

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

Commercial Leasing and Finance PLC,
(Formerly known and named as
Commercial Leasing and Finance
Limited)
No. 68, Bauddhaloka Mawatha,
Colombo 04.
Plaintiff

SC APPEAL NO: SC/APPEAL/23/2021

SC LA NO: SC/CHC/LA/85/2020

CHC CASE NO: HC/CIVIL/175/2013/MR

Vs.

Niranjan Canagasooriyam,
No. 12, Palm Grove,
Colombo 03.
Defendant

AND NOW BETWEEN

Niranjan Canagasooriyam,
No. 12, Palm Grove,
Colombo 03.
Defendant-Appellant

Vs.

Commercial Leasing and Finance PLC,
(Formerly known and named as
Commercial Leasing and Finance
Limited)

No. 68,
Buddhaloka Mawatha,
Colombo 04.

Plaintiff-Respondent

Before: Murdu N.B. Fernando, P.C., J.
A.H.M.D. Nawaz, J.
Mahinda Samayawardhena, J.

Counsel: Neomal Pelpola for the Defendant-Appellant.
Hiran De Alwis with Medani Navoda for the Plaintiff-
Respondent.

Argued on : 15.07.2021

Written submissions:

by the Defendant-Appellant on 03.03.2021.

by the Plaintiff-Respondent on 04.03.2021.

Further written submissions:

by the Defendant-Appellant on 06.08.2021.

by the Plaintiff-Respondent on 20.08.2021.

Decided on: 15.10.2021

Mahinda Samayawardhena, J.

The plaintiff instituted this action against the defendant in the Commercial High Court to recover a sum of Rs. 130,819,394.78 with interest on “*the guarantee and/or indemnity and/or agreement dated 30.12.2010*” marked B with the plaint. When this document was sought to be marked in evidence as P2, the defendant objected to it on the basis that it is a bond which has not been duly stamped and therefore cannot be admitted in evidence. The Commercial High Court made a vague order when it held on the one hand that it need not be stamped as it is not a bond, but on the other hand allowed the plaintiff to rectify the stamp deficiency, if any. Being aggrieved by this order, the defendant filed this appeal with leave obtained on the following two questions of law:

1. *Whether the indemnity furnished to secure a factoring agreement marked as P2 in the brief is subject to stamp fees?*
2. *If the aforementioned question of law is answered in the affirmative, what is the stamp duty that needs to be paid in respect of the said indemnity?*

Section 33(1) of the Stamp Duty Act, No. 43 of 1982, reads as follows:

No instrument chargeable with stamp duty shall be received or admitted in evidence by any person having by law or consent of parties authority to receive evidence or registered or authenticated or acted upon by any person or by any officer in a public office or corporation or bank or approved credit agency unless such instrument is duly stamped:

Provided that any such instrument may—

(a) be admitted in evidence by any person having by law or consent of parties authority to receive evidence; or

(b) if the stamp duty chargeable on such instrument is one thousand five hundred rupees or less, be acted upon by the Registrar-General,

upon payment of the proper duty with which it is chargeable or the amount required to make up the same and a penalty not exceeding three times the proper duty.

The Stamp Duty (Special Provisions) Act, No. 12 of 2006, did not repeal the Stamp Duty Act, No. 43 of 1982. In terms of section 13 of the Stamp Duty (Special Provisions) Act quoted below, both Acts operate in parallel. If there is any inconsistency between the two with regard to the imposition or exemption of stamp duty or any other matter, the Stamp Duty (Special Provisions) Act prevails.

From and after the date of the coming into operation of this Act, the provisions of the Stamp Duty Act, No. 43 of 1982, relating to the Imposition of Stamp Duty (other than any instrument relating to the transfer of immovable property, the transfer of motor vehicles or documents filed in Court), Exemptions and any other provision in the aforesaid Act, shall, in so far as the same are inconsistent with the provisions of this Act, have no operation and the provisions of this Act shall prevail.

Learned counsel for the plaintiff admits that in terms of section 4(g) of the Stamp Duty (Special Provisions) Act, “*a bond or mortgage for any definite and certain sum of money and affecting any property*” is a “*specified instrument*” which needs to be stamped. But his argument is that P2 is not a “*bond*” but an indemnity; and also that it is not “*for any definite and certain sum of money and affecting any property*”.

