

**IN THE HIGH COURT OF THE WESTERN PROVINCE SITTING IN
COLOMBO IN THE EXERCISE OF ITS CIVIL JURISDICTION**

1. Swarna Luxshmi Seneviratne,
2. Kappina Degiri Chinthana Mendis Seneviratne,

Both of

No. C/2/6, Kindawatta Housing
Scheme,
Hospital Road, Kalubowila

PLAINTIFFS

Case No:

Nature: Intellectual Property

Procedure: Regular

Value: Rs. 10,000,000/-

Vs.

Sing Lanka Limited,
No. 64, Jambugasmulla Road,
Nugegoda.

DEFENDANT

On this 26th day of September 2013.

The Complaint of the Plaintiffs above named appearing by Miss. Jayamuditha Jayasooriya, their registered Attorney-at-Law state as follows:

1. The 1st and 2nd Plaintiffs abovenamed are respectively the wife and son of late Mr. Herbert M. Seneviratne, a renowned award winning film Producer, Director and an accomplished Lyricist.

In proof thereof the Plaintiffs annex hereto marked P1, a true copy of the Marriage Certificate of late Mr. Herbert M. Senavirathne and the 1st Plaintiff and,

P2, a true copy of the Birth Certificate of the 2nd Plaintiff and plead that same be considered part and parcel hereof.

2. The Defendant is a limited liability Company duly incorporated under and in terms of the Companies Act, No. 7 of 2007. Thus the Defendant Company is a body corporate with perpetual succession, capable of suing and being sued in the name of such corporate personality having its Registered Office/Principal Place of Business at the aforesaid address within the jurisdiction of this Court.

In proof thereof, the Plaintiffs annex hereto, marked P3, the Certificate of incorporation of the Registration of Companies issued in respect of the Defendant and plead that same be considered part and parcel hereof.

3. The Jurisdiction of this Court is invoked under the provisions of the Intellectual Property Act, No. 36 of 2003 and the exclusive jurisdiction to hear and determine this matter is vested with this Court under and in terms of the said Intellectual Property Act, read with the provisions of the High Court of the Provinces (Special Provisions) Act, No. 10 of 1996.

4. The Plaintiffs state that late Mr. Herbert M. Seneviratne had produced and directed many films and said late Mr. Herbert M. Seneviratne is the lyricist of many popular songs and the song titled "මම මම", which was sung by late Mrs. Chithra Somapala being his first.
5. The Plaintiffs state that late Mr. Herbert M. Seneviratne passed away on 7th June 1987 without assigning or transferring his rights as the lyricist of any of the lyrics of the songs authored by him to any person.

In proof thereof, the Plaintiffs annex hereto, marked P4, a true copy of the Death Certificate of the late Mr. Herbert M. Seneviratne and plead that same be considered part and parcel hereof.

6. The Plaintiffs state that the Plaintiffs are the sole legal heirs of late Mr. Herbert M. Seneviratne and therefore, the rights of late Mr. Herbert M. Seneviratne as a lyricist are vested on the Plaintiffs abovenamed by operation of law.

7. (a) The Plaintiffs state that the lyricist of the song titled "ආලෝකේ පතුර" is late Mr. Herbert M. Seneviratne and the said song titled "ආලෝකේ පතුර" was written for the film "සලක" which was a sinhala film directed by Mr. Kingsly Rajapaksha and screened by Ceylon Theaters Limited. The

Plaintiffs further state that this song was sung and composed by Mr. Sisira Senarathne.

In proof thereof, the Plaintiffs annex hereto, marked P5, P6, P7, P8, P9 and P10, true copies of the News Paper Articles of "සරසවිය" News Paper dated 10th December 1971, 23rd October 1981, 16th January 1985, 11th June 1987, 14th November 2002 and 09th September 2004 and plead that same be considered part and parcel hereof.

(b) The Plaintiffs state that the lyricist of the song titled "අත අතයේ හැරේ දිනිදු පාය" is late Mr. Herbert M. Senevirathne and the said song titled "අත අතයේ හැරේ දිනිදු පාය" was written for the film "හඳපාන" which was a sinhala film directed by Mr. Kingsly Rajapaksha and screened by Ceylon Theaters Limited. The Plaintiffs further state that this song was sung by Mr. Sisira Senarathne with Ms. Indrani Senarathne and the composer was also Mr. Sisira Senarathne. *

In proof thereof, the Plaintiffs annex hereto, marked P11, a true copy of the News Paper Article of "සරසවිය" News Paper dated 19th October 1973 and plead that same be considered part and parcel hereof.

Plaintiffs respectfully draw your Honour's attention to the true copy of the News Paper Article of "සරසවිය" News Paper dated 09th September 2004 already marked as P10 which is also relevant to the song titled "අත අතයේ හැරේ දිනිදු පාය".

