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

**S.C. (C.H.C.) Appeal No. 17/2014**

**Commercial High Court Case No.**

**HC (Civil) 318/2011/MR**

In the matter of an Appeal to the Supreme Court under Section 5(1) of the High Court of the Provinces (Special Provisions) Act No. 10 of 1996 read together with Sections 754(1) read together with Sections 755(3) and 758 of the Civil Procedure Code.

Commercial Bank of Ceylon PLC.,
No. 21, Sir Razik Fareed Mawatha,
Colombo 01.

And having a Branch Office and/or a Place of Business called and known as the "Thalawathugoda Branch" at
No. 07, Suramya Building,
Kottawa Road, Thalawathugoda.

**Plaintiff**

**Vs.**

1. Warnasirige Sinharage Paul Jayantha De Silva,
   No. 155/24, Dolalanda Gardens, Thalawathugoda.

2. Anthony Saliya Godwin Ranasinghe,
   "Rose Villa", No. 79/7, Hettiyawatte, Elpitiwala, Ragama.

**Defendants**

**NOW BETWEEN**

Anthony Saliya Godwin Ranasinghe,
"Rose Villa", No. 79/7, Hettiyawatte, Elpitiwala, Ragama.

**2nd Defendant – Appellant**

**Vs.**

Warnasirige Sinharage Paul Jayantha De Silva,
No. 155/24, Dolalanda Gardens, Thalawathugoda.

**1st Defendant – Respondent**

Commercial Bank of Ceylon PLC.,
No. 21, Sir Razik Fareed Mawatha, Colombo 01.

And having a Branch Office and/or a Place of Business called and known as the "Thalawathugoda Branch" at
No. 07, Suramya Building,
Kottawa Road, Thalawathugoda.

**Plaintiff – Respondent**

**Before: Hon. P. Padman Surasena, C.J.**

**Hon. Janak De Silva, J.**

**Hon. Arjuna Obeyesekere, J.**

**Counsel:** Shane Foster with Thulith Bandara for the 2nd Defendant – Appellant

Shivaan Cooray for the Plaintiff – Respondent

**Written Submissions:** 19.06.2023 and 05.07.2023 by the Defendant – Appellant

11.05.2023 and 16.08.2023 by the Plaintiff–Respondent

**Argued on:** 21.06.2023

**Decided on:** 03.10.2025

**Janak De Silva, J.**

This is an appeal arising from a judgment delivered by the Commercial High Court of the Western Province holden in Colombo (Commercial High Court) on 02.09.2013. The Commercial High Court held that the 2nd Defendant-Appellant (2nd Defendant) is liable to pay a sum of Rs. 3,047,449.94 to the Plaintiff-Respondent (Plaintiff) together with interest thereon at the rate of 24% *per annum* from 09.09.2007 until repayment in full.

***Factual Matrix***

On 02.09.2005, the Plaintiff, by lease agreement dated 02.09.2005 (Lease Agreement), leased a brand-new Chrysler Grand Voyager vehicle to Snap-R Coatings and Chemicals International (Pvt) Ltd. (Lessee). The period of lease was from 12.10.2005 to 12.10.2010. The Lease Agreement stipulated 60 monthly rentals of Rs. 150,203 each and a 24% *per annum* interest on delayed payments.

In terms of Clause 7 of the Lease Agreement, the Lessee agreed that any default being made by it in the payment of money due thereon or otherwise acting in breach of the terms and conditions thereof, it shall be lawful for the Plaintiff to terminate the Lease Agreement and to recover the money which are due thereon.

The offer letter (P1) required a guarantee from the 2nd Defendant and the 1st Defendant-Respondent (1st Defendant) as security. They were, at that time, shareholders and directors of the Lessee.

Accordingly, a Guarantee of Lease Agreement (Guarantee) dated 02.09.2005, was executed by the 1st and 2nd Defendants.

