

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

In the matter of an Appeal in terms of the
Chapter LVIII of the Civil Procedure Code.

1. Jayawardana Mulge Susantha
Jayawardana
2. Udumullage Dona Inoka Ushani
Jayasinghe

SC/CHC/APPEAL No. 09/2016

H.C Civil 277/2012/MR

Both of

Birmenstorsstrasse 586 8055, Zurich,
Switzerland.

Acting through their Power of Attorney
Holder Jayaweerawardana Mulge Gamini
Sathyapala of No. 382A, Dippitigoda
Kelaniya.

Plaintiffs

Vs.

Minnerigamage Samarakkody Perera
No.17, Kavinda Place, Kirulapona
Colombo 06.

And

No. 11, Masjid Mosque Road
Kirulapona

Colombo 06.

Defendant

AND NOW BETWEEN

1. Jayawardana Mulge Susantha
Jayawardana
2. Udumullage Dona Inoka Ushani
Jayasinghe

Both of

Birmenstorsstrasse 586 8055, Zurich,
Switzerland.

Acting through their Power of Attorney
Holder Jayaweerawardana Mulge Gamini
Sathyapala of No. 382A, Dippitigoda
Kelaniya.

Plaintiff-Appellants

Vs.

Minnerigamage Samarakkody Perera
No.17, Kavinda Place, Kirulapona
Colombo 06.

And

No. 11, Masjid Mosque Road
Kirulapona

Colombo 06.

Defendant-Respondent

Before : Yasantha Kodagoda, PC, J.
Arjuna Obeyesekere, J.
Menaka Wijesundera, J.

Counsel : Boopathy Kahathuduwa with Sachintha Perera instructed
by Wasantha Kahathuduwa for the Plaintiff-Appellants.
Chathura Galhena with Sachini Handapangoda instructed
by E. A. Prageeth Alwis for the Defendant-Respondent.

Written

Submissions : Written submissions on behalf of the Plaintiff-Appellants
on 12th August, 2022.
Written submissions on behalf of the Defendant-
Respondent on 24th August, 2022.
Further Written submissions on behalf of the Defendant-
Respondent on 13th June, 2025.

Argued on : 26.05.2025

Decided on : 18.09.2025

MENAKA WIJESUNDERA J.

The appellants in the instant matter instituted this action to vary the judgment dated 16.11.2015 of the Commercial High Court of Colombo (CHC).

The appellants filed action in the CHC to recover a sum of Rs. 4 million with interest calculated at the rate of 24% per annum from 01.04.2010 and damages of Rs. 3 million.

The defendants had agreed to build two houses at the price of 21,000,000 and the appellants were to pay as a deposit a sum of Rs. 4,000,000 and had agreed to pay the balance in installments over a period of 10 years.

Thereafter, the parties had entered into an agreement which had been marked as "P1" but the appellants complained that the said agreement dated 5th March 2010, had been breached by the defendant in which the construction of the house was not completed as agreed upon and had also failed to carry out the construction to the proper standard.

The agreement goes onto state that in the situation the vendor fails to honour the agreement, the purchaser has a right to claim damages amounting to Rs. 1 million. It further iterates that if the purchaser fails to make the balance payments, the vendor is able to deduct Rs. 1 million from the advance payment and pay the balance alongside the monthly payments made.

The learned judge of the CHC had held with the appellants and had decreed to the appellants to be paid by the defendant Rs. 4 million on the basis that the defendant had breached performance of his duties under the agreement without the addition of legal interest to the aforementioned amount and has not awarded the damages because he has concluded that the plaintiffs had failed to prove that they were entitled for the same.

The instant appeal has been filed by the appellants seeking the setting aside of the said judgment and had prayed for both damages and interest on the decreed amount.

Upon perusal of the evidence led in the CHC, the mother of the 2nd appellant had said that the agreements were drawn on behalf of her daughter and the son-in-law. She had gone on to state that although the initial payment was paid by them, they did not pay the rest of the installments as they had initially paid the advance for two houses and had later reconsidered and had agreed to buy only one house because there were many delays from the respondent's end. (171)

The 2nd appellant has taken steps to complain against the respondent to the police and action has been filed in the Magistrates Court.

The 2nd appellant has given evidence and she had said that she is rejecting the contract entered in to with the respondent for the reason that the respondent had failed to honour the same regarding the quality of the building. She further had stated that, upon signing the agreement, they looked into the construction of the house and found that not even a plan or C.O.C had been submitted by the respondent for construction.

She had also said that at page 196 that because they could not get the apartment completed and the fact that they were denied the opportunity of buying another house at more favourable rates, the loss they had incurred monetarily and financially, had been estimated at 3 million rupees and the initial amount of Rs. 4 million with the addition of legal interest at the rate of 24% from 2010 April.

The respondent also had given evidence and had claimed that the appellants failed to pay the monthly installments and that the mother of the 2nd appellant had asked for brokers fees and that was one of the reasons for the discontinuation of the financial transaction. The mother of the 2nd appellant vehemently denied the accusations alleged by the respondent with regards to her asking for broker fees.

The respondent has also admitted that he had failed to register the agreement entered between the parties.

Upon the conclusion of the leading of evidence, the learned High Court Judge had evaluated evidence quite clearly and methodically and has concluded that due to the violation of the agreement, the appellants are entitled for the initial payment of Rs. 4 million but as requested they are not entitled for the damages and the legal interest because they have not proved before Court the loss incurred financially and mentally.

But upon perusal of the evidence, as pointed out above at pages 171 and 196, both the witnesses had referred to the loss incurred and they have been cross-examined also on the same.

At this point, I wish to draw my attention to the case of **I. M. D. Bandara vs The Director of Health and others, SC Appeal 69/2016 by Aluvihare, J**, where he has stated that,

“...although it is understood that legal interest may be provided and in most cases is provided from the date of the institution of the action, as per section 192(1) judges are not mandatorily obligated to grant such relief. The drafters of section 192(1) , being conscious of the myriads of

considerations before the judge, bestows upon the judge, a discretion in the matter”.

Therefore, the learned judge of the CHC had the opportunity of hearing the evidence led at the inquiry. Hence, it is my opinion that the legislators when drafting the above section had thought it fit to leave the discretion in the hands of the inquiring judge to decide on the entitlement of the legal interest, which in my opinion has to be left at that in this instance too.

The submission of the learned Counsel for the respondent was that, following the delivery of the judgment by the learned judge of the CHC, the respondent was ready to comply with the payment of the decreed amount being Rs. 4 million but that the appellants instead of collecting that amount, had filed the instant appeal.

As such, he submitted that it would be unjustifiable for the appellants to seek interest on that amount.

Hence, the instant appeal is hereby dismissed, the respondent is directed to pay the decreed amount of Rs. 4 million to the appellants.

JUDGE OF THE SUPREME COURT

Yasantha Kodagoda, PC, J

I agree.

JUDGE OF THE SUPREME COURT

Arjuna Obeyesekere, J.

I agree.

JUDGE OF THE SUPREME COURT