

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

S.C. Appeal No. 8/2016
S.C (HC) CALA No. 5/2016
WP/HCCA/COL/119/2015
D.C. Colombo Case No. 45/13/DRE

Nadaraja Rajendra
No. 40, Dr. E.A. Cooray Mawatha,
Colombo 6.

PLAINTIFF

Vs.

Thevathasan Sritharan
No. 8/4, Vivekananda Avenue,
Colombo 6.

DEFENDANT

AND BETWEEN

Nadaraja Rajendra
No. 40, Dr. E.A. Cooray Mawatha,
Colombo 6.

PLAINTIFF-PETITIONER

Vs.

Thevathasan Sritharan
No. 8/4, Vivekananda Avenue,
Colombo 6.

DEFENDANT-RESPONDENT

AND BETWEEN

Thevathasan Sritharan
No. 8/4, Vivekananda Avenue,
Colombo 6.

DEFENDANT-RESPONDENT-PETITIONER

Vs.

Nadaraja Rajendra
No. 40, Dr. E.A. Cooray Mawatha,
Colombo 6.

PLAINTIFF-PETITIONER-RESPONDENT

AND NOW BETWEEN

Thevathasan Sritharan
No. 8/4, Vivekananda Avenue,
Colombo 6.

**DEFENDANT-RESPONDENT-
PETITIONER-APPELLANT**

Vs.

Nadaraja Rajendra
No. 40, Dr. E.A. Cooray Mawatha,
Colombo 6.

**PLAINTIFF-PETITIONER-RESPONDENT-
RESPONDENT**

BEFORE: S.E. Wanasundera P.C. J.
Anil Gooneratne J. &
Nalin Perera J.

COUNSEL: Nihal Jayamanne P.C. with Noorani Amarasinghe
For Defendant-Respondent-Petitioner-Appellant

S. Ruthiramoorthy for Plaintiff-Petitioner-Respondent-Respondent
Instructed by Sujeewa S. tissera

ARGUED ON: 11.07.2017

DECIDED ON: 09.10.2017

GOONERATNE J.

This was a rent and ejectment case, wherein the Plaintiff-Petitioner-Respondent (hereinafter referred to as the Plaintiff) sought to eject the Defendant-Respondent-Petitioner-Petitioner (hereinafter referred to as the Defendant) from the premises described in the 3rd schedule to the Plaint. Defendant filed answer and sought a dismissal of the action. It is recorded that on 23.03.2015 parties arrived at a settlement. The settlement is found at document A3 of the brief. In short the settlement was for the Defendant to purchase the property in dispute for Rs. 12 million on or before 28.09.2015 having been satisfied of title to the property. However in the event the Defendant defaults, writ to issue without notice. Then on 08.05.2015 the case came up in the District Court and the Defendant on that day informed court that he is satisfied with title to the property in dispute.

Chronological order of events should be kept in mind as the facts from the point of calling the case on 28.09.2015 the date relevant to the settlement, onwards, tends to unnecessarily confuse the issue. In paragraph 5 of the Petition of Appeal it is pleaded that the Defendant on 28.09.2015 sought

one week's time to pay the Rs. 12 million to Plaintiff. District Court granted time till 05.10.2015. In this regard document A5, A6 & A8 would be relevant as a point is emphasised by the Defendant that on the application for time to pay. District Court granted time till 05.10.2015 and it is wrongfully recorded that Plaintiff sought time to pay. “සමනයට පැමිනිලීම දින පනඬි”. “සමනය අවසන් වරට”, (vide A6).

The material available suggest that the Plaintiff filed a Leave to Appeal Application in the Civil Appellate High Court against the Order of the District Judge dated 28.09.2015 (granting time to pay the Rs. 12 million). The said Leave to Appeal Application was made to the Civil Appellate High Court on the footing that the District Judge misdirected himself by granting time as aforesaid and failed to appreciate that the terms of settlement cannot be unilaterally altered and could be altered only with consent of parties. This matter was taken up in the High Court on 02.10.2015 but after hearing parties High Court did not set aside the order of 28.09.2015 but made order as follows and (A7) simply stated to send the case back to the District Court to take appropriate steps. In order to understand what the High Court Judges in his Order stated it is necessary to incorporate same in this Order.

Counsel for both parties were briefly heard.

The defendant has filed this application for leave to appeal against the purported order of the District Judge dated 28.09.2015 which appears in journal entry No. 15. The part of the journal entry in the District Judge's handwriting when translated into English reads as follows: "Plaintiff moves for a date for settlement. Settlement finally 5.10.2015". Counsel for the defendant also admits that what is recorded is incorrect. It is the defendant, not the plaintiff, who has asked for a date to make the payment in terms of the settlement already recorded, which was due on that day. Therefore "Plaintiff moves for a date for settlement" is entirely wrong. Then "Settlement finally 5.10.2015" is also wrong because admittedly settlement had already been recorded.

Counsel for the plaintiff emphatically emphasises that when the defendant moved for a date for payment, he objected to that application, but it has not been recorded. Counsel says that if the defendant fails to make the payment on or before 28.09.2015, according to clause 4 of the settlement recorded on 23.03.2015 in open court and signed by the parties, the plaintiff is entitled to all the reliefs sought for in the plaint. Counsel for the defendant says defendant moved for one week's time to make the payment.

