

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

In the matter of an Appeal under and in terms of Article 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Pannipitiya Medical Services (Pvt.) Ltd.
No. 334/4, Hokandara Road,
Moraketiya,
Pannipitiya.

Plaintiff

SC Appeal No. 70/17
WP/HCCA/AV/1442/13(F)
DC Homagama No. 11532/M

Vs.

Nadeeka Udayani Dharmapala
No. 61/4, Thapassarakanda,
Kalawana.

Defendant

AND

Nadeeka Udayani Dharmapala
No. 61/4, Thapassarakanda,
Kalawana.

Defendant - Appellant

Vs.

Pannipitiya Medical Services (Pvt.) Ltd.
No. 334/4, Hokandara Road,
Moraketiya,
Pannipitia.

Plaintiff - Respondent

AND NOW BETWEEN

Pannipitiya Medical Services (Pvt.) Ltd.
No. 334/4, Hokandara Road,
Moraketiya,
Pannipitia.

Plaintiff - Respondent - Appellant

Vs.

Nadeeka Udayani Dharmapala
No. 61/4, Thapassarakanda,
Kalawana.

Defendant - Appellant - Respondent

Before: **Hon. Priyantha Jayawardena, PC, J.**
 Hon. P. Padman Surasena, J.
 Hon. Yasantha Kodagoda, PC, J.

Counsel: Anura Ranawaka for the Plaintiff - Respondent - Appellant.
 Defendant - Appellant - Respondent unrepresented.

Argued on: 23rd July, 2020

Decided on: 28th June, 2021

JUDGMENT

YASANTHA KODAGODA, PC,J.

This judgment relates to an Appeal from a Judgment of the High Court of the Provinces of the Western Province holden in Avissawella, setting aside a Judgment of the District Court of Homagama.

At the argument stage before us, the Respondent was absent and unrepresented. This Court took up this matter for argument, after satisfying ourselves that the Appellant has on three occasions complied with directives issued by this Court in issuing Notice of this Appeal to the Respondent. In fact, Notices had been dispatched to the Respondent immediately after this Appeal was filed, immediately before the Application was taken up for consideration for the granting of leave to appeal, and thereafter following the matter being fixed for Argument. The Respondent did not respond to any of these Notices, and therefore this Court concluded that the defended is not interested in vindicating her position or defending the judgment delivered in her favour by the High Court.

Plaint, Answer and the Issues

On 23rd October 2009, the Plaintiff - Respondent - Appellant filed Plaintiff in the District Court of Homagama stating the following:

That the Plaintiff is a company carrying out amongst other business activities, the running of a private hospital named *Pannipitiya Nursing Home*.

That the Defendant joined the Plaintiff company as a *Probationary Trainee*. At the time the Defendant joined the Plaintiff company, the parties entered into a *Service Agreement* dated 16th October 2004 (a copy of which was attached to the Plaintiff marked "P1").

That the said agreement contained amongst others the following three conditions, namely, (i) there shall be a training programme of two years duration for which the cost would be borne by the Plaintiff, (ii) following the completion of the training, the Defendant shall serve the Plaintiff for a period of five years, and (iii) if the agreement is breached, the Defendant shall pay a sum of Rs. 50,000/= to the Plaintiff.

That the Defendant commenced the afore-stated training programme on 16th October, 2004.

That while serving the Plaintiff, with effect from 18th July 2008, without any prior notice, the Defendant ceased to report for work.

That two attempts made in writing to contact the Defendant failed.

That since the Defendant has breached a condition of the afore-stated agreement, she is obliged to pay the Plaintiff a sum of Rs. 50,000/=, and that she is estopped from pleading that she cannot pay the Plaintiff the said sum.

That in view of the foregoing, a cause of action has arisen to the Plaintiff to institute legal action to claim a sum of Rs. 50,000/= from the Defendant, together with legal interest thereon.

Wherefore, the Plaintiff prayed that Judgment and Decree be entered against the Defendant in favour of the Plaintiff, directing the Defendant to pay the Plaintiff a sum of Rs. 50,000/=, together with legal interest thereon.

In response, by Answer dated 18th May 2010, the Defendant - Appellant - Respondent took up the following position:

That the Plaintiff did not provide any service training or education to the Defendant, and that by observing the conduct of senior personnel, the Defendant secured an understanding regarding the work of a hospital laboratory.

