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

In the matter of an application for special leave to appeal under and in terms of Section 02 of the High Court of the Provinces (Special Provisions) Act No. 10 of 1996 and/or Chapter LVIII of the Civil Procedure Code.

SC Case No.
SC/CHC/APPEAL/14/2015
Case No. HC CIVIL 249/2007 MR

Hatton National Bank Limited
having its registered office presently at No. 479, T.B. Jaya Mawatha Colombo 10 and formerly at No. 481, T.B Jaya Mawatha, Colombo 10 and having a branch office at No. 71, Havelock Road, Colombo 05.

Plaintiff

Vs.

1. TMI Embroidery Solutions (Private) Limited.
   No. 276/1, Kadawatha Road,
   Dehiwala.

2. Madurangi Kosali De Silva Gee,
   No.19/11, Alothia Road,

Mirihana, Nugegoda.

3. Surendran Periyanagam,
   No.147-2/2, Muhandiram Road,
   Colombo 03.

Defendants

AND NOW BETWEEN

Surendran Periyanagam,
No.147-2/2, Muhandiram Road,
Colombo 03.

3rd Defendant-Appellant

Vs.

Hatton National Bank Limited
having its registered office presently at
No. 479, T.B. Jaya Mawatha Colombo 10
and formerly at No. 481, T.B Jaya
Mawatha, Colombo 10 and having a
branch office at No. 71, Havelock Road,
Colombo 05.

Plaintiff-Respondent

1. TMI Embroidery Solutions (Private)
   Limited.

No. 276/1, Kadawatha Road,
Dehiwala.

2. Madurangi Kosali De Silva Gee,
No.19/11, Alothia Road,
Mirihana, Nugegoda.

1st and 2nd Defendants-Respondents

Before : Kumudini Wickremasinghe, J.
Janak De Silva, J.
Menaka Wijesundera, J.

Counsel : Charaka Jayaratne with Ms. Nethmi Silva instructed by Ms. H. Punnya Pathmamali for the 3rd Defendant-Appellant.
Palitha Kumarasinghe, PC, with Chinthaka Mendis instructed by T. D. Ediriweera for the Plaintiff-Respondent.

Written Submissions : Written submissions on behalf of Plaintiff-Respondent on 2nd of June, 2022.
Written submissions on behalf of the 3rd Defendant-Appellant on 2nd of June, 2022.
Latest Written submissions on behalf of the Plaintiff-Respondent on 15th day of September, 2025.
Latest Written submissions on behalf of the 3rd Defendant- Appellant on 15th day of September, 2025.

Argued on : 25.08.2025

Decided on : 16.01.2026

MENAKA WIJESUNDERA J.

The instant appeal has been filed to set aside the judgment dated 10.10.2014 of the High Court of the Western Province exercising Civil jurisdiction.

The Plaintiff-Respondent (Hereinafter referred to as the "Respondent bank") filed HC-Civil-249-2007-MR on 25.07.2007 and pleaded for a judgment against the Defendant-Appellant (Hereinafter referred to as the "Appellant") along with the 1st Defendant-Respondent (Hereinafter referred to as the "Defendant-company") and the 2nd Defendant-Respondent (Hereinafter referred to as the "2nd Defendant") for a sum of Rs 9,569,656.73 along with legal interest from the date of 08.05.2007.

The appellant had been employed at the 1st defendant-company in the capacity of a manager and the 2nd defendant had been the wife of a director in the same company.

It is alleged by the appellant that, while serving in the 1st defendant-company, he had to sign in various agreements on behalf of the company and the lease agreement pertaining to the instant case also which had been marked as P2, he had signed as a guarantor along with the 2nd defendant.

While the recovery action had been pending, which had been filed by the respondent in 2007, the 1st defendant-company had been subjected to a winding up proceeding by the no. 11-2008 filed in the year 2008.

The respondent bank had intervened in the said action in the capacity of a creditor. But eventually the said proceedings had been settled and the learned High Court Judge in 2008, December had failed to include the claim of the respondent bank and had ordered that the said claim be pursued in HC-Civil 249-2007, which had been instituted prior to the winding up action. The respondent bank had led evidence in the said case and the evidence of the manager, of the Havelock City branch, of the respondent bank had been led and he had been subjected to cross-examination by the 1st defendant-company.

