

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

SC (CHC) Appeal No. 28/2008  
HC (Civil) No. 261/2005(1)

In the matter of an Appeal from the  
Judgment of the High Court of Colombo  
(Exercising Civil Jurisdiction) dated  
29.2.2008

Papeteries De Maudit  
No. 07, Avenue Ingres,  
76016, Paris,  
France.

**PLAINTIFF**

Vs.

Tylos Tea (Private) Limited  
Serendib Park,  
Indolamulla  
Dompe.

**DEFENDANT**

**AND NOW**

Tylos Tea (Private) Limited  
Serendib Park,  
Indolamulla  
Dompe.

**DEFENDANT-APPELLANT**

Vs.

Papeteries De Maudit  
No. 07, Avenue Ingres,  
76016, Paris,  
France.

**PLAINTIFF-RESPONDENT**

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

**COUNSEL:** Hiran de Alwis with Chanaka Jayamaha  
and Heshan Thambimuttu for the Defendant-Appellant

Geoffray Alagaratnam P.C. with Senuri de Silva  
For the Plaintiff-Respondent

**WRITTEN SUBMISSIONS OF THE DEFENDANT-APPELLANT FILED ON:**

12.08.2014

**WRITTEN SUBMISSIONS OF THE PLAINTIFF-RESPONDENT FILED ON:**

05.01.2015

**ARGUED ON:** 16.02.2017

**DECIDED ON:** 02.06.2017

**GOONERATNE J.**

This is a direct appeal to the Supreme Court. Plaintiff Company, a company in France filed action against the Defendant Company for monies due

to the Plaintiff Company for goods described 'as tea bag filter papers' being provided to the Defendant Company and for the reason money due on same have not been settled. The Plaintiff-Respondent Company having its business concern in France had by a power of Attorney holder, authorised to collect and file action on behalf of the Plaintiff Company. A Managing Director of a private firm called Russel Fredricks Weerappah was the power of Attorney holder of the Plaintiff Company (X2 dated 17.11.2005) and by resolution of the Plaintiff Company (X 2a). He gave evidence on behalf of the Plaintiff Company and claim the amount of money described in prayer (a) of the prayer to the plaintiff. Defendant by a claim in reconvention as pleaded prayed for same but the learned High Court Judge held that the Defendant did not prove the counter claim and dismissed the counter claim as no evidence was led to prove the counter claim.

The main points urged inter alia before the Supreme Court by the Defendant-Appellant was that the action was prescribed and that there was no written agreement. Learned counsel for the Defendant-Appellant demonstrated to court that this was a case of goods sold and delivered and that there was no account stated as submitted by Plaintiff and accepted by the High Court. As such the action was prescribed. Parties proceeded to trial on six (6) admissions and 29 issues. I will refer to some of the admissions only as it has a bearing to the

appeal before this court. It was admitted that documents annexed to the plaint X4, X9, X14 and X19 were sent by the Defendant to the Plaintiff Company. These are all orders placed by the Defendant Company requesting the Plaintiff to sell the goods but the High Court has in the Judgment considered same to be an admission. What was admitted was sending of the purchase orders. But whatever it may be exchange of correspondence between parties on X24, X25, X26 X27 and X30 were also admitted.

X24 is a request for payment by Plaintiff. X25 Managing Director of the Defendant Company apologize for the delay in payment and states that he will remit the sum as early as possible. X 26 dated 27.11.2002 Plaintiff states partial payment was received and request for balance. X 27 Defendant apologise for delay (letter dated 29.11.2002). By X30 dated 25.04.2003, Defendant accept that they have to pay for some invoices but states fair part of the filter papers are inferior quality and unfit for human consumption. Plaint filed on or about 28.11.2005.

Documents X25, X27, X30 are letters where the Defendant Company admit liability for the goods imported, and states amounts due would be settled. X3A is a statement of accounts for the transaction during 2001-2002. There is no doubt that the amount due need to be settled by the Defendant. The question is whether the action is prescribed? If the case falls within Section 6 of

the Prescription Ordinance based on written contract etc., the period would be 6 years and Plaintiff would be entitled for Judgment

If the case falls within Section 8 of the Prescription Ordinance for goods sold and delivered prescriptive period would be a period of one year to institute action. Learned High Court Judge gives his reasons and consider the transaction based on 4 Purchase Orders where the goods were delivered to the Defendant Company. It is stated that the invoices, packing lists and the bill of lading in respect of those 4 orders were marked in evidence and produced in court. It is also stated that the above documents are admissible in evidence though the Defendant takes the view that there is no proof of such documents and or the documents were not proved. I do not think it is correct since a witness from the Commercial Bank, one Somananda gave evidence on invoices, packing lists and the Bills of Lading as those documents were produced to the Bank and goods cleared from the warehouse as the goods imported on D/A terms. As such goods were delivered to the Defendant Company. I am inclined to accept the reasoning of the High Court on this aspect where provisions of Section 65 of the Evidence Ordinance has been considered, in circumstances where secondary evidence could be led.

