

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

**Sc. Appeal No. 36/10**

SC.HC.CA.LA No. 86/2010

Appeal No. WP/HCCALA/Col.121/09

DC Colombo Case No. 9259/MHP

In the matter of an Application for  
Leave to Appeal under Article 128  
of the Constitution read with Section  
5C of the Provincial High Court (Special  
Provisions) Act No. 19 of 1990 as  
Amended by Act No. 54 of 2006.

Maharaja Investment Ltd.

(Previously)

Union Trust and Investment

P.O. Box 2080,

No. 347, (Now Being Liquidated)

Jayawickrma and P.J. David

(Liquidators)

S.J.M.S. Associates,

No. 2, Castle Lane,

Colombo 04.

**PLAINTIFF**

**VS.**

01. Cross World (Pvt.) Ltd.

Sir Chittampalam Gardiner Mw,

Colombo 2.

Now at  
Cross World (Pvt.)Ltd.,  
200/2, Sri Siddartha Rd,  
Kirulaponne,  
Colombo 06.

02. Surendra Ediriweera  
No. 40/7,  
Lake Gardents(Off Lake Drive)  
Rajagiriya,  
Kotte.

03. Jinendra Ediriweera  
No. 17A,  
Swarna Place,  
Nawala,  
Rajagiriya.

**DEFENDANTS**

AND

Cross World (Pvt.) Ltd.  
Sir Chittampalam Gardiner Mw,  
Colombo 2.

Now at  
Cross World (Pvt.)Ltd.,  
200/2, Sri Siddartha Rd,  
Kirulaponne,  
Colombo 06.

**DEFENDANT-PETITIONER**

Maharaja Investment Ltd.  
(Previously)  
Union Trust and Investment  
P.O. Box 2080,  
No. 347, (Now Being Liquidated)  
Jayawickrma and P.J. David  
(Liquidators)  
S.J.M.S. Associates,  
No. 2, Castle Lane,  
Colombo 04.

**PLAINTIFF-RESPONDENT**

01. Surendra Ediriweera  
No. 40/7,  
Lake Gardents(Off Lake Drive)  
Rajagiriya,  
Kotte.
  
- 02 Jinendra Ediriweera  
No. 17A,  
Swarna Place,  
Nawala,  
Rajagiriya.

**DEFENDANT-RESPONDENT**

**AND NOW BETWEEN**

Cross World (Pvt.) Ltd.  
Sir Chittampalam Gardiner Mw,  
Colombo 2.

Now at  
Cross World (Pvt.)Ltd.,  
200/2, Sri Siddartha Rd,  
Kirulaponne,  
Colombo 06.

**DEFENDANT-PETITIONER**

**PETITIONER**

Maharaja Investment Ltd.  
(Previously)  
Union Trust and Investment  
P.O. Box 2080,  
No. 347, (Now Being Liquidated)  
Jayawickrma and P.J. David  
(Liquidators)  
S.J.M.S. Associates,  
No. 2, Castle Lane,  
Colombo 04.

**PLAINTIFF-RESPONDENT-**

**RESPONDENT**

01. Surendra Ediriweera  
No. 40/7,  
Lake Gardents(Off Lake Drive)  
Rajagiriya,  
Kotte.

02 Jinendra Ediriweera  
No. 17A,  
Swarna Place,  
Nawala,  
Rajagiriya.

**DEFENDANT-RESPONDENT-  
RESPONDENT**

**Before** : Hon. J.A.N. De Silva, Chief Justice  
Hon. K. Sripavan, J  
Hon. S.I. Imam, J

**Arguments**

**Tendered on** : 02.02.2011

Written Submissions of the Defendant-Petitioner-Petitioner  
And the Plaintiff-Respondent-Respondent tendered  
Subsequently.

**Counsel** : Mr. Upul Jayasuriya with Mr. Sandamal  
Rajapaksha for the Defendant-Petitioner-

Petitioner.

Mr. Rajendra Jayasinghe with Mr. D. Ratnayake for

The Plaintiff-Respondent-Respondent.

**Order Delivered on** : 16/05/2011

**Hon. S.I. Imam, J**

The Plaintiff-Respondent-Respondent Company (hereinafter sometimes referred to as the “Respondent Company”) instituted action in the District Court of Colombo on 16.03.1989 having sought inter-alia a sum of Rs. 997,905.48 together with 36% interest and re-possession of the properties in a reasonably good condition or in the alternative sought a sum of Rs. 725,000/- with legal interest from the first, second and third Defendants respectively the second and third Defendants having signed as sureties for the, first Respondent-Respondent(hence forth sometimes referred to as the “1<sup>st</sup> Defendant-Petitioner”). On answer being tendered by the “1<sup>st</sup> Defendant-Petitioner”, consequent to the conclusion of the Trial, the Learned Additional District Judge of Colombo on 31.10.1994 delivered Judgment in favour of the Plaintiff-Company. The aforesaid “1<sup>st</sup> Defendant-Petitioner Company” tendered an Appeal bearing No. 666/94 in the Court of Appeal on 12.12.1994, His Lordship in the Court of Appeal having dismissed the aforesaid Appeal on 18.11.1996, as the “Appellant” did not appear. This order rejecting the Appeal was communicated by the Registrar of the Court of Appeal by letter dated 30.11.1996 to the District Judge of Colombo having conformed to Section 776(4) of the Civil Procedure Code. Consequently the case Record was transferred to the District Court of Colombo to pronounce the Judgment/Decree to the parties of the action on 23.11.1996. Meanwhile the “Plaintiff –Respondent” Company was liquidated in District Court Case no. 28/Co. Subsequently a Liquidator was appointed by the District Court, with the Respondent Company being liquidated on 22.10.2003. Consequently on 3.4.2008 the Liquidator having intervened in the action by way of

