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

In the matter of an Appeal in terms of Sections 5(1) & 6 of the High Court of the Provinces (Special Provisions) Act No. 10 of 1996 read with Chapter LVIII of the Civil Procedure Code and Article 127 & 128(4) of the Constitution against the Judgment dated 12th October 2018 of the High Court of the Western Province holden in Colombo exercising Civil jurisdiction.

Commercial Leasing and Finance PLC,
(former known and named as Commercial Leasing and Finance Limited)
No. 68, Bauddhaloka Mawatha,
Colombo 04.
(New number of company - PQ 131/PB/PQ)

Plaintiff

SC (CHC) Appeal No: 06/2019
Commercial High Court
Case No: HC/Civil/28/2013/MR

Vs.

1. Herath Mudiyanselage Indika Sarathchandra Herath,
No. 101/B, Palathuru Wella,
Serankada,
Padiyathalawa.

2. Ismailkhan Seiyadu Muhammathkhan,
   No. 433, Randenigala Road,
   Weheraganthota.

3. Hitisekara Mudiyanselage Wimalasiri,
   No. 201, Opposite School,
   Padiyathalawa.

Defendants

AND NOW BETWEEN

3. Hitisekara Mudiyanselage Wimalasiri,
   No. 201, Opposite School,
   Padiyathalawa.

3rd Defendant-Appellant

AND NOW

Commercial Leasing and Finance PLC,
(former known and named as Commercial Leasing and Finance Limited)
No. 68, Bauddhaloka Mawatha,
Colombo 04.
(New number of company - PQ 131/PB/PQ)

And presently,

LOLC Finance PLC,
(Commercial Leasing and Finance PLC after having been amalgamated on 31st March 2022 with LOLC Finance PLC)
No. 100/1,

Sri Jayawardenapura Mawatha,
Rajagiriya.
(New number of company - PB244PQ)

Plaintiff-Respondent

1. Herath Mudiyanselage Indika
   Sarathchandra Herath,
   No. 101/B, Palathuru Wella,
   Serankada,
   Padiyathalawa.

2. Ismailkhan Seiyadu Muhammathkhan,
   No. 433, Randenigala Road,
   Weheraganthota.

Defendants-Respondents

Before: **Justice A.L. Shiran Gooneratne**
Justice Janak De Silva
Justice Sampath B. Abayakoon

Counsel: Widura Ranawaka with Bhathiya Dassanayake instructed by R.J. Upali De Almeida for the **3rd Defendant-Appellant.**

Shanaka De Livera with Ruwani Chandrasiri instructed by Sithumini Wijayarathna for the **Plaintiff-Respondent**.

Argued on: 29/07/2025

Decided on: 26/09/2025

A.L. Shiran Gooneratne J.

Factual Background

[1] By Plaint dated 01/02/2013 the Plaintiff-Respondent filed this action against the 1st, 2nd and 3rd Defendants, (presently the 3rd Defendant-Appellant), and sought to recover a sum of Rs. 6,701,254/- together with interest on a Lease Agreement, granted to the 1st Defendant, secured by a Guarantee and indemnity of Lease Agreement, by the 2nd Defendant and the 3rd Defendant-Appellant, claiming jointly and severally the said sum and the accrued interest.

[2] In the Plaint, the Plaintiff stated that the Plaintiff and the 1st Defendant entered into a Lease Agreement bearing No. C1-09-0011EB dated 22/09/2011, P2. By the said agreement, the Plaintiff leased "the property" (1 Nissan Navara Double Cab) more fully described in the schedule to the Agreement.

[3] The 1st Defendant entered into the aforesaid lease agreement, and the 2nd and 3rd Defendants by Guarantee and Indemnity of Lease Agreement No. C1-09-0011 jointly and severally undertook to indemnify the Plaintiff against any failure by the 1st Defendant to perform his obligations. When the 1st Defendant failed and neglected to pay to the Plaintiff the rentals due, the Plaintiff terminated the agreement and demanded "the property" and the sums due and owing to the Plaintiff from the 1st, 2nd and 3rd Defendants.