When the appellant's case was proceeding, the appellant had given evidence but he had concluded his case without marking any documents.

According to the lease agreement marked as P2, the appellant, had signed as a guarantor in which he had agreed to perform all the obligations of the 1st defendant-company in the event there was a default payment.

The respondent had alleged that the 1st defendant company had defaulted, after obtaining possession of the vehicle, which had been the subject matter of the lease agreement.

As the 1st defendant-company had defaulted the payment of the installments, the bank had written to the defendants, including the appellant, that the payment should be accelerated on 15th August 2006, but as there had been no response the lease agreement had been terminated by letter dated 04.09.2006 marked and produced as P7.

The 1st defendant-company had failed to hand over the leased vehicle and the respondent bank had seized the vehicle in question and had then sold the vehicle for a sum of Rs. 5.5 million in the year 2007.

The respondent bank had sent a letter of demand to the appellant and the 1st and the 2nd defendants on 8th of May, 2007, which had been marked and produced as P10.

All the above material had been led at the trial and the appellant had failed to challenge the same and has neither produced any documentary evidence challenging the same.

The learned High Court Judge had held against the appellant and before this Court, he had claimed that the,

1) The findings of the trial judge are erroneous for the reason that when winding up proceedings are initiated all other proceeding must cease,
2) The statement of account marked as P8 is erroneous and the trial judge had based his findings on the same,
3) The respondent had recovered all monies lent on the lease agreement and the respondent was engaged in unjust enrichment.

But the respondent bank has claimed and the trial judge also had observed, that the appellant in fact had not been able to show any flaw in the statement of accounts and neither has he been able to produce any oral or documentary evidence to that effect.

The main allegation of the appellant is the statement of accounts marked and produced as P8, which he claims is not correct and that even the learned trial judge had observed so.

But if one may go through P8, the respondent bank had not indicted the deposit which the appellant has claimed the respondent bank had not added, but the learned trial judge in his conclusion has taken steps to deduct the same from the total amount due.

Therefore, it cannot be concluded that the findings of the trial judge were erroneous because he had been fully aware of the contents of P8 and in fact, it is the appellant, who had not successfully challenged the evidence of the respondent bank, as observed by the trial judge.

The second argument by the appellant being that all other proceedings should stop once winding up proceedings are instituted. It has to be noted that initially the recovery action had been filed by the respondent bank in 2007 and once that was proceeding, the winding up action has been filed and at that point, the recovery had been laid by and the winding up action had proceeded. However, it had been settled and the said order had been delivered in 2008 and the trial judge had not included the claim of the respondent bank.

However, the learned High Court Judge had made a consent order on 01.12.2008 that the bank could pursue their claim in the recovery action, which they had done.

Section 274 of Companies Act No. 07 of 2007 states that,

> At any time after the presentation of a winding-up petition, and before a winding-up order has been made, the company or any creditor or contributory may-
>
> (a) where any action or proceeding against the company is pending in any court in Sri Lanka, make an application to the court in which such action or proceeding is pending for a stay of proceedings therein; and
>
> (b) where any other action or proceeding is pending against the company, make an application to the court having jurisdiction to wind up the company, to restrain further proceedings in such action or proceeding, and the court to which application is so made may, as the case may be, stay or restrain the proceedings accordingly on such terms as it thinks fit.

The High Court order made on 01.12.2008 allowed this action to be proved. In any event, the winding up proceedings ended on 01.12.2008 with the entering of decree in accordance with the settlement.

Hence, I see no violation of any provision of the legal provisions laid down, under Section 274 of Companies Act No. 07 of 2007.

However, it is very clear on documents that the appellant had signed as a guarantor to the lease agreement marked as P2 and had undertaken to fulfil all obligations of the defendant-company in the event of any violation.

Therefore, the trial judge had concluded that the respondent bank had proved on a balance of probability that the monies due on the lease agreement entered into in the instant case had never been recovered by the respondent bank. Hence, I see no compelling reason to set aside the judgement of the trial judge.

Hence, I affirm the judgment of the learned trial judge and dismiss the instant appeal.

JUDGE OF THE SUPREME COURT

Kumudini Wickremasinghe, J.
I agree.

JUDGE OF THE SUPREME COURT

Janak De Silva, J.
I agree.

JUDGE OF THE SUPREME COURT