That the Plaintiff did not conduct itself according to the agreement marked "P1" and that the said Agreement had been prepared to shield itself from labour and other laws of the country, that therefore the said Agreement was a *sham contract*, and thus based on such Agreement, it was not possible to institute legal action against the Defendant.

That without providing training to the Defendant as provided in the afore-stated Agreement, and without issuing a formal letter of appointment and sufficient wages, the Plaintiff had retained the services of the Defendant.

Wherefore, the Defendant prayed that the Plaintiff's case be dismissed.

On 30th July 2010, on behalf of the Plaintiff, the following issues were raised:

- (1) Whether the Defendant has breached the conditions of Agreement marked "P1"?
- (2) If so, whether the Plaintiff was entitled to the reliefs prayed for in the Plaintiff?

The issues raised on behalf of the Defendant were the following:

- (3) Whether the Plaintiff had breached the conditions of Agreement marked 'P1'?
- (4) Was the afore-stated agreement entered into, in order to enable the Plaintiff to shield itself from the industrial laws of the country?
- (5) Was the afore-stated agreement intended not to be enforced and thus was a *sham agreement*?
- (6) Did the Plaintiff obtain the services of the Defendant without providing her with training as provided in Agreement marked 'P1', without issuing her a letter of appointment and adequate wages?
- (7) If the afore-stated issues are answered in the affirmative, can the Plaintiff obtain the reliefs prayed for in the Plaintiff?

Plaintiff's case

During the trial, the Administrative Officer of the Plaintiff company Shakila Nayana Kumari testified on behalf of the Plaintiff. According to her testimony, following an advertisement calling for applications, the Defendant had submitted an application for the post of '*Laboratory Technician*', and following an interview, she had been selected for training for the post '*Probationary Laboratory Technician*'. Under cross-examination, the witness has clarified that, the Defendant was recruited on 16th October 2004. This position tallies with the date on which Agreement "P1" has been entered into. At the stage of recruitment, the Plaintiff had entered into an agreement with the Defendant, marked "P1".

Following recruitment, a two years training had been provided to the Defendant. Subsequently, the Defendant had been confirmed in the position. After approximately 3½ years of service, the Defendant had presented a written request to leave the

organization. It had been explained to the Defendant that she could not leave the organization in view of the agreement entered into. Subsequently, the Defendant had ceased to report for duty. Under cross-examination, the witness has stated that the defendant ceased to report for work with effect from 18th July 2008. Thereafter, two letters had been sent to her for no avail.

Under cross-examination, it had been suggested to the witness that no formal laboratory training was provided to the Defendant by the Plaintiff with the aid of trained laboratory technicians and qualified doctors. The witness has denied this suggestion. The witness has stated the names of two doctors and two senior laboratory technicians who participated as trainers. Learned Counsel for the Defendant has suggested to the witness that no trainers had participated in the training programme including those whose names were revealed as having functioned as trainers. This suggestion has also been denied by the witness. However, during the argument stage, learned Counsel for the Plaintiff - Respondent - Appellant submitted to this Court that, what was provided to the Defendant was an '*on the job training*'. That, such a training was provided by serving technicians of the organization, has not been seriously contested by learned Counsel for the Defendant, when he cross-examined the witness. In fact, the witness's cross-examination seems to have been aimed at establishing that fact and that no formal training by external trainers was provided to the Defendant.

The witness has also testified regarding the conduct of an examination at the end of the training period. The examination had been conducted by three doctors. They had reported that the Defendant lacked 'theoretical knowledge'. The position taken up by learned Counsel for the Plaintiff - Respondent - Appellant during the appeal hearing before us, was that as the Defendant was not successful at the afore-stated examination, her training period was extended. The witness also took up the position that, following an extended training period of three months, the Plaintiff had deemed the Defendant to have been successful at the examination. However, the witness has not stated with effect from when the Plaintiff had successfully completed the training programme. Neither oral nor documentary evidence to that effect had been presented at the trial. The witness's position was that, before the certificate of 'completion of training' could be issued, the Defendant had ceased to report for work.

