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

In the matter of an Application and/or Appeal from the Judgement dated the 03rd September, 2019 of the Learned Judges of the Provincial High Court of Civil Appeal of the Central Province holden at Kandy made in Case No. CP/HCCA/37/2019 (F.A.) under and in terms of Article 127 of the Constitution read together with Section 5C of the High Court of the Provinces (Special Provisions) Act No 19 of 1990 as amended by High Court of the Provinces (Special Provinces) (Amendment) Act, No 54 of 2006.

SC Case No: SC/Appeal/48/2020

SC HCCA Case No:
SS/HCCA/LA/404/2019

Provincial High Court of Civil Appeal of the Central Province (Holden at Kandy)
Appeal No: CP/HCCA/37/2017(F.A.)

District Court of Matale Case No:
MR/9824/11

Central Finance Co. PLC
No. 84, Raja Vidiya,
Kandy

PLAINTIFF

Vs.

1. Basnayake Appuhamilage Belin Tissera
   "Niwanthika" Paranagama,
   Pallepola.

2. Basnayake Appuhamilage Justin
   Tissera
   Ehelepola,
   Pallepola.

3. Senanayake Mudiyanselage Priyantha
   Sisira Kumara Senanayake,
   Ehelepola, Nilawwa
   Pallepola.

DEFENDANTS

And
Central Finance Co. PLC.
No. 84, Raja Vidiya,
Kandy.

PLAINTIFF-APPELLANT

Vs.

1. Basnayake Appuhamilage Belin
   Tissera
   "Niwanthika" Paranagama,
   Pallepola.

2. Basnayake Appuhamilage Justin
   Tissera
   Ehelepola,
   Pallepola.

3. Senanayake Mudiyanselage
Priyantha Sisira Kumara
Senanayake,
Ehelepola, Nilawwa
Pallepola.

DEFENDANTS-RESPONDENTS

AND NOW BETWEEN

Central Finance Co. PLC.
No. 84, Raja Vidiya,
Kandy.

PLAINTIFF-APPELLANT-APPELLANT

Vs.

1. Basnayake Appuhamilage Belin
Tissera
"Niwanthika" Paranagama,
Pallepola.

2. Basnayake Appuhamilage Justin
Tissera
Ehelepola,
Pallepola.

3. Senanayake Mudiyanselage
Priyantha Sisira Kumara
Senanayake,

Ehelepola, Nilawwa
Pallepola. (Deceased)

3A. Basnayake Appuhamilage Belin Tissera
Paranagama, Pallepola.
(Substituted Defendant-Respondent-Respondent)

DEFENDANTS-RESPONDENTS-RESPONDENTS

Before: **Justice A.L. Shiran Gooneratne**
Justice Mahinda Samayawardhena
Justice Sobhitha Rajakaruna

Counsel: Harsha Amarasekera, PC with Dhammika Welagedara instructed Paul Ratnayeke Associates for the **Plaintiff-Appellant-Appellant-Appellant.**

Mohamed Muzni instructed by M.A.C Mohamed Yakoob for the **Defendant-Respondent-Respondent-Respondent.**

Argued on: 11/09/2025

Decided on: 12/11/2025

A.L. Shiran Gooneratne J.

1. Factual Background

The Plaintiff-Appellant-Appellant (hereinafter referred to as the "Plaintiff"), Central Finance Company PLC, instituted action against the Defendants-Respondents-Respondents (hereinafter referred to as the "Defendants") in the District Court of Matale by plaint dated 02/08/2011, seeking recovery of a property provided under a lease agreement No. 04/1/3/674883 dated 15/11/2006 [hereinafter known as the 'Lease Agreement'].

In their common answer dated 09/03/2012, the Defendants, comprising the Lessee and his Guarantors, denied any knowledge of a company named "Central Finance Company PLC," but admitted to having entered into the Lease Agreement, with "Central Finance Company Limited."

The Defendants further averred that a case relating to the vehicle in question had been instituted in the Magistrate's Court. They have stated that due to the Plaintiff's failure to take appropriate legal steps, the vehicle was confiscated by the State. As a result, it was argued that they should be released from any contractual obligations under the agreement with the Plaintiff and, therefore, prayed for the dismissal of the case.

1.1. Decision of the District Court.

By its judgment dated 29/03/2016, the District Court ruled in favor of the Defendants. The decision was primarily based on the issue of the Plaintiff 's legal personality.

The first two issues identified for determination on behalf of the Plaintiff were as follows:

1. Whether the Plaintiff is a legal person, as stated in the 1st and 2nd averments of the plaint?

2. Whether the Plaintiff was previously referred to as 'Central Finance Private Limited'?

In its judgment, the District Court noted that, apart from contesting the validity of the lease agreement, the Defendants had challenged the legal personality of the Plaintiff, and that the Defendants' position was that they had not entered into any agreement with the Plaintiff as named in the caption of the plaint.