[4] The Plaintiff instituted action against the 1st, 2nd and 3rd Defendants, claiming relief jointly and severally on the lease agreement marked 'P2' and the guarantee bond marked 'P8'.

[5] At the conclusion of the trial, the learned Judge of the Commercial High Court by Judgment dated 12/10/2018*, ex parte* against the 1st and 2nd Defendants and inter parte against the 3rd Defendant-Appellant, decided in favor of the Plaintiff.

[6] The 3rd Defendant-Appellant by Petition dated 05/12/2018 is before this Court to set aside the Judgment dated 12/10/2018, delivered by the Commercial High Court.

[7] On the date of the hearing, the 3rd Defendant-Appellant limited his submissions to the following questions of law.

1. Whether the guarantee bond (P8) was a printed form that had several blanks that were filled later with typewritten details.
2. The lease agreement was neither shown or a Sinhala translation was given to the Appellant.
3. Whether the lease agreement (P2) was lawfully terminated.

1. Validity of the Guarantee Bond (P8)

1.1 Whether the enforceability of a guarantee is affected by the addition of typewritten particulars subsequent to the guarantor's signature.

[8] The Appellant challenges the validity of the Guarantee Bond (P8) based on several procedural infirmities which should have precluded the trial court from granting relief against him. His principal argument is that, at the time of signing, the bond contained only the printed text and the typewritten details were inserted later.

[9] The Appellant in his evidence has attempted to point out to the portions that were subsequently inserted. While the precise portions of evidence were not marked for the benefit of the Court, a careful reading of his evidence directs to

such subsequent insertions to be the date of execution of the guarantee bond, the reference number of the lease agreement, the personal details of the guarantors (entered below their respective signatures), and the name and address of the lessee.

[10] However, it is crucial to note that none of these particulars were pleaded by the Appellant to be false or to amount to a misrepresentation.

[11] In support of his claim, the Appellant relied on the testimony of the Plaintiff's witness, Belan Daminda who conceded that the blank spaces in the guarantee agreement were completed after the 3rd Defendant had placed his signature.

[12] The 3rd Defendant-Appellant, in his testimony, stated that at the time he signed the guarantee bond, the document contained only the printed part and alleged that the typewritten part was inserted later. He takes up the position that, by leaving blank spaces in the guarantee bond to be filled later, the lender has made a fundamental mistake which makes the agreement void.

[13] However, it is noted that any subsequent insertion *ipso facto* would not render a contract unenforceable, but rather enforceability would be determined by the nature of the alteration and the knowledge or consent of the executing party. A contract can be vitiated where the insertion constitutes a material alteration that fundamentally changes the obligations undertaken, or where the signature was obtained by fraud or misrepresentation.

[14] In the present case, it is not disputed that the Appellant executed the guarantee as surety of the 1st Defendant under the lease agreement. The nature of that obligation remained constant, irrespective of the fact that the particulars were subsequently filled. The Appellant is a literate businessman, and has not alleged that his signature was obtained by fraud or duress by the Respondent. His evidence was that he signed the printed form knowing it to be a guarantee.

Furthermore, the lessee was known to the Appellant, and he has admitted that he is related to him.

[15] The law has long recognized that a guarantee or a similar instrument is vitiated by alterations introduced after execution without the consent of the parties. As held in ***Pigot's Case (1614)***[1] it was established that such post-execution changes could render an instrument void, the rationale being that no party should be held to obligations materially different from those they agreed to when affixing their signature and seal. In its early application, the rule was interpreted narrowly and applied strictly.

[16] Over time the courts have refined the principle to reflect commercial realities. Recent authorities such as ***Raiffeisen Zentralbank Österreich AG vs. Crossseas Shipping Ltd***[2], has explained that only alterations which are "material" in nature will void a guarantee as against a non-assenting party. As Potter LJ observed, material alterations fall broadly into two categories:

I. those which change the very nature or character of the instrument, and

II. those which are potentially prejudicial to the legal rights or obligations of the guarantor.

An alteration falling within either of these points will discharge a guarantor who did not assent to it.