Under cross-examination, the witness has admitted that, the Defendant was not issued with a 'letter of appointment'. The witness has clarified that, a letter of appointment was not issued, because the Defendant had been required to enhance her theoretical knowledge. The witness has admitted that, following the training, the Defendant had not been issued with a certificate of 'successful completion of training'. The position of the witness was that, at a particular point of time, the Defendant was placed on the salary scale of a Medical Laboratory Technician. When questioned by the learned Counsel for the Defendant as to why the Defendant was paid the salary of a Medical Laboratory Technician without issuing a 'letter of appointment', the witness had no answer to give. It has also been suggested to the witness that it was the Plaintiff who breached Agreement marked "P1". This suggestion has also been denied by the witness. The witness has stated that the Defendant handed over to her a 'letter of resignation', stating that she was leaving due to personal reasons. However, this letter was not produced at the trial. No other evidence had been presented on behalf of the Plaintiff company.

Defendant's case

The Defendant had testified on her behalf. She has admitted having entered into "P1" with the Plaintiff. Following recruitment, she had been initially assigned to the 'emergency treatment unit' and had attended to miscellaneous functions of that unit. She had thereafter been assigned to the location where blood samples are obtained. At that location, she had attended to functions such as writing bills and taking samples to the laboratory. She had thereafter requested that she be given the opportunity of taking blood samples, and subsequently she had received that opportunity. She implied thereby that she obtained 'on the job training' in that regard. She emphasized that she did not receive any formal training either in the form of lectures or practical training. After some time working at the Plaintiff company, she had been assigned to the laboratory. At the laboratory, she had through her own observation and with the assistance of seniors who worked at the laboratory, gradually learnt various functions associated with testing of samples.

The Defendant has testified with regard to an incident where she had tendered a letter to the management requesting that an acknowledgement be issued that she handed over the originals of her educational certificates, and containing an undertaking that the company would release them to the Defendant when required. This request had resulted

in the head of the organization having scolded her. Following that incident, she had decided to leave the organization. Afterwards, she had submitted a letter giving one months notice of her intended resignation. She claims to have thereafter been subjected to maltreatment. Thus, she had ceased to report for work.

In her evidence, the Defendant was emphatic that she (a) did not receive formal training for a duration of two years, (b) was not subjected to an examination (formal assessment) following a period of formal training, and (c) did not receive a letter confirming her in service.

The cross-examination of the Defendant by learned Counsel for the Plaintiff has been aimed at primarily establishing five matters, namely (i) that the Defendant received ‘on the job’ training, (ii) that the Defendant did not successfully complete the training programme as evident by the findings of the three consultant medical specialists who assessed her, (iii) that during her service at the Plaintiff company the Defendant was paid a salary, (iv) that the Plaintiff did not violate Agreement marked “P1”, and (v) that the Defendant acted in violation of Agreement marked “P1”. As regards ‘(i)’ and ‘(ii)’, the Plaintiff disagreed with the position taken up by learned counsel for the Plaintiff. Her position was that, she did not receive a formal training as provided for in “P1”, and that her performance was not properly assessed. She has not contested the suggestion that she was paid a salary. Her position was that, while she did not act contrary to “P1”, and that it was the Plaintiff who acted in breach of the said Agreement.

Judgment of the District Court

Following the conclusion of evidence, on 18th February 2013, the learned District Judge delivered judgment in favour of the Plaintiff. In the said judgment, the learned District Judge has taken into consideration the facts that, the Defendant has admitted that (i) in terms of Agreement marked “P1”, the Defendant had been enrolled by the Plaintiff to a laboratory technician training programme, (ii) the said Agreement stipulated a training period of 2 years, (iii) following such training period, the Defendant was required to serve the Plaintiff for a further period of 5 years, and (iii) if the Defendant were to cease to work for the Plaintiff prior to the 7 years cumulative period, in terms of the Agreement, she was liable to pay the Plaintiff a sum of Rs. 50,000/=. Thus, the learned District Judge has arrived at the finding that the Defendant has intentionally breached a condition of

the Agreement marked “P1”, and that on a balance of probabilities, the Plaintiff has established its case against the Defendant. The the learned District Judge has answered the 1st and 2nd issues in the affirmative, 3rd, 4th, 5th and 6th issues in the negative, and has held that the Defendant cannot in any event prove the 7th issue in the affirmative. Accordingly, the learned District Judge has ruled that the Plaintiff is entitled to the relief prayed for, and has accordingly granted the Plaintiff the relief prayed for.