I do agree that invoices, packing list and Bills of Lading are evidence before the trial court and secondary evidence of same could be led without any doubt (Section 65(1) and (7) of the Evidence Ordinance)

Defendant-Appellant argued that this is a series of transactions, between parties of goods sold and delivered and each item of purchase constitutes a separate transactions, and attempted to establish that it is a transaction of goods sold and delivered. The action is prescribed in one year.

Entirety of the facts and circumstances and conduct of parties, admission of liability are all matters to be considered, in order to decide the nature of the transaction. It is a written contract, and an action would be prescribed in 6 years. Even though the case in hand is based on 4 Purchase Orders, Plaintiff's claim is based on all orders. I have considered the lengthy written submissions of the Defendant. I am not inclined to accept the argument that this is only a case of goods sold and delivered.

Defendant Company made no payments and the goods had been shipped on four consignments subsequent to the said purchase orders which were accepted. Based on the orders, invoices, packing list and Bills of Lading are all written documents on which the transaction proceeded and which was between parties. I am more inclined to accept the argument of the Plaintiff Company that having taken the entirety of the facts of the case into

consideration and not in isolation, I do agree that the transaction emanated from a written contract and not on a running account. In order to constitute a written promise contract, bargain or an agreement, no specific form of writing is required. *Vide Ceylon Insurance Company Ltd. Vs. Diesel and Motor Engineers Co. Ltd. 79(1) SLR 5.*

I note that the claim of the Plaintiff as pleaded and in the correspondence is for the four transactions based on orders, invoices, packing lists and Bills of Lading. I am also fortified in my views having perused the authority cited from 'The Law of Contracts' - *Prof. Weeramantry Pg. 826*

Prof. Weeramantry in his book titled the 'Law of Contract' at page 826 stated that, Instances of writing which have been held to constitute written agreements are;

- "an acknowledgement of liability to pay a sum due for goods bought on credit followed by a statement",
- "we shall definitely pay this bill by the end of this month"
- a written contract to supply a specified quantity of goods at a specified price, and containing other conditions as to the payment of an advance and the recovery of damages and an offer in writing to a person to pay certain charges for the supply of a service or commodity on the faith of which the supplier makes the supply".

There was another point on the question of locus standi urged on behalf of the Defendant-Appellant. Chapter V of the Civil Procedure Code deals with recognised agents and Attorney-at-Law. An agent with a special authority to represent his principle in matters in connection with a particular trade or

business is a recognised agent within the meaning of Section 25(b) of the Civil Procedure Code. Section 25(b) was not intended to refer only to persons who hold general powers of Attorney authorising them to represent the principle in every conceivable kind of transactions and in connection with every kind of legal proceeding. *Lanka Estate Agency Vs. Corea* 52 NLR 477.

Section 25(b) and (c) of the Civil Procedure Code reads thus:

- (b) persons holding general powers of Attorney from parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance or application is made or act done, authorising them to make such appearances and applications, and do such acts on behalf of such parties; which power, or a copy thereof certified by an Attorney-at-Law or notary, shall in each case be filed in the Court.
- (c) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance or application is made or act done, in matters connected with such trade or business only, where no other agent is expressly authorised to make such appearances and applications and do such acts.

The documents relating to power of Attorney X2 and X2(a) were produced in evidence without an objection. As such in view of the above



provisions of law I have to conclude that the witness for the Plaintiff Weerappa holds a valid Power of Attorney to act on behalf of the Plaintiff Company.

The first purchase order is dated 21.09.2001. Plaintiff filed on 28.11.2005. This is well within time. There are three letters of the Defendant Company admitting liability. By X25 Defendant having admitted liability states we will be starting to make payment from next week. X27 Defendant states they will do their best to remit the sum as early as possible. X30 as mentioned above, Defendant admit that they have to pay for some invoices but attempt to complain of the quality of goods. It was the position in the High Court that the Defendant did not lead any evidence to prove their counter claim, and it was dismissed by court. Further after a lapse of time by X30 dated 30.05.2003 quality problems were raised for the first time and Defendant had not substantiated such a quality issue. This is an after thought and the Defendant could not place any evidence before the High Court to establish any such quality issue. Further the claim of the Plaintiff was for the entire sum due. I note that issue Nos. 17 to 23 relating to quality issue raised by the Defendant, has been answered by the learned High Court Judge as 'not proved'.

The correspondence between parties indicate the true nature of the transaction. X25 and X27 concedes the total sums due on the transaction. X26 makes reference to two invoices 15,922 and 16754 and the amount due is

indicated. Further X26 dated 22.11.2002 refer to the other two invoices already due for an urgent payment. X27 is a reply to X26, and X27 refer to the date in X26 vide 27.11.2002. By X27 the Defendant whilst acknowledging X26 apologise for the delay and promise to pay. At this stage there is no complaint of bad quality but an independent written promise to pay. An acknowledgment of a debt in terms of Section 12 of the Prescription Ordinance may also give rise to creation of a new contract, and take the case out of prescription.

This court having considered the material placed before court more particularly, correspondence between parties at the relevant time would indicate the true nature of the transaction.

As such I affirm the Judgment of the learned High Court Judge and dismiss this appeal with costs.

Appeal dismissed.

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