[17] In the above case, the guarantor, argued that a guarantee had been invalidated because, after he had signed it, the bank inserted into clause 37 the name and address of a company (Crossseas Shipping Ltd) as his agent for service of process in England. The Court accepted that the insertion was made without his

[1] (1614) 11 Co Rep 26b, 77 ER 1177.
[2] [2000] 1 WLR 1135

knowledge or consent but held that the alteration was not material because it was procedural in nature and did not alter the fundamental obligations under the guarantee.

[18] As Cresswell J explained:

"The contract of guarantee (and indemnity) with cl. 37 completed would not have operated differently from the guarantee in its original form (with cl. 37 containing blanks). The legal incidence of the contract of guarantee (and indemnity) was not altered by the insertions into cl. 37. The business effect of the contract of guarantee (and indemnity), if used for any ordinary business purpose for which a contract of guarantee (and indemnity) is used, was not altered by the insertion into cl. 37. The alteration was not, in the context of this guarantee (and indemnity), material."

[19] Similarly, in the present case, the typewritten particulars inserted into the guarantee bond after signature do not fall within either category of "material alteration." They did not change the nature or character of the instrument. The bond remained what it was at execution, a guarantee by the Appellant to answer the obligations of the 1st Defendant under the lease. No new debtor was substituted, no new creditor was introduced, and the scope of the obligation was not changed, nor were these insertions prejudicial to the guarantor's legal rights or obligations. The typewritten parts had only specified procedural or administrative details necessary for the operation of the bond.

[20] For the forgoing reasons, the alterations complained of do not constitute "material" alterations. The Appellant's fundamental obligation remained the same, and his rights as guarantor were not diminished. The guarantee bond therefore remains valid and enforceable.

1.2 The lease agreement was neither shown or a Sinhala translation was given to the Appellant.

[21] The learned Counsel for the Appellant further contended that before the guarantors undertake to indemnify the lessor, it is required that a copy of the lease agreement be made available to the guarantors to satisfy themselves regarding the total sum and the interest to be indemnified, moreso due to the 1st recital to the guarantee bond which obligates the guarantors to ensure *"punctual payment by the Lessee of all rentals, interest, the Stipulated Loss value referred to in Schedule of Lease Agreement and all other sums whatso ever due under the Lease Agreement and the performance of all the Lessee's obligations thereunder ---"*

[22] In support of this claim, the Appellant relied on the testimony of the Plaintiff's witness, Belan Daminda, who admitted that the guarantors were not shown the lease agreement or its schedules at the time of signing. He testified to a general procedural practice where the guarantors are verbally informed of the sum indemnified by the guarantors in the lease agreement. The witness stated that in this instance, the guarantors did not have the opportunity to go through the lease agreement or the schedules before signing the document, however, the responsibilities and the conditions of the guarantors were explained.

[23] His testimony included the following:

Cross examination dated: 20/10/2017.

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ප්‍ර: මහත්මයා මේ 'පැ8' ලේඛනයේ යම් ස්ථානයක තිබෙනවාද 1 වන විත්තිකරුට ලබා දුන්න මුළු මුදල සම්බන්ධයෙන් කල්බදු ගිවිසුමේ?

උ: මුදලක් සටහන් කරලා නැහැ ස්වාමීනී.

ප්‍ර: මහත්මයා 'පැ8' ලේඛනයේ කොහේ හරි සඳහන් වෙනවද අදාළ කල්බදු ගිවිසුම සම්බන්ධයෙන් 1 වන විත්තිකරු ගෙවිය යුතු වාරිකය සම්බන්ධව?

උ: ඒක මං හරියටම දන්නේ නැහැ.

ප්‍ර: එතකොට මහත්මයා අත්සන් කරන්න පැමිණි අවස්ථාවේදී තමුන් මොනවද කියා සිටියේ 3 වන විත්තිකරුට?