(c) The Plaintiffs state that the lyricist of the song titled "පිදුරු සෙවිකළ" is late Mr. Herbert M. Senevirathne and the said song titled "පිදුරු සෙවිකළ" was written for the film "හඳපාන" which was a sinhala film directed by Mr. Kingsly Rajapaksha and screened by Ceylon Theaters Limited. The Plaintiffs further state that this song was sung and composed by Mr. Sisira Senarathne.

Plaintiffs respectfully draw your Honour's attention to the true copies of the News Paper Articles of "සරසවිය" News Paper dated 19th October 1973 and 09th September 2004 already marked as P11 and P10 respectively which are also relevant to the song titled "පිදුරු සෙවිකළ".

(d) The Plaintiffs state that the lyricist of the song titled "ඔබ හැති මේ බිම" is late Mr. Herbert M. Senevirathne and the said song titled "ඔබ හැති මේ බිම" was written for the film "හඳපාන" which was a sinhala film directed

by Mr. Kingsly Rajapaksha and screened by Ceylon Theaters Limited. The Plaintiffs further state that this song was sung by Ms. Indrani Senarathne and the composer was Mr. Sisira Senarathne.

Plaintiffs respectfully draw your Honour's attention to the true copies of the News Paper Articles of "සරසවිය" News Paper dated 23rd October 1981, 11th June 1987 and 09th September 2004 already marked as P6, P8 and P10 respectively which are also relevant to the song titled "ඔබ නැති මේ බිම".

(e) The Plaintiffs state that the lyricist of the song titled "යනමාද මා දමා" is late Mr. Herbert M. Senevirathne. The Plaintiffs further state that this song was sung and composed by Mr. Sisira Senarathne.

(f) The Plaintiffs state that the lyricist of the song titled "සුභත" is late Mr. Herbert M. Senevirathne. The Plaintiffs further state that this song was sung and composed by Mr. Sisira Senarathne.

(g) The Plaintiffs state that the lyricist of the song titled "දොයි දොයි දොයි පුතුනේ" is late Mr. Herbert M. Senevirathne. The Plaintiffs further state that this song was sung by Ms. Indrani Senarathne and the composer was Mr. Sisira Senarathne.

8. (a) The Plaintiffs state that the intellectual property right of late Mr. Herbert M. Senevirathne of the above songs were transmitted to the Plaintiffs abovenamed by operation of law upon the death of late Mr. Herbert M. Senevirathne.

(b) The Plaintiffs state that neither late Mr. Herbert M. Senevirathne nor the Plaintiffs have assigned or transferred any of their Intellectual property rights of the above songs to any third party including the Defendant abovenamed.

9. The Plaintiffs state that the Defendant has produced Compact Discs and/or Cassettes containing the songs described in paragraph 7 herein above that are morefully set out in the Schedule hereto. The Plaintiffs state that the Defendant has produced many more Compact Discs and/or Cassettes containing songs in respect of which the Plaintiffs own the copyrights without seeking the express permission or authority of the Plaintiffs.

In proof thereof, the Plaintiffs annex hereto, marked P12 and P13, Compact Discs titled "Best of SISIRA INDRANI ගා ගීතයන්" and "හිමි හිමි දලයි SISIRA

SENARATHNE/INDRANI WIJAYABANDARA" respectively and plead that same be considered part and parcel hereof.

10. However according to the knowledge of the Plaintiffs, the Defendant presently restraining from inserting above songs from their current productions.

11. (a) The Plaintiffs state that to the best of the Plaintiffs knowledge and belief the Defendant has produced and distributed the above songs in Compact Discs and/or Cassettes for a considerable period of time.
- (b) The Plaintiffs further state that although the cover, of the Compact Disc already marked as P13 sets out that the said Compact Disc is presented by one "SISINDRA" of No. C 3/2, Elvitigala Flats, Colombo 08, the Plaintiffs verily believe that said Compact Disc is infact produced by the Defendant.
- (c) The Plaintiffs state that the conduct of the Defendant as pleaded herein are continuing violations of intellectual property rights of the late Mr. Herbert M. Senavirathne and the Plaintiffs.
- (d) The Plaintiffs state that the 1st Plaintiff is 78 years old and she is unemployed and the 1st Plaintiff is a heart patient and she has undergone a major heart surgery in or about 2011 and has no financial means whatsoever and the 2nd Plaintiff is presently employed as an adviser financial consultant at the AVIVA NDB Insurance PLC and he has undergone several major motor accidents in or about January 2007, in or about November 2008 and in or about December 2010 and due to those accidents 2nd Plaintiff was not be able to attend any work during that period.
- (e) The Plaintiffs state that the Plaintiffs were not in a position due to the above mentioned reasons and as well as the lack of finance to institute this action and to obtain the necessary documentation and information relating to this application.
12. (a) The Plaintiffs state that in the aforesaid circumstances the Plaintiffs through their Attorney-at-Law sent a Letter of Demand to the Defendant asserting their intellectual property rights in respect of the said songs and claiming damages in a sum of Rs. 10,000,000/-.