Judgment of the High Court of the Provinces

Against the Judgment of the District Court, the Defendant appealed to the High Court of the Provinces holden in Avissawella. Following hearing of the Appeal, on 12th November 2015, the learned Judge of the High Court delivered Judgment allowing the Appeal with costs payable to the Defendant by the Plaintiff at Rs. 10,000/=. The learned High Court Judge has laid emphasis on the fact that, the obligation on the part of the Defendant to serve the Plaintiff for a period of 5 years would arise only after completion of the training period. According to Agreement marked “P1”, at the end of the training period, a ‘written and oral examination’ should be held. Such an examination has not been held. The learned Judge has further held that, in any event, the contractual obligation of serving the Plaintiff for 5 years would arise only after the Defendant passed the afore-stated examination. In the circumstances, the learned High Court Judge has concluded that, it was in fact the Plaintiff who had breached Agreement marked “P1”, and thus no cause of action had accrued in favour of the Plaintiff. Therefore, the learned Judge of the High Court has concluded that the learned District Judge had erred in holding with the Plaintiff and granting relief. Thus, he has while allowing the Appeal, dismissed the Plaintiff’s action with costs.

Grant of leave and question of law

On 28th March 2017, following the learned Counsel for the Plaintiff - Respondent - Petitioner supporting the Petition seeking the grant of leave to appeal, this Court had granted leave to appeal on the following question of law:

“Has the learned High Court Judge erred in law in coming to the finding that the Petitioner (sic ‘Appellant’) acting in breach of the Agreement “P1” failed to hold a written and oral examination, contrary to the evidence that the Respondent’s work had been evaluated by three consultant doctors, which clearly amount to a

proper examination of the skills acquired by the Respondent as a trainee laboratory technician?”

Analysis of the evidence, application of the law and conclusions

In order to decide this matter, it is necessary to carefully examine the clauses of Agreement marked “P1”. According to Clause 1 of “P1”, which has been titled ‘Service Contract’, the Plaintiff has been designated as the ‘employer’ and the Defendant as the ‘trainee’. It further states that, the trainee (Defendant) had entered a ‘training programme’ relating to the position ‘laboratory technician’. The afore-stated ‘training’ will be provided at the expense of the employer (Plaintiff). The said ‘training programme’ shall be of 24 months duration, at the end of which, the trainee (Defendant) shall sit for a ‘written and oral examination’ that will be held and is required to pass the said examination. Clause 2 of the Agreement provides that, following the passing of the afore-stated examination, the trainee shall serve the employer at the Pannipitiya Medical Services (Pvt.) Ltd in the position of ‘Laboratory Technician’ for a period of 5 years. Should the trainee be unsuccessful at passing the afore-stated examination, the trainee shall serve the employer in a different position. Clause 2 does not state the duration of employment in the alternate position, should the trainee be unsuccessful at passing the afore-stated examination. Clause 3 provides that, (a) upon successful passing of the afore-stated examination, when the trainee commences functioning in the position ‘Laboratory Technician’, or (b) if the trainee is unsuccessful at the examination when functioning in the alternate position that is given to her, she would agree to contribute 8% of her salary as the ‘trust fund contribution’ and contribute towards a ‘security deposit’. Clause 4 of the Agreement provides that, should the Agreement be breached under whatsoever circumstances, the trainee (Defendant) shall pay a sum of Rs. 50,000/= to the employer (Plaintiff). Clause 4 further provides that, should the trainee leave the training without completion or should she be expelled from the training on disciplinary grounds, the trainee shall pay the employer (Plaintiff) a sum of money stipulated by the employer as being the cost of the training.

From the relief prayed in the **Plaint**, it is evident that the Plaintiff has sought a decree from the District Court for liquidated damages. This according to the **Plaint** and the evidence presented on behalf of the Plaintiff arises out of the Defendant having failed to perform the obligation contained in clause 2 of the agreement by ceasing to work for the

Plaintiff prior to the expiry of 5 years following the conduct of the examination. It is necessary to observe that, 'working for the employer for 5 years post passing of the examination' or 'working for the employer for an unspecified period in an alternate position following the trainee being unsuccessful at the examination' as provided in clause 2 of the agreement on the one hand, are alternate obligations conferred on the Defendant by agreement marked "P1". According to the Plaintiff, it is the first of these two obligations the Plaintiff claims the Defendant defaulted. Further, the Plaintiff alleges that, the Defendant failed to comply with the ensuing obligation of making a payment of Rs. 50,000/= prior to her premature departure from service at the Pannipitiya Nursing Home.