උ: 3 වන විත්තිකරු ආවට පස්සේ අයිඩෙන්ටි කාඩ් එක වෙක් කලා. වෙක් කරලා අයිඩෙන්ටි කාඩ් නම්බර් එක බලලා එයාගේ අයිඩෙන්ටි කාඩ් නම්බරය තියෙන තැන නම තියෙන තැන අත්සන් කරන්න කියලා තමයි කිව්වේ.

ප්‍ර: වෙන යමක් කියා සිටියේ නැද්ද 3 වන විත්තිකරුට?

උ: කියා සිටියා. දැන් මේකේ ඇග්‍රිමන්ට් එකක් අත්සන් කරද්දි අපි කියනවා, සාමාන්‍යයෙන් මේකම කියන්නේ නැහැ අපි සරලව මේකේ අත්සන් කරන් තියෙන වගකීම ගැන පොඩි දැනුම්දීමක් කරනවා. ඒ කියන්නේ ඇග්‍රිමන්ට් එකක් අත්සන් කලහම ඒ කියන්නේ අයදුම්කරුට ගෙවන්න බැරි වුනොත් එහෙම අයදුම්කරුත් ඇපකරුවන් දෙන්නටම නඩු දාන්න පුළුවන්. අයදුම්කරුට ඊළඟට එයා පෙනී නොසිටියොත් අපට පළවෙනි අවස්ථාවේම ඇපකරුවන් දෙදෙනාට නඩු දාන්න පුළුවන් කියලා පැහැදිලි කරලා තියෙනවා.

ප්‍ර: එපමණද 3 වන විත්තිකරුට තමුන් පැහැදිලි කළේ එදින?

උ: ඔව් එපමණයි පැහැදිලි කලේ.

ප්‍ර: යම් අවස්ථාවකදී කල්බදු ගිවිසුම පෙන්නා සිටියෙත් නැහැ?

උ: නැහැ.

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ප්‍ර: මහත්මයා ඇපකරුවන්ට විරුද්ධව නඩු දාන්න ඇපකරුවන් දැන ගෙන සිටිය යුතුයි නේද අත්සන් කරන අවස්ථාවේදී මේ කල්බදු ගිවිසුමෙන් ලබා දුන්න මුදල සම්බන්ධව?

උ: ඒක අපි අයදුම් පත්‍රය අත්සන් කරන අවස්ථාවේ ගන්න මුදලයි එයා කොච්චර කාලෙකටද ගන්නෙ කියලා ඒ සියලු දේවල් පැහැදිලි කරලා දීලා තමයි අයදුම් පත්‍රය අත්සන් කරන්නේ.

ප්‍ර: කාටද ඒවා පැහැදිලි කළේ?

උ: ඇපකරුවන්ටයි, අයදුම්කරුටයි තුන්දෙනාටම පැහැදිලි කරනවා අයදුම් පත්‍රය අත්සන් කරන කොට.

[24] The Appellant further contends that his consent as guarantor was vitiated because the lease agreement was not shown to him at the time of execution and because he was not provided with a Sinhala translation of the agreement, which was in English. He claims that being unable to read English, he could not fully appreciate the obligations he was undertaking.

[25] Belan, when further questioned about the rubber stamp, seen on top of the document, confirming that the guarantors had received a Sinhala translation of the agreement, failed to respond.

ප්‍ර: අයදුම් පත්‍රය ගැන මං ඇහුවෙ නැහැ මහත්මයා. 'පැ8' ලේඛනයේ තියෙන මුද්‍රාව බලන්න මහත්මයා. ඒ මුද්‍රාව තමුන්ට කියවන්න පුළුවන්ද මහත්මයා ගරු අධිකරණයට ඇහෙන්න?

උ: මෙම කුලී සින්නක්කර/කල්බදු ඇපකරු ගිවිසුම සිංහල පරිවර්තන පිටපතක් ලැබුණු බවට සහතික කරනවා.

ප්‍ර: එතකොට මහත්මයා මොන ලේඛනයේද සිංහල පිටපත් පරිවර්තනයක් ලබා දුන්නේ?

උ: මේ 'පැ8' කියන එකේ තමයි ඇපකරුවන්ට දෙන්නේ. අයදුම්කරුට දෙන්නේ එයා අත්සන් කරන ලීස් අග්‍රිමෙන්ට් එකේ පිටපතක්.