The learned District Judge held that, before considering the substantive issues of the case, it was necessary to first determine whether the Plaintiff was a legal entity capable of instituting the action.

The Plaintiff's witness marked two documents, identified as P1 and P2 which were photocopies of the certificates of incorporation. These documents were marked subject to proof. However, they were allowed on the condition that the original documents would subsequently be produced in court. However, the District Judge noted that the Plaintiff failed to produce either the original or certified copies of these documents.

In documents marked P1 and P2 a seal was affixed stating "Director, Corporate Services Private Limited" with the word "Secretaries" underneath. The District Judge found that there was no evidence to establish that this company acted as the secretary of the Plaintiff. Furthermore, the Plaintiff failed to produce any evidence proving that the company referred to in the seal was, in fact, belonged to its company secretary.

1.2. Appeal to the Civil Appeal High Court and its Decision.

The Civil Appellate High Court, by its judgment dated 03.09.2019 affirmed the District Court's decision. It held that P1 and P2 were photocopies, bearing a seal from a private company described as the Plaintiff's company secretary, and not certificates issued or authenticated by a public officer in accordance with Section 76 of the Evidence Ordinance.

The Court rejected the argument that the documents could be treated as certified public documents under Section 74 and upheld the dismissal of the action.

1.3. Appeal to the Supreme Court

The Plaintiff thereafter preferred a Petition of Appeal dated 15/10/2019 to this court, against the judgment of the Civil Appellate High Court.

By the order dated 11/06/2020 this court granted leave on questions of law raised in sub paragraphs 1 and 2 of paragraph 21 of the above-mentioned petition. Accordingly, the questions of law to be addressed in this judgement are as follows:

I. Should the court have taken cognizance of documents P1 and P2 which were before court without requiring further proof?

II. Should the court have taken cognizance of the fact that the defendants have being acting and/or dealing with the Plaintiff and accepted the Plaintiff as a legal entity and are estopped in law from having and maintaining the positions taken up in the District Court.

2. Analysis

The Plaintiff, in paragraph 1 of the plaint, averred that the Plaintiff is a company incorporated under the Companies Act No. 7 of 2007, previously known as Central

Finance Company Limited, and that it possessed legal personality to maintain the present action.

In their answer, the defendants denied the Plaintiff's legal personality and raised an objection to its capacity to sue as follows:

2."පැමිණිල්ලේ 1 වන ඡේදයේ සඳහන් කරුණු පිළිනොගනිමින් කියා සිටිනුයේ එහි සඳහන් මෙම 'සෙන්ට්‍රල් ෆිනෑන්ස් කම්පනි පිඑල්සී' යනුවෙන් සඳහන් කරන සමාගමක් සම්බන්ධයෙන් මෙම විත්තිකරුවන් කිසිවක් නොදන්නා බවයි."

Then the Defendants proceeded to admit entering into an agreement with the Central Finance Company Limited as follows:

4."පැමිණිල්ලේ 3 වන ඡේදයේ සඳහන් කරුණු මෙම විත්තිකරුවන් පිළිනොගනිමින් ප්‍රතික්ෂේප කර කියා සිටින්නේ සීමාසහිත සෙන්ට්‍රල් ෆිනෑන්ස් සමාගම සමග ගිවිසුමක් අත්සන් කර ඇති බවය."

The Plaintiff marked the documents P1 to P14, several of which were accepted subject to proof by the Court. However, at the conclusion of the trial, the Defendants maintained objections only in respect of documents P1 and P2, the two certificates of incorporation, issued under the Companies Ordinance of 1938 and the Companies Act No. 7 of 2007, respectively. The Defendants contended that these documents were affixed with the seal of the Company Registrar of Central Finance PLC and not that of the Registrar of Companies, and therefore argued that the Plaintiff had failed to prove the documents according to the requirements of the Evidence Ordinance.

At this juncture, I wish to draw attention to the case of ***Multiform Chemicals Limited v. Adrian Machado*** **[SC Appeal No. 183/2011, decided on 18.07.2024]**

"What is objectionable is the practice of moving that a document be marked subject to proof without specifying the matters on which proof is required. Judges have become passive observers of such practice. This is not a healthy practice and more

often than not, leads to additional issues as in this case. Moreover, it signifies a poor grasp of the relevant evidentiary principles. A trial judge must not condone such practices. There is a duty on a trial judge to inquire from the party moving that a document be marked subject to proof, what is required to be proved in the document."