What is recorded by the District Judge in journal entry No. 15 is incorrect, may be due to the fact that the case came up before him (a new judge) for the first time on 28.09.2015.

Send a copy of these proceedings to the District Court forthwith to take appropriate steps.

Defendant takes the position that the Order of the District Judge wherein it is stated "සමනය අවසන් වරට" stands and in view of A7 the High Court did not set aside the Order of 28.09.2015.

As per the Order of 28.09.2015 the matter was called in the District Court on 05.10.2015. The Defendant party offered the 12 million in cash to the Plaintiff but the Plaintiff did not accept the 12 million and took up the position that in terms of the settlement between parties that on 28.09.2015 if the moneys were not paid as aforesaid and as such the Plaintiff has a right to take out writ against the Defendant, as the Defendant acted contrary to the terms of settlement. Based on submissions the District Judge made Order on 08.10.2015 permitting the Plaintiff to act according to the terms of settlement and take out writ as per the terms of settlement (vide A8 & A9). Subsequently the Civil Appellate High Court by Order of A17 dated 18.12.2015, dismissed the application of the Defendant dated 12.10.2015 without costs.

The Supreme Court on 18.01.2016 granted Leave to Appeal against the Order made by the Civil Appellate High Court by A17 dated 18.12.2015. However the journal entry of 18.10.2016 does not refer to the question of law on which leave was granted.

As such this court will consider the questions pleaded at paragraph 20 of the Petition of Appeal as follows: 20 (i), 20 (ii) & 20 (iii) are answered as follows.

20(1) In view of the orders made by the High Court and District Court on 18.10.2015 and 08.10.2015 respectively question is answered in the negative.

Terms of settlement could not have been altered unilaterally. Defendant need to comply with the terms of settlement between parties as the final date to pay the sum of Rs. 12 million was on 28.09.2015. Plaintiff never consented to grant further time for settlement.

In view of above and the views expressed by all the courts connected to this application the rest of the questions are answered in the negative.

It is a common ground that the Defendant failed to act as per the terms of settlement and pay the sum of Rs. 12 million on or before 28.09.2015. In the event if payment was not duly paid as above, Plaintiff as per the terms of settlement would be entitled to take out writ and entitled to the relief as per the prayer to the plaint. Though the Defendant party has right along attempted to unnecessarily confuse the matter the simple way to look at this case is that there was settlement for which both parties agreed and in breach of such agreement plaintiff would be entitled to relief and take out the writ as agreed between parties. This is in fact the crux of matter as explained by a very comprehensive order dated 18.12.2015 of the Civil Appellate High Court. I see no basis to interfere with that Order of the High Court. (Order of the High Court dated 02.10.2015 very correctly explain the correct position in this case).

I have also perused the Order of the learned District Judge of 08.10.2015. In that Order trial Judge refer to the factually incorrect statement highlighted by the High Court to be relevant, i.e settlement finally on 05.10.2015. This statement of the trial Judge is totally incorrect as the terms of settlement were previously entered and there is no question of extending the date for settlement. Defendant seems to be attempting to make use of this incorrect and factually incorrect statement. To be more precise and give more clarity to the issue I incorporate the following paragraph from the learned District Judge's Order of 08.10.2015.

වර්ෂ 2015.03.23 වන දින දෙපාර්ශවයේ එකඟත්වයෙන් වාර්තා කල සමථ කොන්දේසි ප්‍රකාරව සලකා බැලීමේ දී “වර්ෂ 2015.09.28 දින සමථයකට පැමිණිල්ල දින පනයි. සමථය අවසන් වරට 05.10.2015” යනුවෙන් නඩා ඇති සටහන ගරු සිවිල් අභියාචනා මහාධිකරණ විනිසුරු තුමා සිය නියෝගයේ ප්‍රකාශ කර ඇති ආකාරයටම අතිශයින් වැරදි සහගත ය. එය සිද්ධිමය කරුණු වරදවා දැක්වීම හේතුවෙන් සිදුකර ඇති නියෝගයක් බව කිව යුතු නැත. මෙම නඩුවේ සමථය පූර්ණ වශයෙන් වාර්තා කර ඊට එකඟව දෙපාර්ශවය නඩු වර්ථාවට අත්සන් කර ඇත. පෙර දින එනම් වර්ෂ 2015.09.28 දිනට නියමිතව ඇත්තේ එකී සමථය ප්‍රකාරව පාර්ශවකරුවන් විසින් ඉටු කල යුතු කාර්යයන් ඉටු කිරීම සඳහාය. නමුත් එදින සමථය ප්‍රකාරව වින්තිකාර වගඋත්තරකරු ක්‍රියා කර නැත. ඒ අනුව වර්ෂ 2015.03.23 වන දින වාර්තා කල සමථ

කොන්දේසිවල 4 වන ඡේදය අනුව කටයුතු කිරීමට පැමිණිලිකරුට විනයානුකූල හිමිකම් ලැබී ඇත.

In the above circumstances I affirm the Order of the High Court dated 18.12.2005 and the learned District Judge's Order of 08.10.2015. I dismiss the Petition of Appeal of the Defendant-Respondent-Petitioner-Petitioner dated 04.01.2016 with costs.

JUDGE OF THE SUPREME COURT

S.E. Wanasundera P.C, J.

I agree

JUDGE OF THE SUPREME COURT

Nalin Perera J.

I agree

JUDGE OF THE SUPREME COURT