ප්‍ර: මහත්මයා නේද මේ ගිවිසුමට අත්සන් ලබා ගත්තේ?

උ: ඔව්.

ප්‍ර: මහත්මයාට හිතුනෙ නැද්ද මේ අදාල නැති වචන අවම වශයෙන් පෑනකින් කපා හැරිය යුතුයි කියලා?

උ: (පිළිතුරක් නැත)

[26] However, the position that no copy of the lease agreement was provided to the guarantors fails to consider the essential fact that the Appellant was at all times aware that he was signing as a guarantor for the 1st Defendant's obligations, and that his liability would arise in the event of default.

[27] It remains incumbent upon the creditor to ensure that the guarantor is made aware of the essential nature and extent of the obligation undertaken. In the ordinary course of banking practice, this would include making clear the amount guaranteed. In the present case, the evidence of Belan Daminda is that the guarantors were verbally informed of the liability under the lease agreement before signing. For that reason, the Court is satisfied that the Appellant was aware of the nature of his obligation, notwithstanding that the lease agreement itself was not shown to him.

[28] The Appellant further sought to rely on the alleged absence of a Sinhala translation. The guarantee bond bears a rubber stamp certifying receipt of "translations of the lease agreement/guarantee bond," above which the Appellant has signed. He now contends that no translation of the lease agreement was in fact provided. The Respondent's witness clarified that the practice is to furnish guarantors with a translation of the guarantee bond which defines their obligations and not of the Lease Agreement. The reference to both instruments on the rubber stamp appears to be a standard form in which the inapplicable words were not struck out. Importantly, the Appellant has never asserted that he did not receive a translation of the guarantee bond itself.

[29] As explained above, the law does not require that the lease agreement be translated for the guarantor, it is sufficient that he understands his responsibilities under the bond. On the evidence, that requirement was met.

1.3 Analysis

[30] The 3rd Defendant-Appellant takes up the position that he is not liable to pay the demanded sum since the guarantee bond was incomplete at the time he placed his signature. The Appellant also contends that due to his inability to read and understand the English language, he required a Sinhala translation of the Agreement, which was not given to him. Under cross-examination, the 3rd Defendant-Appellant refers to certain numbers in document P8, which he claims include the typewritten parts.

[31] The Respondent was obligated to explain to the guarantors the nature of the transaction and the liability imposed on them in the event the principal debtor defaults. It is evident that the 3rd Defendant-Appellant, as guarantor, was aware of the amount he was liable to pay to the lessor in the event of any default of payment of the obligated sum.

[32] The Judge of the Commercial High Court, in the overall analysis of the evidence, concluded that the 3rd Defendant-Appellant was aware that he signed P8 as a guarantor to the 1st Defendant, that the 1st Defendant had defaulted on payment, that failure or neglect to pay the sum guaranteed or the return of "the property", the liability was on the guarantor to pay its value on demand. The trial Judge observed that, although the 3rd Defendant-Appellant claims to have signed a document which had blank spaces, the Appellant was admittedly a literate businessman owning a trading business and was not under any incapacity or disability, such as blindness or deafness, to be misguided.

[33] Although the Appellant did not expressly plead the defence of *non est factum*, the learned trial Judge in the above observation appears to have treated the Appellant's claim to be similar to the defence *"non est factum*" meaning a plea denying execution of the instrument sued on or signing a document by a person without knowing its contents. I am of the view that this was an appropriate application of the principle by the learned High Court Judge. This plea is primarily available to persons who are illiterate, sick, or incapacitated. It can also extend to an executor of a document presumed to have read and understood the document before its execution; however, by proving that it was not the document the executor intended to sign, or that it was obtained by fraud or force.