Following a payment default commencing around August 2006, the 1st Defendant surrendered the vehicle on 17.10.2006, requesting its sale to reduce the debt. The Plaintiff formally terminated the Lease Agreement on 02.11.2006. After accounting for all credits, a sum of Rs. 3,047,449.94 remained together with interest thereon at the rate of 24% per annum from 09.09.2007 until the payment in full. A demand was made on the Lessee for this outstanding amount.

As the Lessee failed to settle the outstanding amount, and relying expressly on the Guarantee (P3), the Plaintiff instituted the present action on 11.07.2011 in the Commercial High Court against the 1st and 2nd Defendants as guarantors. The summons could not be served on the 1st Defendant, and the trial proceeded between the Plaintiff and the 2nd Defendant.

The learned counsel for the Appellant sought to impugn the judgment of the Commercial High Court on the following grounds:

(1) The Plaintiff has failed to make a valid demand from the 2nd Defendant.
(2) This cause of action should have first been referred to compulsory arbitration in terms of the Lease Agreement.

(3) The statements of account ("P5", "P5A", "P5B") were derivative creations and not certified copies of bankers' books as required by Section 90A of the Evidence Ordinance No. 14 of 1895 and therefore inadmissible.

***Demand***

The learned counsel for the 2nd Defendant submitted that a cause of action on the Guarantee will arise only upon a demand made by the Plaintiff from the 2nd Defendant. In support of this proposition, he cited the decisions in ***Bradford Old Bank v. Sutcliffe*** **[(1918) 2 KB 833]**, ***L.B. Finance v. Manchanayake*** **[(2000) 2 Sri LR 142]**, ***Seylan Bank Ltd. v. Inter Trade Garments (Pvt) Ltd.*** **[(2005) 1 Sri LR 80]** and ***Sivasubramaniam v. Alagamuttu*** **(53 NLR 150)]**.

The heading of the Guarantee states "Guarantee of Lease Agreement". Nevertheless, one cannot interpret a contract based purely on internal linguistic considerations. The mere use of a descriptive term cannot affect the reality of the transaction. The agreement must be objectively construed as a whole to determine the intention of the parties.

Clause 1 of the Guarantee reads as follows:

> *"[…] (hereinafter called "the Lessee" which expression shall include its successors-in-title and permitted assigns) we, the undersigned,* ***do and each of us both hereby jointly and severally guarantee to you the punctual payment by the Lessee of all rental, interest, the Stipulated Loss value referred to in schedule of the Lease Agreement and all other sums whatsoever due under the Lease Agreement*** *and the* ***performance of all the Lessee's obligations thereunder*** *and we and each of us further jointly and severally undertake to* ***indemnify you on demand against all losses****, expenses (including legal costs on a full indemnity basis) charges and damages incurred or* ***suffered by you in consequence of any failure by the Lessee to perform any of one of the Lessee's obligations whether express or implied*** *under the Lease Agreement and including the payment of any damages and/or cost awarded to the Lessor by a competent Court of Law in respect of the Lease Agreement.*" (emphasis added)

Clearly, the obligation of the 2nd Defendant was conditional upon a duly made demand.

The 1st witness for the Plaintiff was T.P.M. Dharmabandhu, Executive Officer. Along with his affidavit, documents marked P1 to P6(d) was tendered in evidence. P6(b) was the demand made on the 2nd Defendant. At the commencement of his examination-in-chief, Counsel for the 2nd Defendant moved that document marked P5 should be marked subject to proof. P5 was the Statement of Account. None of the other documents including P6(b) were marked subject to proof.

Where no objection is taken when the document is sought to be tendered in evidence, and the document is not forbidden by law to be received in evidence, any objection to its receipt as evidence is deemed to have been waived. [See ***Kenakal v. Velapillai*** **(2 NLR 80);** ***Muttaiya Chetty v. Harmanis Appu*** **(4 NLR 184);** ***Silva v. Kindersley*** **(18 NLR 85);** ***Siyadoris v. Danoris*** **(42 NLR 311);** ***Multiform Chemicals Limited v. Adrian Machado*** **(S.C. Appeal 183/2011, S.C.M. 18.07.2024)]**.