A true copy of the said Letter of Demand dated 23rd May 2011 is annexed hereto, marked P14, and plead that it be considered part and parcel hereof.

- (b) The Plaintiffs state that the Defendant through its Attorneys-at-Law replied the said letter marked P14 denying the allegations made by the Plaintiffs in their letter marked P14.

A true copy of the said reply dated 20th June 2011 is annexed hereto, marked P15, and plead that it be considered part and parcel hereof.

- 13. The Plaintiffs state that in terms of the provisions of Section 9 of the Intellectual Property Act, No. 36 of 2003, the owner of copyright has the exclusive right to carryout and/or authorize *inter-alia* the reproduction, translation, adaptation, arrangement or other transformation and the public distribution of the original and each copy of the work by sale, rental, export or otherwise of the works protected in terms of Section 6 of the said Intellectual Property Act.

- 14. (a) Thus, the Plaintiffs respectfully state that the Plaintiffs, being the heirs of the late Mr. Herbert M. Senavirathne are the owners of the moral and economic rights of the said works and such rights have not been assigned or transferred to any person and more particularly to the Defendant.

- (b) The Plaintiffs state that as stated above neither the late Mr. Herbert M. Senavirathne nor the Plaintiffs have transmitted or waived any of the intellectual property rights inrelation to the songs which are the subject matter of this action and the Defendant above named has no right to produce the Compact Discs and/or Cassettes containing the songs that are morefully explained in the Schedule hereto and many more Compact Discs and/or Cassettes containing songs in respect of which the Plaintiffs own the copyrights without seeking the express permission or authority of the Plaintiffs.

FIRST CAUSE OF ACTION

- 15. The Plaintiffs respectfully state that in terms of the Section 14 of the Intellectual Property Act, No. 36 of 2003, the late Mr. Herbert M. Seneviratne was the original owner of the economic right in respect of the lyrics of the songs morefully described in the Schedule hereto and those rights of late Mr. Herbert M.

Seneviratne were transferred to the Plaintiffs consequent to the death of said late Mr. Herbert M. Seneviratne.

16. The Plaintiffs state that the Defendant had not obtained authorization from the Plaintiffs, to reproduce or distribute, or to carry out any of the acts specified in Section 9 of the said Act, in relation to the lyrics of the songs morefully set out in the Schedule hereto.
17. The Plaintiffs state that therefore the reproduction of the aforesaid songs containing the said lyrics and/or distribution of cassettes and compact discs containing the aforesaid songs containing the said lyrics constitute acts of infringement of the economic and moral right in respect of the lyrics of the said songs.
18. The Plaintiffs state that that in the above circumstances the Plaintiffs are, *inter-alia*, entitled to relief under Section 22 of the Intellectual Property Act, No. 36 of 2003 for damages.
19. The Plaintiffs state that the Defendant was at all times aware and/or could not have been unaware and/or had reasonable cause to know that
 - (a) the economic and *moral right* in respect of the lyrics of the songs referred to in this plaint belong to the late Mr. Herbert M. Seneviratne and upon his death to the Plaintiffs; and
 - (b) the recording, reproduction, public performance and communicating to the public in any manner and public distribution of the original and each copy of such lyrics of the songs referred to in this plaint infringe the said copyright belonging to the Plaintiffs.
20. The Plaintiffs state that in such circumstances the Plaintiffs are entitled to the award of damages for the loss suffered by the aforesaid acts of infringement of the Defendant in terms of Section 22(2) (b) of the Intellectual Property Act, No. 36 of 2003 and estimates the loss suffered by the Plaintiffs by such acts of infringement of the Defendant in a sum of Rs. 10 million.
21. Wherefore the Plaintiff states that a cause of action has arisen to the Plaintiffs to sue the Defendant for judgment and decree in a sum of Rs. 10 Million or such other sum as Court may find due to the Plaintiffs on account of the loss suffered by the Plaintiffs as a consequence of the several acts of infringement by the

Defendant, together with legal interest from the date hereof until the date of decree and thereafter on the decrual amount until the payment in full.