In the present case, the Defendants failed to specify any particular aspect of documents P1 and P2 that required proof. Their objection was raised without clarifying whether it pertained to the execution, contents, or authenticity of the documents. It is well settled that a party who objects to the marking of a document bears the duty of distinctly stating the grounds of such objection to allow both the opposing party and the Court to address the matter appropriately.

It should also be noted that at no stage of the proceedings was any issue raised contesting the authenticity or evidentiary value of the documents marked P1 and P2. The Defendants have not alleged that the said documents were fabricated, altered, or otherwise unreliable. Without such a challenge, this Court finds no necessity for further proof.

In ***Prasanth and Another v. Devarajan and Another*** **[2021] 2 SLR. 419 at 428,** it was held that;

"There is a practice among some lawyers to get up and say "subject to proof' whenever a document is marked in evidence by the other party. This they do as a matter of course or as a matter of routine and not with any particular objective in mind, except perhaps to prolong the trial. It is regrettable that most of the time the party who produces the document obliges to this without a murmur. If we are serious about law's delays, we must put an end to this bad practice. When a counsel routinely says, "subject to proof', the Judge must ask what he wants the other party to prove

in the document. If this simple question is asked, I am certain the objection would be withdrawn or at least the issue to be addressed would be narrowed down."

In considering this matter, it becomes necessary to examine the Companies Act No. 7 of 2007, which brought about changes to the way companies were required to describe their corporate status.

The above Act introduced a revised system of company nomenclature. Section 6(c) of the Act required all companies incorporated to revise their names in accordance with the new classification. Accordingly, every listed public company was required to include the suffix "Public Limited Company" or the abbreviation "PLC" in its name, while private limited companies were to continue using "(Private) Limited" or "(Pvt) Ltd."

Section 485 (Application of Act to existing companies) subsection 5 (b) states as follows:

5. *An existing company—*

    b. *which is a public listed company, shall be deemed to have changed its name to include the suffix "Public Limited Company" or the abbreviation "PLC".*

Further, section 487 states that:

(1) Subject to the provisions of subsection (2), the number which an existing company has been assigned by the Registrar for administrative purposes, shall be the company number of that company.

(2) Within a period of twelve months from the coming into operation of this Act, all existing companies shall apply to the Registrar to assign a new number as its company number, in a form as may be prescribed by the Registrar. The new number

so assigned shall be entered in the register and also on the fresh certificate of incorporation to be issued under the provisions of subsection (6) of section 485.

(3) Where an existing company fails to comply with the requirements imposed under subsection (2) of this section within the time specified therein, the Registrar shall cause to be published the name of such company in a daily newspaper in the Sinhala, Tamil and English Language, and where such company continues to fail to comply with those requirements.

It is the position of the Plaintiff that the difference in name between Central Finance Company Limited and Central Finance Company PLC arises only because of the introduction of the Companies Act No. 7 of 2007.

The alteration of the company's suffix from "Limited" to "PLC" occurred by operation of law and did not result in the creation of a new legal entity, nor did it extinguish or affect the company's pre-existing legal rights and obligations. In such a case, the absence of a certified copy of the incorporation certificate issued by the Registrar of Companies cannot, by itself, negate the Plaintiff's continuing existence as a duly incorporated entity.

The Defendants have taken the position that the Plaintiff cannot raise an issue of estoppel for the first time on appeal, as estoppel must be specifically pleaded and made an issue at first instance. It is correct that estoppel, being a mixed question of fact and law, must ordinarily be pleaded to enable the opposing party to meet it in evidence, and therefore, I do not find the necessity to answer the second question of law.

Nevertheless, this does not prevent the Court from exercising its equitable jurisdiction from drawing appropriate inferences from the evidence on record to prevent a party from adopting inconsistent and self-serving positions in the same matter. The Court

cannot permit conduct that amounts to approbation and reprobation within the same transaction.

As held by Lord Browne-Wilkinson in ***Express Newspapers v. News (UK) Ltd*** **[1990] 3 All ER 376**:

"There is a principle of law of general application that it is not possible to approbate and reprobate. That means you are not allowed to blow hot and cold in the attitude that you adopt. A man cannot adopt two inconsistent attitudes towards another: he must elect between them and, having elected to adopt one stance, cannot thereafter be permitted to go back and adopt an inconsistent stance.

As further held in ***Ranasinghe v. Premadharma*** **[1985] 1 SLR 63**

"The rationale of the above principle appears to be that a defendant cannot approbate and reprobate. In cases where the doctrine of approbation and reprobation applies, the person concerned has a choice of two rights, either of which he is at liberty to adopt, but not both. Where the doctrine does apply, if the person to whom the choice belongs irrevocably and with full knowledge accepts the one he cannot afterwards assert the other; he cannot affirm and disaffirm. Hence a defendant who denies tenancy cannot consistently claim the benefit of the tenancy which the Rent Act provides."