Nevertheless, I observe that when the documents marked P1 to P6(d) was read in evidence at the close of the case for the Plaintiff, the Counsel for the 2nd Defendant objected on the basis that P5, P5(a), P5(b), P5(c) were not proved. Even assuming that this was a reference to documents marked P6(a), P6(b) and P6(c), it was an exercise in futility and an attempt to close the stable door after the horse has bolted. The Plaintiff has proved that a demand was made on the 2nd Defendant as required by the Guarantee.

***Compulsory Arbitration***

The next point urged by the learned counsel for the 2nd Defendant is that the Plaintiff should have first referred this matter to arbitration. Reliance was placed on Clause 18 of the lease agreement which reads as follows:

> *"JURISDICTION*
>
> *In the event of* ***any default or non-observance by Lessee of the terms and conditions contained in this Lease Agreement or in any other case*** *and in the event*

*of any dispute, difference or question which may from time to time and at any time hereafter arise or occur* ***between the Lessor and Lessee*** *or their respective representatives or permitted assigns touching or concerning or arising out of, under,* ***in relation to or in respect of this Lease Agreement*** *or any provision matter or thing contained herein or the subject matter hereof, or the operation, interpretation or construction hereof or of any clause hereof or as to the rights, duties or liabilities of either party hereunder or in connection with the premises or their respective representatives or permitted assigns* ***including all questions that may arise after the termination or cancellation of this lease****, such dispute difference or question may, notwithstanding the remedies available under this Lease Agreement or in law by the Lessor only, be submitted in writing at its sole option for arbitration by a single arbitrator to be nominated by the parties or if such nomination is not practicable, by two arbitrators one to be appointed by Lessor and the other by Lessee and an umpire to be nominated by the two arbitrators.*" (emphasis added)

It was submitted that the 1st and 2nd Defendants become principal debtors consequent to a demand being made on them which then means that the 2nd Defendant is akin to the Lessee in the Lease Agreement.

I have no hesitation in rejecting this proposition. On an objective reading of the arbitration clause as well as the Lease Agreement as a whole, the scope of the arbitration clause covers only disputes between the Lessor and Lessee.

Let me further expound my reasoning by identifying the nature of a guarantee.

None of the parties to this action is a bank. The Lease Agreement is not part of a banking transaction. Hence, the transaction between the parties in this action does not fall within *Banks and Banking* in Section 3 of the Civil Law Ordinance. The governing law of the Lease Agreement is Roman-Dutch law.

There was a general rule in early Roman law that a contract should not benefit or bind a third party. This was known as *alteri stipulari non potest*. A stranger to a contract was outside the scope of the rights and duties arising thereunder. This rigid rule was subject to progressive modification in later Roman law.

Roman-Dutch law did not adopt the strict approach of Roman law to third party rights. According to Grotius (3.3.38), Roman-Dutch law allows a third party to accept the promise and thus acquire a right unless the promisor revokes the promise before such acceptance by the third party. Similarly, a stipulation in a contract in favour of a third party can be enforced by such party where it has been accepted by him **[*Jinadasa v. Silva* (34 NLR 344), *De Silva v. Margaret Nona* (40 NLR 251), *Marthelis Appuhamy v. Peiris* (47 NLR 78]**.

The arbitration clause does not have any stipulation indicating that the 1st and 2nd Defendants as Guarantors are to benefit from it.

Moreover, according to Roman-Dutch law, the obligation created thereunder is independent of the obligations created under the Lease Agreement and the 2nd Defendant cannot rely on the scope of the arbitration clause contained in the Lease Agreement. Let me explain my conclusion.

According to Weeramantry [*The Law of Contracts*, Vol. I, page 190], contracts which charge a person with the debt, default or miscarriage of another are contracts of suretyship or guarantee. He appears to proceed on the basis that "suretyship" and "guarantee" are interchangeable.