There are various kinds of bonds—guarantee bonds, indemnity bonds, performance bonds, bail bonds etc. The Stamp Duty (Special Provisions) Act does not refer to these species, but the Stamp Duty Act does to some extent. The Stamp Duty (Special Provisions) Act uses the word “bond” in a generic sense. Section 5(6) of the Stamp Duty Act makes only a “*bond of indemnity given to a public officer in the execution of his duty*” exempt from stamp duty, not all bonds of indemnity. This goes to prove that the Stamp Duty Act recognises an indemnity as (i) a bond (ii) liable to stamp duty (iii) subject to one exemption. This is not superseded by the Stamp Duty (Special Provisions) Act because there is no conflict or inconsistency between the two Acts on this point. Hence I take the view that P2 is a bond—a bond of indemnity.

P2 is admittedly based on a Factoring Agreement. The defendant tendered this Factoring Agreement marked X1 to the Commercial High Court with his answer. In essence, by X1, EPSI Computer (Pvt) Ltd, where the defendant is a director, agreed to sell “*all debts incurred or to be incurred by any debtor of the class or description contemplated in this Agreement which shall be in existence at the commencement or which shall come into existence at any time thereafter before termination of this Agreement*” to the plaintiff and the plaintiff agreed to purchase the same subject to the conditions stated in X1. According to P2, X1 was executed in consideration of the defendant entering into P2 whereby the defendant *inter alia* agreed that he would be liable in all respects as the principal debtor.

All bonds are not liable to stamp duty. In terms of section 4(g) of the Stamp Duty (Special Provisions) Act, for a bond to be subject to stamp duty, two requirements shall co-exist: it shall be “*for any definite and*

certain sum of money and affecting any property". P2 does not satisfy these two requirements.

There is no definite sum of money ascertainable in P2. This is because there is no definite sum of money ascertainable in X1. I accept the submission made on behalf of the plaintiff that "*It is a rolling amount and depends on the debt payable.*"

Nor does P2 or X1 affect any property. X1 is based on debts and P2 is based on X1. A debt is a sum of money due by contract. According to the Stamp Duty Act, "money" does not fall within the definition of "property". They are two different concepts. Section 71 of the Stamp Duty Act defines "money" as follows: "*money includes all sums, whether expressed in Sri Lanka or foreign currency*"; it defines "property" as follows: "*property means movable as well as immovable property; and includes a right to or any interest in property*".

There are three well-known decisions of this Court in relation to the payment of stamp duty on bonds. One is *Ceylease Financial Services Limited v. Sriyalatha* [2006] 2 Sri LR 169. Another is *Seylan Bank Ltd v. Samdo Macky Sportswear (Pvt) Ltd* [2008] 1 Sri LR 96. The more recent one is *People's Bank v. Ocean Queen Marine (Pvt) Ltd* [2016] 1 Sri LR 141. With the exception of the *Seylan Bank* case, this Court held in the other two cases that the bond in question was liable to be stamped. In those two cases, it was held that the bond was for a definite sum of money and affecting property. In the *Ceylease* case and the *People's Bank* case the property was a "vehicle" and "trawler boat" respectively. But in the *Seylan Bank* case this Court at page 100 held that the bond was not liable to be stamped *inter alia* because the money was not secured by and correlated to property:

Clearly the 'Bond' contemplated by the language above has to be one where the money obtained is secured by, and correlated to property. Document P9 [the bond] did not, at the time of the creation of the principal covenant, seek to secure or refer to any property in other words it was not a bond that bound property for the payment of the money.

In *Ameen v. Malship (Ceylon) Ltd [1982] 2 Sri LR 483*, this Court held “*The levy of stamp duty is governed by the letter of the law and not by its spirit.*” All fiscal legislation is subject to strict interpretation. The Court will look squarely at the statute without reading in or implying anything. There is no room for intendment, presumption or assumption. Consideration of the principles of equity, morality, ethics, logic, injustice etc. are irrelevant. Any ambiguity or uncertainty must be resolved in favour of the tax payer, not the tax collector. (*Vide Maxwell on The Interpretation of Statutes, 12th edition, p. 256, N.S. Bindra's Interpretation of Statues, 9th Edition, p.1036, The Manager, Bank of Ceylon, Hatton v. The Secretary, Hatton Dickoya Urban Council [2005] 3 Sri LR 1, Sohli Eduljee Captain (Secco Brushes Corporation) v. Commissioner General of Inland Revenue (1974) 77 NLR 350, Perera & Silva Ltd. v. Commissioner General of Inland Revenue (1978) 79(II) NLR 164 at 167-168*)

In my view, P2 is not liable to stamp duty.

I answer the two questions of law as follows:

1. No.
2. Does not arise.

I set aside the impugned order of the Commercial High Court dated 10.09.2020 insofar as it is in conflict with this judgment, and dismiss the appeal.

Judge of the Supreme Court

Murdu N.B. Fernando, P.C., J.

I agree.

Judge of the Supreme Court

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

I agree.

Judge of the Supreme Court