An analysis of the evidence presented before the learned District Judge is necessary to determine whether the Plaintiff is entitled in law to the relief of liquidated damages against the Defendant.

There is in my view cogent evidence on the following matters: On 16th October 2004, the Defendant had been recruited by the Plaintiff as a 'Trainee Laboratory Technician'. Following her recruitment as a 'trainee', the Plaintiff has provided some form of training to the Defendant. As opposed to providing to the Defendant a formal training programme, I am inclined to agree with the submission of the learned Counsel for the Appellant that, what was provided was an '*on the job training*'. Though the learned Counsel for the Defendant during cross-examination of the witness of the Plaintiff and the Defendant during her testimony had sought to impeach the case for the Plaintiff on the footing that a formal training programme was not provided to the Defendant, it is my view that as the Agreement marked "P1" does not specify the nature and the content of the training programme that the employer (Plaintiff) was obligated to provide the trainee (Defendant), it cannot be successfully proved that the Plaintiff breached "P1" by not making arrangements for the Defendant to follow a 'formal training programme', and for having provided only a '*on the job training*'.

As depicted in "P7", "P8" and "P9", on 18th March 2008, the Defendant had been subjected to an 'assessment' by two Consultant Pathologists and a Consultant Microbiologist / Virologist. Though not established in the form of direct evidence, from the date appearing immediately below the signature on "P7", it can be inferred that this

examination had been held on 18th March 2008. Out of the three assessors, while Consultant Pathologist Dr. Geethika Jayaweera and Consultant Microbiologist and Virologist Dr. Geethani Wickramasinghe have in their report under the category ‘comment’ reported that they recommend the “*promotion*”, Consultant Pathologist Dr. A. Eleyperuma has reported that the Defendant “*needs to improve in the theoretical knowledge*”. The Agreement (“P1”) provides clearly that, following a “*training programme*” of 24 months duration, the employer would subject the trainee to a “*written and oral examination*”. It is thus clear that, whereas Agreement “P1” requires an assessment to be conducted upon the expiry of 24 months of training, the afore-stated assessment had been held following a period of approximately 40 months. Furthermore, the nature of the assessment to be conducted upon the expiry of 24 months of training has been described in “P1” as a “*written and oral examination*”. However, the assessment carried out by the three medical specialists regarding the Defendant can only be described as a ‘viva voice’ or an ‘oral examination’. The Plaintiff has offered no evidence that a ‘written examination’ was held. Thus, both as regards the time at which the assessment ought to have been carried out, as well as the nature of the assessment, it is clear that the Plaintiff has acted in breach of Clause 1 of the Agreement.

The position of the Plaintiff is that, as the Defendant was not successful at the afore-stated examination held on 18th March 2008, the ‘training period’ of the Defendant was extended. The Plaintiff sought to justify the extension of the training period of the Defendant, based on the comment made by Dr. A. Eleyperuma. It seems that, it was Dr. A. Eleyperuma’s comment that resulted in the Plaintiff deciding to extend the ‘on the job training’. The Plaintiff’s position is that at some stage thereafter, they deemed that the Defendant had successfully completed the training. Though the witness for the Plaintiff has taken up that position, it appears that no formal assessment similar to the assessment carried out on 18th March 2008 had been held thereafter. No explanation in that regard has been provided, either. Further, witness Shakila Nayana Kumari has also taken up the position that the head of ‘laboratory services’ reported that the Defendant had developed to a stage where she could face a re-examination. Nevertheless, a re-examination has not been conducted. Nor had a formal entry been made reflecting that the Defendant had successfully completed the extended period of training. Furthermore, the Plaintiff has also failed to acknowledge the fact that the Defendant had successfully completed the training, by issuing the Defendant a certificate of completion of training or a formal letter

of appointment signaling the completion of her training period and or completion of the period of probation. In fact, the position of the Plaintiff as provided by the Administrative Officer is that, a letter of appointment was not issued to the Defendant, because she had not successfully completed the training. Thus, this Court must necessarily conclude that, there is no cogent evidence that the Defendant had successfully completed the extended period of training, and thereby assumed duties of the substantive post of 'Laboratory Technician', at any time preceding her having ceased to report for work.