Indeed, many writings and judicial decisions do reflect this understanding [See Caney's The Law of Suretyship, 1st and 2nd editions; Walter Pereira, The Laws of Ceylon, Vol. II, page 629; Geraldine Andrews and Richard Millet, Law of Guarantees [6th ed. (Thomson Reuters, 2011), page 271]; Institutes of Holland, Van Der Linden, Translation by Henry Juta, (3rd ed., 1897), Chapter XIV, Section X; Institutes of Holland, Van Der Linden, Translation by J.

Henry, (1828), Chapter XIV, Section X. See also, ***Mouton v. Die Mynwerkersunie*** **(1977(1) SA 119(A) at 136B)**; ***Hazis v. Transvaal and Delagoa Bay Investment Co Ltd*****. (1939 AD 372 at 384)**; ***Hermes Ship Chandlers (Pty) Ltd v. Caltex Oil (SA) Ltd*****. (1973 (3) SA 263 (D) at 266-7)**; ***IIG Capital LLC v. Van Der Merwe and Another*** **(2008) EWCA Civ 542, para. 19**; ***Sri Lanka Insurance Corporation Ltd. v People's Bank*** **(2017) B.L.R. 206**].

However, Courts have also held that the word "guarantee" is open to a number of meanings and its meaning when used in a specific document depends on the context in which it is used. In ***Walker's Fruit Farms Ltd v. Sumner*** **[1930 TPD 394 at 398]**, Greenberg, J. held that the ordinary meaning is to assure a person of the receipt or possession of something. In ***Dempster v. Addington Football Club (Pty) Ltd.*** **[1967(3) SA 262(D) at 267]** and ***Cazalet v. Johnson*** **[1914 TPD 142 at 145]** it was held to mean 'pay'.

An example of the interpretation of the word *"guarantee"* in the context of the contract as a whole is found in ***Hutchinson v. Hylton Holdings and Another*** **[supra.]**. The defendant had signed a document in which he guaranteed specific performance of the contract for the sale of land in his personal capacity. The purchaser of the land was non-existent so there was no principal obligation and no suretyship. The Court held that the clause resulted in an independent undertaking. The defendant had contracted as a co-principal debtor and not surety. His undertaking was held not to be dependent upon the non-performance of the purchaser but was in the form of an indemnity. Here the use of the word *guarantee* was construed to create an independent obligation and hence the undertaking was not a suretyship. Such result is not possible if one were to assume that "suretyship" and "guarantee" are interchangeable.

Similarly, in ***List v. Jungers*** **[1979(3) SA 106 (A) at 117-119]** the use of the word *guarantee* was held by Court to mean an original undertaking whereby the promisor bound himself as principal debtor and not as surety.

These authorities support the statement in Caney's The Law of Suretyship [Forsyth & Pretorius (eds.), 5th edition (Juta & Co. Ltd., 2002), page 27], that "guarantee" is a distinct although difficult concept and seeks to provide a precise definition and explore its relationship with suretyship. Caney [supra. page 31] goes on to state that with a contract of guarantee, the guarantor undertakes a principal obligation to indemnify the promisee on the happening of certain events.

According to Caney [supra., page 32]:

> "*What then is the difference between a guarantee that a debtor will perform and suretyship? Lubbe makes one point of distinction clear :* ***the guarantor's obligation, as an obligation independent of that of the debtor, is to indemnify the creditor in respect of losses suffered through the debtor's non-performance****, whereas the* ***surety, as we have seen, is only liable for losses resulting from the debtor's breach of contract*** *[...]* ***suretyship is an undertaking,*** *in the first instance****, that the debtor himself will perform, and only secondarily that if he fails to perform that the surety will do so. With guarantee, on the other hand, the guarantor undertakes to pay on the happening of a certain event but does not promise that that event will not happen***." (emphasis added)

Thus, in Roman-Dutch law, a "guarantee" given by a guarantor to a promisee in relation to a promise by a third party to the promisee, does create an independent obligation to that of the debtor.

I must hasten to add that parties can by agreement determine the exact nature of the relationship between them notwithstanding the general definition given in the governing law to particular types of documents. Accordingly, the Guarantee must be examined to determine the rights and obligations of the parties.

