/M.R.

Vs.

Prisca (Private) Ltd.,
Katukurunda, Kaluthara.

Plaintiff-Respondent

Before: **M.T. MOHAMMED LAFFAR, J. &**
K.K.A.V. SWARNADHIPATHI, J.

Counsel: Maithri Amarasinghe Jayathilaka (S.C.)
(For the Defendant-Appellant)

H. Withanachchi (A.A.L.) with Shantha Karunadhara(A.A.L.)
(For the Plaintiff-Respondent)

Argument: By way of written submissions

Decided on: 17.02.2022

K.K.A.V. SWARNADHIPATHI, J.

JUDGMENT

Plaintiff-Respondent filed the case at the District Court of Kalutara, claiming from the Defendant-Appellant for loss of income and reputation. Plaintiff-Respondent was running a Cinema in Kalutara, and the Defendant-Appellant as the Film Corporation provided films to run in the cinema. The Respondent's theatre was an "A" grade theatre, and it was the Appellant who decided which grade should be given to a theatre. The Appellant allocated the film "**Singhayaneth Singhaya**" to be filmed at the Respondent's theatre from the 4th of December 1992.

In January of the following year, the Respondent had received a letter dated 11th of January 1993 from the Producer of the film regarding an assault on the representatives of the film by the Manager of the film hall. An inquiry was held by the Appellant and removed the film from the theatre. The aforesaid inquiry was first fixed, only giving three days for the Respondent to which the Respondent had objected and requested 14 days to face the inquiry. The Appellant had not given any time for the Respondent and had held the inquiry *ex-parte* on the 18th of January 1993 as directed by the letter dated 15th of January 1993. On the 18th of January 1993, an officer was sent by the Appellant to remove the film running in the theatre. Also had not provided any other film to be broadcasted at the cinema.

The Respondent filed the case at the District Court of Kalutara. After the Answer, the trial began on 28 issues. On behalf of both parties, evidence was led, and the learned District Judge delivered his Judgment on the 7th of September 1999 in favour of Plaintiff. Being aggrieved by the said Judgment, the Respondent appealed to this Court.

At the Appeal, the Appellant argued that even though the Respondent had based his case on the basis that Plaintiff's reputation had suffered, there was no evidence to that effect. Pointing out portions of the evidence, the Appellant argued that the Managing Director and Plaintiff are two

different legal personalities. Therefore, the learned District Judge's conclusion is not agreeable with the law. The Managing Director's evidence that he had to face disrepute, and even his family members had a low opinion of him cannot be considered as disrepute to Plaintiff.

Plaintiff is a legal entity, but one must understand it cannot give evidence. The evidence of the Managing Director of the company is given not only on his behalf but also on behalf of the company. He became the voice of the company. The learned District Judge had analysed the evidence as an individual and as a representative of the Plaintiff company.

In the Judgment, the learned District Judge had observed and placed on record that the Plaintiff is a limited liability company. Therefore, the evidence of the witness is treated as evidence of the Plaintiff on that ground the argument of the Appellant fails.

Another argument of the Appellant is "has the learned District Judge misdirected himself on the evidence of proof of damages allegedly suffered by the Respondent?"

The Appellant contends that loss of income is special damage that has to be specifically pleaded and proved. The documents marked as [P17], [P18], and [P19], which were auditors' reports marked subject to proof, were not proved. Therefore, those documents cannot be considered. Perusing the Judgment, there is no reference to the documents marked as [P17], [P18], and [P19] in the Judgment. Therefore, I am compelled to accept that those documents had no bearing on the Judgment. The learned District Judge had mentioned that evidence was not led regarding those documents.

Issue No.11 is an issue on which damages were mentioned, and in the Plaint, the Plaintiff had claimed damages. If the Appellant intended to raise an issue on loss of income, they should have done so. What was not argued cannot be taken for someone's advantage. In this context, loss of income had been discussed in the form of closing of the theatre for many days. There is ample evidence of the income of the theatre while running. Therefore, what the learned District Judge had discussed regarding loss of income rejects the argument of the Appellant.

The learned District Judge also considered the arbitrary actions of the Appellant. After the *ex-parte* inquiry on the 18th of January 1993, an officer was sent to remove the film. Only after that, the Appellant had held an inquiry again. On the 18th of January, when the officer visited the theatre, 2.30 film was screening, and around forty people were waiting for 6.30 film to be screened. Suddenly, when the film was removed, on an *ex-parte* inquiry, was the reputation of the Plaintiff suffered or not was discussed by the learned District Judge.

The Judgment speaks of income not only from the film but also from the car park and the canteen. The learned District Judge had come to a conclusion regarding loss of income on a sound footing. Especially the fact that the theatre was kept closed for 27 days because the Appellant failed to supply another film was also considered. Without a proper inquiry, the arbitrary actions cannot be rectified by a second inquiry held in February.

Therefore, I am of the view that the arguments placed by the Appellant are not strong enough to set aside the Judgment of the learned District Judge of Kalutara. The learned District Judge had evaluated evidence very carefully in concluding the Judgment. Therefore, I dismiss the Appeal with taxed costs.

Judge of the Court of Appeal

M. T. MOHAMMED LAFFAR, J.

I agree.

Judge of the Court of Appeal