Be that as it may, Clause 2 of the Agreement specifically provides as to what the employer should do, if the trainee is unsuccessful at the 'written and oral examination'. It provides that should the trainee be unsuccessful, the trainee shall accept a different appointment that will be given by the employer to her. "P1" does not provide for an extension of the training programme. Therefore, in terms of the Agreement, the employer (Plaintiff) was not contractually entitled to extend the period of training on the premise that the trainee was unsuccessful at the examination. Thus, the afore-stated 'extension' of training period also amounts to a breach of the terms of the Agreement marked 'P1'.

According to Clause 2 of the Agreement, the obligation cast on the trainee (Defendant) to serve the employer (Plaintiff) for a period of 5 years arises only upon the trainee successfully passing the afore-stated 'written and oral examination'. The Plaintiff has not presented any evidence at the trial to establish that the Defendant passed such an examination at any point of time subsequent to the extension of the training period. Thus, there is no basis in terms of the Agreement to allege that the Defendant breached "P1" by not serving the Plaintiff for a period of 5 years following successful passing of the 'written and oral examination'.

In view of the foregoing, I conclude that the Agreement between the Plaintiff and the Defendant had been breached by the Plaintiff by its failure to comply with a substantial part of his obligations towards the Defendant, prior to the impugned failure on the part of the Defendant taking place. The impugned breach on the part of the Defendant is intrinsically linked and indivisible with the obligations on the part of the Plaintiff which the Plaintiff failed to fulfill. The fulfilment of the obligation cast on the Defendant contained in clause 2 of the Agreement is founded upon the Plaintiff fulfilling his obligations contained in clause 2 of the Agreement, which as pointed above by me was

not fulfilled. The failure to either treat the Defendant as having been successful at the assessment and appoint her as a Laboratory Technician or in the alternative treat her as having been unsuccessful at the assessment and appointed her to an alternate position, goes into the root of the Agreement and is necessarily linked to the obligation cast on the Defendant to serve the Plaintiff for the stipulated time period. The breach on the part of the Plaintiff is inseparable with obligation cast on the Defendant to serve the Plaintiff. Therefore, I hold that, the Plaintiff had breached the Agreement well before the impugned failure on the part of the Defendant. In the circumstances, the Defendant was entitled to treat herself as having been discharged from her contractual obligations and thus was contractually entitled unilaterally terminate working at the Pannipitiya Nursing Home prior to the expiry of the stipulated 5 years period.

In this instance, the Plaintiff has sought liquidated damages as provided for in Clause 4 of the Agreement marked “P1”. The grant of relief in the nature of liquidated damages arise only in instances where the Plaintiff had fulfilled his contractual obligations towards the Defendant and not breached the Agreement. As pointed out above, it is evident that in this instance, the Plaintiff had breached the Agreement well before the impugned breach by the Defendant. In such circumstances, the Plaintiff would not be entitled for liquidated damages.

In this regard, it is pertinent to recall an observation made by Justice Sisira De Abrew in *Wickrema Pathiranage Mahesh Ruwan Pathirana v. Ginthota Sarukkale Vitharange Hemalatha Piyathilaka Ginthota* (SC Appeal 218/2014, SC Minutes 15.02.2017) wherein he has held as follows: *“It is an accepted principle in law that the wrongdoer is not permitted to take advantage of his own wrongful acts. This principle is applicable to a case of breach of contract”*.

It would also be seen that the learned High Court Judge was quite correct in holding that the Plaintiff - Respondent had acted in breach of the Agreement marked “P1” by not conducting a ‘written and oral examination’. As explained by me above, the assessment held on 8th March 2008 carried out by three medical specialists, can only be recognized as an ‘oral examination’ which is short of the nature of the examination provided for by the Agreement marked “P1”. Thus, I must answer the question of law referred to above, in the negative.

In the foregoing circumstances and the conclusions reached by me, I dismiss this Appeal, while upholding the Judgment pronounced by the learned High Court Judge.

Accordingly, the Appeal Dismissed.

JUDGE OF THE SUPREME COURT

Priyantha Jayawardena, PC, J.

I agree.

JUDGE OF THE SUPREME COURT

P. Padman Surasena, J.

I agree.

JUDGE OF THE SUPREME COURT