Clause 2 of the Guarantee specifically provide that the 1st and 2nd Defendants have admitted their liability thereunder to be as principal debtors and not merely as sureties. Clause 4 reiterates the principal debtor status of the 1st and 2nd Defendants.

Hence even after a demand was made on the 2nd Defendant, it did not result in the 2nd Defendant stepping into the shoes of the Lessee in the lease agreement. Consequently, the 2nd Defendant cannot seek the benefit of the arbitration clause to oust jurisdiction of the Commercial High Court.

In any event, assuming that the cause of action falls within the scope of the arbitration clause, an objection to jurisdiction cannot be raised now.

In terms of Section 39 of the Judicature Act, whenever any defendant or accused party shall have pleaded in any action, proceeding or matter brought in any Court of First Instance neither party shall afterwards be entitled to object to the jurisdiction of such court, but such court shall be taken and held to have jurisdiction over such action, proceeding or matter.

Admittedly, the 2nd Defendant did raise a jurisdictional issue before the Commercial High Court based on the arbitration clause. It was rejected by the learned trial judge by his order dated 10.07.2012. Court held that although the Lease Agreement contained an arbitration clause, there is no such clause in the Guarantee. The 2nd Defendant did not prefer an appeal against the said order and continued to take part in the trial.

Section 5 of the Arbitration Act No. 11 of 1995 reads as follows:

> *"Where a party to an arbitration agreement institutes legal proceedings in a court against another party to such agreement in respect of a matter agreed to be submitted for arbitration under such agreement,* ***the court shall have no jurisdiction to hear and determine such matter if the other party objects to the court exercising jurisdiction in respect of such matter****"* (emphasis added)

Clearly the jurisdiction of the Commercial High Court is ousted only where the other party objects to its jurisdiction. This is a latent or contingent want of jurisdiction and not a patent or total want of jurisdiction.

In ***P. Beatrice Perera v. The Commissioner of National Housing*** **(77 NLR 361 at 366),** the distinction between 'patent' and 'latent' want of jurisdiction is expounded as follows:

> *"……. Lack of competency may arise in one of two ways. A court may lack jurisdiction over the cause or matter or over the parties; it may also lack competence because of failure to comply with such procedural requirements as are necessary for the exercise of power by the court. Both are jurisdictional defects; The first mentioned of these is commonly known in the law as 'patent' or 'total' want of jurisdiction or a defectus jurisdictionis and the second a 'latent' or 'contingent' want of jurisdiction or defectus triationis.* ***Both classes of jurisdictional defect result in judgments or orders which are void****. But* ***an important difference*** *must also be noted. In that class of case* ***where the want of jurisdiction is patent, no waiver of objection or acquiescence can cure the want of jurisdiction****; the reason for this being that to permit parties by their conduct to confer jurisdiction on a tribunal which has none would be to admit a power in the parties to litigation to create new jurisdictions or to extend a jurisdiction beyond its existing limits, both of which are within the exclusive privilege of the legislature; the proceedings in cases within this category are* ***non coram judice*** *and* ***the want of jurisdiction is incurable****. In* ***other class of case, where the want of jurisdiction is contingent only****, the judgment or order of the Court will be void only against the party on whom it operates but* ***acquiescence, waiver or inaction on the part of such person may estop him from making or attempting to establish by evidence****, any averment to the effect that the Court was lacking in contingent jurisdiction. ……."*

Any objection to contingent or latent want of jurisdiction must be raised at the first available opportunity and if no objection is taken the matter is within the plenary jurisdiction of the court [See ***Lily Fernando v. Ronald ( alias R. A. Vanlangenberg)*** **(75 NLR 231),** ***Navaratnasingham v. Arumugam and another*** **(1980) 2 Sri LR 1*****, Paramasothy v. Nagalingam*** **(1980) 2 Sri LR 34,** ***Jalaldeen v. Rajaratnam*** **(1986) 2 Sri LR 201*****, David Appuhamy v. Yassassi thero*** **(1987) 1 Sri LR 253*****, Edmund Perera v. Nimalaratne and another*** **(2005) 3 Sri LR 68].**

The 2nd Defendant should have sought leave to appeal against the order rejecting the objection to jurisdiction. Failure to do so amounts to submission to jurisdiction.