SECOND CAUSE OF ACTION

22. The Plaintiffs respectfully state that in all of the aforesaid circumstances the following causes of action have accrued to the Plaintiffs under and in terms of the Intellectual Property Act, No. 36 of 2003 to sue the Defendant for:-

- (a) an order to deliver up to the Plaintiffs all the infringing material in the possession of the Defendant.
- (b) a permanent Injunction restraining the Defendant and/or his servants, agents, employees or any of them or otherwise, howsoever, whether directly or indirectly from marketing and/or selling and/or offering for sale and/or promoting and/or advertising and/or producing and/or reproducing and/or distributing the songs set out in the Schedule below and any other song where the lyricist is late Mr. Herbert M. Seneviratne.
- (c) an Interim Injunction restraining the Defendant and/or his servants, agents, employees or any of them or otherwise, howsoever, whether directly or indirectly from marketing and/or selling and/or offering for sale and/or promoting and/or advertising and/or producing and/or reproducing and/or distributing the songs set out in the Schedule below and any other song where the lyricist is late Mr. Herbert M. Seneviratne until the hearing and conclusion of this action.
- (d) an Enjoining Order restraining the Defendant and/or his servants, agents, employees or any of them or otherwise, howsoever, whether directly or indirectly from marketing and/or selling and/or offering for sale and/or promoting and/or advertising and/or producing and/or reproducing and/or distributing the songs set out in the Schedule below and any other song where the lyricist is late Mr. Herbert M. Seneviratne until the hearing and determination of the application for an Interim Injunction.

23. The Plaintiffs state that unless the injunctive orders prayed for herein are granted, irreparable mischief and grave and irreparable loss and damage would be caused to the Plaintiffs.

24. The Plaintiffs value the subject matter of this action for the purposes of stamp duty at Rs. 10,000,000/-;
25. An Affidavit of the Plaintiffs is annexed hereto in support of the averments referred to herein.

WHEREFORE, the Plaintiffs pray that Your Honour's Court be pleased to grant:

- (a) judgment and decree against the Defendant in a sum of Rs 10 Million or such other sum as Your Honour's Court may find due to the Plaintiffs on account of the loss suffered by the Plaintiffs as a consequence of the several acts of infringement by the Defendant, together with legal interest from the date hereof until the date of decree and thereafter on the decrual amount until the payment in full;
- (b) an order to deliver up to the Plaintiffs by the Defendant all the infringing material in the possession of the Defendant;
- (c) A permanent Injunction restraining the Defendant and/or their servants, agents, employees or any of them or otherwise, howsoever, whether directly or indirectly from marketing and/or selling and/or offering for sale and/or promoting and/or advertising and/or producing an/or reproducing and/or distributing the songs set out in the Schedule below and any other song where the lyricist is late Mr. Herbert M. Seneviratne;
- (d) An Interim Injunction restraining the Defendant and/or their servants, agents, employees or any of them or otherwise, howsoever, whether directly or indirectly from marketing and/or selling and/or offering for sale and/or promoting and/or advertising and/or producing an/or reproducing and/or distributing the songs set out in the Schedule below and any other song where the lyricist is late Mr. Herbert M. Seneviratne until the hearing and determination of this action;
- (e) An Enjoining Order restraining the Defendant and/or their servants, agents, employees or any of them or otherwise, howsoever, whether directly or indirectly from marketing and/or selling and/or offering for sale and/or promoting and/or advertising and/or producing an/or reproducing and/or distributing the songs set out in the Schedule below and any other song where

the lyricist if late Mr. Herbert M. Seneviratne until the hearing and determination of the application for an Interim Injunction;

- (f) Costs; and
- (g) Such other and further reliefs as Your Honour's Court may seem meet.

Jayamuditha

Registered Attorney-at-Law for the Plaintiffs

JAYAMUDITHA JAYASOORIYA
LL.B (Hons) C
Attorney-at-Law, Notary Public
Registered Company Secretary
34/55, New Lawyers' Office Complex,
Colombo - 12.

Settled by:

Madhawa Wijayasriwardena
Ranil Samarasooriya
Chandaka Jayasundere

Attorneys-at-Law

THE SCHEDULE ABOVE REFERRED TO

Title of the Compact Disc

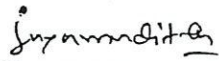
The songs composed
by Herbert M. Seneviratne

01. "Best of SISIRA INDRANI ගයා ගීතයන්"

- ආලෝකේ පතුරා ✓
- ඔබ නැති මේ බිම ✓
- අත අතේ තැගේ ✓
- පිදුරු කෙටිකළ ✓
- ✓ සුභත
- දොඩ දොඩ පුතුනේ ✓

02. "නිව් නිව් දළඹි SISIRA
SENARATHNE/INDRANIWIJAYABANDA
RA"

- යනවද මා දමා


Registered Attorney-at-Law for the Plaintiffs

JAYAMUDITHA JAYASINGHE
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