[34] Regarding the usage of this principle, Paget on Law of banking states as follows[3]:

"The doctrine is now rarely invoked successfully, and negligence in failing to ascertain the meaning of the document can prevent its application. So in Saunders v Anglia Building Society, an elderly widow failed to read a document which she executed in the belief that it was a deed of gift of a property to her nephew, when in fact it was an assignment to a third party. The House of Lords rejected a plea of non est factum in a dispute between the claimant widow and a lender who had innocently lent money on the strength of the document. The claimant had known that she was signing a legal document, and although she was mistaken as to its terms, she had not taken the trouble to read it so as to ascertain even its general effect."

[3] *Paget's Law of Banking* (15th edn, LexisNexis Butterworths 2018) 376, para 13.27.

[35] Prof. C.G. Weeramantry in 'Law of Contracts' states as follows:

"A person signing a document is held strictly to its terms on the basis that he does so at his peril. This is known as the caveat subscriptor rule, and in the operation of this rule the principles relating to justus error come into play. This rule must not however be viewed as a special head of exemption from the ordinary rules relating to mistake. Where a person deliberately affixes his signature to a written contract, the court would naturally be more hesitant in permitting him to plead that he did so in consequence of a mistake as to the nature or substance of the transaction, and to this extent would be less prone to view the error as justus."[4]

[36] I also wish to echo the opinion of A.H.M.D. Nawaz, J, in the judgement of ***Nimalasena vs. L.B. Finance Company Ltd and others***[5] where he held that; *"I also find that the 2nd defendant appellant was a technician and a tradesman on his own admission. The witness came through as a man of the world who could not have been so naive as to be unaware of the implications of placing one's signature to a guarantee. If he knew that the act of signing a guarantee would spell for him disastrous consequences of monetary burdens, he should have exhibited prudence. So his assertion that he only signed as a witness and not as a guarantor does not inspire confidence in this Court. The necessity to exercise prudence was emphasized by the House of Lords in the context of the plea of non est factum."*

[37] The guarantors have not pleaded fraud or force when obtaining signatures, or that the signatures were placed unintentionally or without a complete understanding of the implications. The nature and the contents of the

[4] Law of Contracts 1999 reprint, vol. 1 at page 300
[5] C.A. Case No. 831/2000 (F) decided on 06/02/2017

Agreement were explained before the guarantors placed their signatures. There is no evidence that the guarantors were induced to sign the document believing it to be something different. In such circumstances and taking the above-mentioned authorities into consideration, the guarantors should be held responsible for their actions.

2. Whether the Lease Agreement (P2) Was Lawfully Terminated

[38] It is also contended that by the notice for acceleration of payment dated 17/03/2012, P5, the Plaintiff has demanded that all monies due to the Plaintiff be paid within 14 days of the receipt of the said letter. The relevant postal article receipt and the seal of the postal authorities are dated 22/03/2012 and 23/03/2912 respectively and are marked 'P5(a)'. However, the Plaintiff sought to terminate the Lease Agreement by letter dated 31/03/2012 (marked P6). In the circumstances, it is contended that the Plaintiff has terminated the Lease Agreement by letter P6, without the lapse of 14 days, and therefore the learned trial Judge has erred in law in answering Issue No. 05.

[39] Issue No. 05, raised in the Commercial High Court was limited to the question **"whether the lease agreement marked 'A' terminated"** [Emphasis added], to which the court answered correctly as 'yes'. In addition, the purported lapse on the part of the Respondent was not pleaded before the Commercial High Court, nor was it put in cross-examination or pleaded in the Petition of Appeal to this Court; therefore, it attracts no merit.

[40] For all the above reasons, I am of the view that the Plaintiff-Respondent has asserted its position taken in the Plaint dated 01/02/2013, in the evidence led before Court, to establish that the Plaintiff should be granted the reliefs as prayed for in the Plaint, in terms of prayers (a) (b), and (c).

[41] In all the above circumstances, I answer questions of law Nos. 1, 2, and 3 in the negative and uphold and affirm the Judgement dated 12/10/2018 of the Commercial High Court. Accordingly, this Appeal is dismissed with costs fixed at Rs. 50,000/-

Judge of the Supreme Court

Janak De Silva, J.
I agree

Judge of the Supreme Court

Sampath B. Abayakoon, J.
I agree

Judge of the Supreme Court