Nevertheless, learned counsel for the 2nd Defendant relies on the decision in ***Avenra Gardens (Private) Ltd. v. Global Project Funding*** **[S.C. Appeal 157/2019, S.C.M. 22.02.2022]** where I held that it is the clear right of every litigant to invite the Appellate Court to consider in a final appeal any interlocutory order even if he did not directly challenge it at the time when it was made.

However, the legal principles and factual circumstances differ. Here, the Commercial High Court made an order on the jurisdictional objection based on the arbitration clause in the Lease Agreement. Thereafter, the 2nd Defendant continued to take part in the trial and submitted to the jurisdiction of the Commercial High Court. He cannot now be entitled to raise an objection to the jurisdiction of the Commercial High Court.

***Admissibility***

The final point urged by the learned counsel for the 2nd Defendant is that the Plaintiff has failed to prove the sums due and owing to it from the 2nd Defendant. He submitted that this could have been proved only by recourse to Chapter VI of the Evidence Ordinance.

Relying on the decision in ***Agostinu v. Kumaraswamy*** **(59 NLR 132)**, it was submitted that the only way of proving entries in a banker's book is by either producing the original or certified copies of the entries therein as prescribed by Section 90C of the Evdence Ordinance.

Our attention was also drawn to Sections 5 and 6 of the Evidence (Special Provisions) Act No. 14 of 1995.

The rationale for the decision in ***Agostinu*** **(supra)** is that the document that was produced in that case is not a certified copy of the entries in the banker's book, but a statement prepared with the aid of those entries certified by the accountant of the bank.

As explained by Aluwihare, P.C., J. in ***Chandra Gunasekara v. People's Bank and Others*** [**S.C. Appeal (CHC) 43/2012, S.C.M. 11.10.2019 at page 21**]:

> *"The only question that arose in that case* **[*Agostinu* (supra)]** *was whether entries in the books of a banker have been proved in the manner prescribed in Section 90C of the Evidence Ordinance.*
>
> *In a brief judgment, Basnayake C.J. held that, "Section 90C does not apply to the 'statements produced'. The only way of proving entries in a banker's book is by either producing the original or certified copies of the entries therein as prescribed by Section 90C" (emphasis added).*
>
> *What was produced in Court in the case of* ***Agostinu was a bare statement, without any certification, and based on some entries which had been certified by the accountant of the bank.*** *It appears, then, that although the* ***original entries of the bank had been certified by the accountant, the transcription of those entries that was produced in Court carried no certification.*** *Basnayake C.J. correctly held that the statement was inadmissible in as much as it is a mandatory requirement under*

*Section 90C, that what is produced in Court should be certified as stipulated in Section 90A of the Evidence Ordinance."*

In ***Chandra Gunasekara*** **(ibid.)**, the certificate read as follows:

*""I, Uttumalebbe Ali Mohamed, Chief Manager-Special Assets Unit do hereby certify that the foregoing statement is a true extract of the relevant entries relating to the current account No. 205002 of Wang Lanka Apparels (Pvt) Ltd., No. 86, Sea Beach Road, Colombo 11 as appearing in the books of the People's bank and that such entries are contained in one of the ordinary books of the Bank and were made in the usual or ordinary course of business and that such books are still in the custody of the Bank.."*

Initially, the certificate was marked subject to proof. Subsequently, the author who placed the certification at the foot of the document had given evidence. According to witness it was he who had the prepared the statement of account with the aid of entries in the ledgers maintained by the Bank.

In these circumstances, Aluwihare, P.C., J. held that there is sufficient compliance with the certification prescribed in Section 90A of the Evidence Ordinance and as such the principle laid down in ***Agostinu*** **(supra)** is not applicable to that case.