In the present case, from the evidence before this Court it is clear that the Defendants have derived a significant benefit from their dealings with the Central Finance Company Limited as a result of which the first Defendant obtained the possession of the leased vehicle.

It is important to note that at the conclusion of the trial, the Defendants only objected to the documents marked P1 and P2, which are the certificates of incorporation. No

objection was taken regarding the other documents produced by the Plaintiff, several of which were issued under the official letterhead of Central Finance Company PLC. Further, the Defendants have received letters of demand marked P7 to P9 from the Plaintiff. These were replied to by the Defendants' Attorney by letter dated 19/02/2011. The said replies were addressed to Central Finance Company PLC, and they denied liability on the ground that the vehicle had been confiscated by the State due to the alleged failure of the Plaintiff to take appropriate legal steps. The replies do not deny the existence of the lease agreement between the parties. On the contrary, it expressly refers to the same vehicle number and lease agreement number, and the explanation given for non-payment confirms that the Defendants continued to recognize the Plaintiff's capacity as lessor.

The letter of reply states as follows:

"මාගේ ගිවිසුමට අදාළ අංක 43-8251 රථය දැනට ඔබ ආයතනය දැනුවත්ව ඔබගේ ආයතනයේ නිලධාරීන් සාක්ෂි දීමේ හා ලේඛන ඉදිරිපත් කිරීමේ දුර්වලතා හේතුවෙන්, එනම් මාගේ සේවාදායකයා විසින් අදාළ ගවපට්ටි පවත්වා ගෙන නොගිය බවට අදාළ ලේඛන හා එය පවත්වා ගෙන ගිය පුද්ගලයා විසින් ඉදිරිපත් කරන ලද ලේඛන ඔබ ආයතනයේ නිලධාරීන්ට බාර දී තිබියදීත් ඒවා සම්බන්දව නිවැරදි සාක්ෂි ගරු අධිකරණයට ලබා නොදීම හා..."

At all relevant times, the Defendants have accepted its corporate identity in practice. Therefore, it appears that it was only after the confiscation of the vehicle by order of the Magistrate's Court, when the contractual relationship ceased to serve any benefit, that the Defendants sought to repudiate the Plaintiff's legal status. In other words, the Defendants, having benefited from the Plaintiff's recognized legal existence, now seek to deny that very existence.

By entering into the lease agreement and accepting its benefits, the Defendants unequivocally recognized and accepted the Plaintiff's corporate identity. Having done

so, their subsequent attempt to deny that same identity upon a mere change of name amounts to reprobation of the very relationship they once affirmed. Such conduct is impermissible in equity.

Although the Defendants have emphasized the absence of a certified copy issued by the Registrar of Companies, that omission, when assessed against the surrounding circumstances, cannot reasonably be regarded as sufficient to deny the Plaintiff's continued existence as a duly incorporated company. The consistent course of dealings between the parties, the payments made under the lease, and the correspondence exchanged all point to the recognition of the Plaintiff's corporate identity.

I must also state that the Defendants cannot be said to have suffered any prejudice by the court taking P1 and P2 documents into consideration. As explained above, through their own correspondence, the Defendants have already recognized and accepted the Plaintiff's legal personality. Having dealt with the Plaintiff in such a capacity, they cannot now claim to be disadvantaged by the acknowledgement of the same fact through documentary evidence. Hence, no prejudice could arise from their inclusion in evidence.

In determining whether a fact is proved, the Court must look into the credibility of the evidence as a whole rather than adhere to strict formalities. As observed in ***Shepherd v The Queen* (1990) 170 CLR 573 at 580**, "*the probative force of a mass of evidence may be cumulative, making it pointless to consider the degree of probability of each item of evidence separately.*" The Court is therefore entitled to consider the entire factual matrix in deciding whether the Defendants' denial of the Plaintiff's legal personality can be sustained.

For the foregoing reasons, the first question of law is answered in the affirmative, and therefore, the second question of law does not arise for consideration.

The Court is of the view that the application made by the Defendant-Respondent-Respondent is devoid of any merit and is a frivolous attempt to protract proceedings. The Respondent has misused the time and resources of three courts. Such conduct cannot be countenanced. Accordingly, the Defendant–Respondent–Respondent is directed to pay costs in the sum of Rupees Five Hundred Thousand (Rs. 500,000/-).

The appeal is accordingly allowed.

Judge of the Supreme Court

Mahinda Samayawardhena, J.

I agree

Judge of the Supreme Court

Sobhitha Rajakaruna, J.

I agree

Judge of the Supreme Court