Petition and Affidavit on 3.7.2008, the learned District Judge allowed the Application Ex-parte, and ordered that notice be issued on the Defendants. Subsequently the 1<sup>st</sup> Defendant-Company received a Summons on 29.4.2009 to the effect that the Court of Appeal Decree was to be pronounced in the District Court. The "1<sup>st</sup> Defendant-Petitioner" contends that although the "1<sup>st</sup> Defendant-Petitioner-Company received Notice, up to date No Decree has been served on the 1<sup>st</sup> Defendant-Petitioner Company. Hence on 30.4.2009 the 1<sup>st</sup> Defendant-Petitioner Company having received notice appeared before the District Court when the learned District Judge read over the Decree/Order of the Court of Appeal in Open Court. It is averred by the "1<sup>st</sup> Defendant-Petitioner" that there is no statutory requirement that the Order/Decree/Judgment should be read in the original Court. On 12.6.2009 the 1<sup>st</sup> Defendant-Petitioner-Company by motion tendered in the District Court of Colombo attempted to abate the matter under Section 402 of the Civil Procedure Code, which was rejected by the learned District Judge on 15.6.2009. The 1<sup>st</sup> Defendant-Petitioner on 24.09.2009 made another Application attempting to prevent the Plaintiff-Respondent from obtaining a Writ of Execution under Section 337(1) of the Civil Procedure Code. On 2.10.2009 the learned District Judge having considered the application of Counsel dismissed the application on the basis that the Judgment of the Court of Appeal was pronounced in the District Court on 3.4.2009, and thus in accordance with Section 337 of the Civil Procedure Code the 10 year period has not lapsed from the date the Decree was pronounced in the District Court. The 1<sup>st</sup> Defendant-Petitioner sought Leave to Appeal against this aforesaid Order dated 2.10.2009 to the Civil Appeal High Court of Colombo on the basis that the Order was inconsistent with Section 337(1) of the Civil Procedure Code. However the Civil Appeal High Court by Order dated 31.3.2010 refused Leave and Dismissed the Application. The refusal of the Application was due to the relevance of the date on which the Order was pronounced in the District Court under Section 337(1) of the Civil Procedure Code.

The 1<sup>st</sup> Defendant-Petitioner sought Leave to Appeal against the aforesaid Order dated 31.3.2010 from this Court, and this Court on 12.5.2010 granted Leave on the questions posed in paragraph 21, 1 of the Petition namely

1. is the Order dated 2.10.2009 contrary to Section 337(i) of the Civil Procedure Code?

Section 337(i) of the Civil Procedure Code states as follows,

“No application (whether it be the first or a subsequent application) to execute a decree, not being a Decree granting an Injunction, shall be granted after the expiration of ten years from

- (a) the date of the decree sought to be executed or of the decree, if any, on appeal affirming the same or
  - (b) Where the decree or any subsequent order directs the payment of money or the delivery of property to be made on a specified date or at recurring periods, the date of the default in making the payment as delivering the property in respect of which applicant seeks to execute decree.”
2. Nothing in this Section shall prevent the Court from granting an application for execution of a decree after the expiration of the said term of ten years, where the Judgment-debtor has by fraud or force prevented the execution of the decree at some time within ten years immediately before the date of the application.
3. Subject to the provisions contained in Sub Section (2) a Writ of execution, if unexpected shall remain in force for one year only from its issue but
  - (a) such writ may at anytime before its expiration, be renewed by the judgment-Creditor for one year from the date of such renewal and so on from time to time; or

(b) a fresh writ may at any time after the expiration of an earlier writ be issued, till satisfaction of the decree is obtained.

Section 776 of the Civil Procedure Code states as follows;

- 1) The Decree of the Court of Appeal shall be passed in accordance with the Judgments of the Judges of which the Bench hearing the appeal is composed, if they are unanimous in regard to it but, if otherwise, in accordance with the Judgments of the majority of them. It shall bear the date the day on which the Judgment was pronounced and shall contain the following particulars
  - (a) The heading ' In the Court of Appeal':
  - (b) The Court number and title of the Appeal:.... Etc.
  - (c) The decree shall be sealed with the seal of the Court.
  - (d) As soon as the decree is sealed all the proceedings in the case sent up to the Court of Appeal on Appeal (together with the Petition and order thereon, if any a copy of the Judgment or Judgments pronounced on appeal, and the decree of the Court of Appeal) shall be forthwith returned to the Court of first instance which shall conform to and execute such decree in all particulars.