Section 90A of the Evidence Ordinance as amended reads as follows:

*'certified copy' means a copy of* ***any entry in the books of a bank, together with a certificate written at the foot of such copy that it is a true copy of such entry****; that such entry is contained in one of the ordinary books of the bank, and was made in the usual and ordinary course of business; and that such book is still in the custody of the bank, such certificate being dated and subscribed by the principal accountant or manager of the bank with his name and official title and where the bankers' books consist of data stored by electronic, magnetic, optical or other means in an*

*information system**,** includes a printout of such data together with an affidavit made in accordance with section 6 of the Evidence (Special Provisions) Act, No. 14 of 1995, or such other document of certification as may be prescribed in terms of any law for the time being in force relating to the tendering of computer evidence before any court or tribunal."* (emphasis added)

The Respondent marked the statement of account as P5B. It has the following certificate:

*"We hereby certify that the foregoing is a true and accurate extract of entries maintained in the account of Snap-R coatings & Chemicals International (Pvt) Ltd in the books of Commercial Bank of Ceylon PLC maintained by the said company in the usual and ordinary course of the business of the said company which are still in the custody of the said company."*

The second witness for the Respondent, Mr. Prasanna Devaka Ferdinando, Senior Manager, Lease Recoveries is the person who prepared P5B. He testified that P5B has been verified and checked by himself. Therefore, the statement of account P5B is in accordance with the Sections 90A and 90C of the Evidence Ordinance. The probative value of this document has proved, on a balance of probability, the total outstanding due.

**Conclusion**

The Guarantee admittedly signed by the 2nd defendant, is clear and unambiguous. By its terms, he agreed to be treated as a principal debtor and authorized the Respondent to sue him in the first instance. The Respondent has validly exercised its right by initiating this action against the 2nd Defendant to claim the amount due on the Lease Agreement.

For all the foregoing reasons, I affirm the judgment delivered by the Commercial High Court dated 02.09.2013.

The appeal is dismissed.

The 2nd Defendant shall pay the Respondent as Rs. 2,00,000/= as costs of this appeal.

**JUDGE OF THE SUPREME COURT**

**P. Padman Surasena, C.J.,**

I have had the privilege of going through the Judgment of Hon. Justice Janak De Silva in draft form. Hon. Justice Janak De Silva has set out the factual matrix of this case.

As stated by Hon. Justice Janak De Silva in his Judgment under the sub-heading 'Admissibility', the final point urged by the learned Counsel for the 2nd Defendant is that the Plaintiff has failed to prove the amount of money due to it from the 2nd Defendant.

I observe that the Plaintiff has produced the document marked **P5B** in this regard. The Plaintiff has also called one Prasanna Devaka Fernando, as a witness to give evidence on its behalf. He is the senior manager lease recoveries. He has established that the contents of **P5B** were verified and checked by him. Thus, I am also of the view that **P5B** can be admitted under Sections 90A and 90C of the Evidence Ordinance.

I agree with the reasons and conclusions reached by Hon. Justice Janak De Silva with regard to the other arguments advanced by the Appellant.

I am also in agreement with the final conclusion reached by Hon. Justice Janak De Silva.

Hence, I also agree that the Judgment delivered by the Commercial High Court dated 02-09-2013 must stand affirmed. Therefore, I also agree that this appeal must be dismissed. I also agree that the 2nd Defendant shall pay the Plaintiff Rs. 200,000 (Rupees Two Hundred Thousand) as costs of this action.

**CHIEF JUSTICE**

**Arjuna Obeyesekera, J.**

I have had the benefit of reading the draft judgment of Hon. Justice Janak De Silva and the opinion expressed by His Lordship, the Chief Justice.

I am in agreement with the opinion expressed by Justice De Silva on the three grounds urged by the learned counsel for the 2nd Defendant.

I am also of the view that the document P5B is admissible under Section 90A and 90C of the Evidence Ordinance.

**JUDGE OF THE SUPREME COURT**