It is the position of the 1<sup>st</sup> Defendant-Petitioner that the relevant date to commence the period of 10 years would be the date when the matter was concluded in the Court of Appeal.

However Section 776(4) of the Civil Procedure Code states that all proceedings shall be forthwith returned to the Court of first instance which shall conform to and execute such decree in all particulars. Hence it is my opinion that the period of 10 years would commence when the proceedings are returned to the Court of First instance, which shall conform to and execute such decree in

all particulars. In this case although the Appeal concluded in the Court of Appeal on 18.11.1996, the conclusion of the Court of Appeal was conveyed to the District Court on 30.11.1996. Hence in my view the period of 10 years for the interpretation of Section 337 would commence on 30.11.1996.

It is contended on behalf of the 1<sup>st</sup> Defendant-Petitioner that the District Court and the Civil Appeal High Court have misinterpreted Section 337(1) of the Civil Procedure Code in the following manner

- i) The Order of the Court of Appeal was send in the District Court on 30.4.2009.
- ii) As per the Judgments referred to by the "Plaintiff" 10 years have not passed from the "announcement of the Judgment" as per Section 337(1) on the basis that, the reading of the Court of Appeal Decree/Order has been done on 30.4.2009.
- iii) The Authorities were quoted by the Counsel for the 1<sup>st</sup> Respondent Company, although the District and Civil Appeal High Court erred in holding that the authorities were quoted by Counsel for the Plaintiff.
- iv) The District and Civil Appeal High Court have arrived at an entirely erroneous hypothetis on the basis that there is a mandatory requirement to read the Judgment of the Court of Appeal in the District Court.
- v) That Section 337(1)(a) has no bearing on the reading of the Court of Appeal Judgment in the District Court.
- vi) It is explicitly evident that the Decree has not been sought/enforced as per Section 337 of the Civil Procedure Code.
- vii) Both Court have not considered the fact that after nearly 13 years of the Court of Appeal Judgment, no application has been made by the Plaintiff applying for Writ.

The authorities cited on behalf of the 1<sup>st</sup> Defendant-Petitioner in my view are not relevant. The Judgment in *Kamanie Alles De Silva Vs. Wijewardane* 2002, 3 SLR P. 236 cited on behalf of the 1<sup>st</sup> Defendant-Petitioner the special circumstances of the case made it distinguishable for the normal trend. In the Case of *Rajadurai Vs Emerson* 1995 (2) SLR P. 30 His Lordship the Hon. S.N. Silva, J (as he then was) held that the 10 years limitation period does not apply in relation to a Decree for immovable property, prior to the passing of Act No. 53 of 1980 on 11.12.1980.

It was averred by the Counsel for the Plaintiff-Respondent-Respondent that the reason why the Court of Appeal Judgment could not be pronounced in the District Court of Appeal Judgment Could not be pronounced in the District Court from 1997 until 30.4.2009 was because the 1<sup>st</sup> Defendant-Petitioner and the other 2 Defendant-Respondents had changed their addresses without any notice whatsoever to Court, and hence such notice could not be served. I agree with the reasoning of Counsel for the Plaintiff-Respondent as the Journal Entries reveal that Court had tried to serve notice on the Petitioner and the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant-Respondents on numerous occasions. Hence there was no fault of the Plaintiff-Respondent. Consequent to filing proxy and entering an appearance in Court the Petitioner, 2<sup>nd</sup> and 3<sup>rd</sup> Defendant-Respondents owed a duty to inform Court of any change of address, which they failed to do. It is evident that the Petitioner, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents failed to pay the fee for the preparation of the Appeal Brief, which resulted in the final Appeal filed by them being dismissed on 18.11.1996.

In *Don Jacovis Vs. Perera* 9 NLR P. 166 it was held that in a Mortgage Decree which orders the Defendant to pay to the Plaintiff a certain sum of money within a certain period and directs that in default in such payment, the property hypothecated to be sold to satisfy the debt is a Decree for payment of money and the provisions of Section 337 of the code apply to such a Decree. For the aforesaid reasons I hold that the Appeal

Court order was pronounced in the District Court on 30.4.2009 and hence there is no lapse of 10 years as envisaged in section 337(1) of the Civil Procedure Code. My answer to the question raised in this Court on 12.05.2010, namely

i) Is the Order dated 2.10.2009 contrary to Section 337(1) of the Civil Procedure Code is No.

For the aforesaid reasons I dismiss the Appeal of the 1<sup>st</sup> Defendant-Petitioner-Petitioner without costs.

JUDGE OF THE SUPREME COURT

**Hon. J.A.N. De Silva, CJ**

I agree.

CHIEF JUSTICE

**Hon. Sripavan, J**

I agree.

JUDGE OF THE SUPREME COURT