

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

In the matter of an appeal under and in terms of
Article 128 (2) of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

LB, Finance PLC,

No. 275/75,

Professor Stanley Wijesundara Mawatha,

Colombo 07.

SC / CHC / APPEAL / 03 / 2014

HC / CIVIL / 348 / 2012 / MR

PLAINTIFF

-Vs-

1. Muhammadu Thaibu Minnathun

Naeem,

No. 76, Hakmana, Mee Ella.

2. Divithura Gamage Gunadasa,

“Samanmali” Urumuththa,

Akuressa.

3. Siriwardena Pathiranage

Jayawickrama,

“Sirisevana” Gallindamulla,

Katuwana.

DEFENDANTS

AND NOW BETWEEN

LB, Finance PLC,

No. 275/75,

Professor Stanley Wijesundara Mawatha,

Colombo 07.

PLAINTIFF – APPELLANT

-Vs-

1. Muhammadu Thaibu Minnathun

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Jayawickrama,

“Sirisevana” Gallindamulla,

Katuwana.

DEFENDANT – RESPONDENTS

Before: P. Padman Surasena, J,
E.A.G.R. Amarasekara, J &
A.H.M.D. Nawaz, J

Counsel: Nishantha Lenora for Plaintiff – Appellant.

Respondents absent and unrepresented.

Argued on: 22.03.2021

Decided on: 16.06.2025

A.H.M.D. Nawaz, J

1. The Plaintiff - Appellant seeks by way of this appeal to set aside and vary the judgement of the Commercial High Court dated 10th September 2013, wherein the learned High Court judge has dismissed the Plaintiff's action on its 2nd, 3rd and 4th causes of action but has allowed the 1st cause of action. In a laconic judgement the learned High Court judge observes that the reliefs claimed on the 2nd, 3rd and 4th causes of action depended on a pending action in the Magistrate's Court and as such, the 2nd, 3rd and 4th causes of action cannot be adjudicated upon.
2. For the purpose of clarity, I would set out the basis of the action instituted by the Plaintiff - Appellant (hereinafter sometimes referred to as the Plaintiff), in the Commercial High Court. The Plaintiff pleaded 4 causes of action in all and according to the plaint, all these causes of action arose out of a "hire purchase agreement" that was entered into between the 1st Defendant - Respondent and the Plaintiff - Appellant namely LB Finance Ltd.
3. The Plaintiff instituted the present action to recover under the **1st cause of action** a sum of Rs.256,904/- from the Defendants together with interest at the rate of 48% per annum from 14.11.2008.
4. Under the **2nd cause of action**, a sum of Rs. Rs.51,432/- was claimed by the Plaintiff for the breach of contract until the vehicle let on hire was released by the Magistrate's Court, Panadura.

5. As the **3rd cause of action**, the Plaintiff claimed a sum of Rs.1,900,000/- as the value of the vehicle, if the vehicle in question was subject to forfeiture or confiscation in the action in the Magistrate's Court of Panadura.
6. Under the limb of the **4th cause of action**, the Plaintiff - Appellant prayed for the balance monthly rentals due after the termination of the Hire Purchase Agreement, in terms of Article 13 of the said Hire Purchase Agreement, by which it was alleged that the Plaintiff was entitled to recover the balance payments after the termination of the Hire Purchase Agreement. In the circumstances, the Plaintiff Company claimed under the said **4th cause of action** a sum of Rs.3,694,191.16 as damages caused to the Plaintiff.
7. Whilst the learned High Court judge allowed the 1st cause of action, he disallowed the 2nd, 3rd and 4th causes of action. It has to be noted that the 1st Defendant was the hirer, whilst the 2nd and 3rd Defendants were the guarantors to the obligation of the 1st Defendant. The reliefs sought against all three Defendants were on the basis of joint and several liability.
8. On the summons returnable date, the 1st to 3rd Defendants were absent and unrepresented and the case against them proceeded *ex parte*. On behalf of the Plaintiff, an affidavit from the Assistant Manager (Recoveries) of the Plaintiff - Appellant had been submitted along with documentary evidence marked as "**P1**"- "**P14(b)**".
9. The short point that arises for consideration is whether the 2nd to 4th causes of action as pleaded by the Plaintiff could be maintained in the Commercial High Court. The Commercial High Court had before it the affidavit of one Palliyaguruge Thushara Lasantha Kumara who attested to the facts in the case.
10. The learned Commercial High Court judge has disallowed the aforesaid 2nd to 4th claims on the basis that their grant is contingent upon the happening of an eventuality namely the outcome of the Magistrate's Court action in relation to the

lorry which was the subject matter of the hire purchase under consideration.

11. When the plaint was filed in the Commercial High Court in July 2012, there had been a confiscation of the vehicle on 13th March 2012 which was appealed against to the High Court of Panadura. When the learned Commercial High Court judge delivered his judgment on the 10th September 2013, the propriety of the order of confiscation made by the Magistrate was yet pending in the High Court of Panadura. In other words, the question was still at large whether the lorry in question would be forfeited or released to the Plaintiff Finance Company.
12. In my view the relief claimed by the 4th cause of action was not dependent upon the outcome of the pending High Court appeal as regards the forfeiture or otherwise of the vehicle.
13. There was affidavit evidence to establish the 1st cause of action as well as the 4th cause of action. It is the contractual duty of the hirer to return the vehicle to the absolute owner upon the termination of the agreement. Should the vehicle not be returned, the absolute owner is entitled to monthly rental payments until the vehicle is actually returned to him, as supported by paragraph 13(e) and (f) of the affidavit and the relevant clauses in the hire purchase agreement.
14. Paragraph 25 of the affidavit, along with the relevant contractual provisions, clearly prohibits the hirer from using or permitting the use of the vehicle for illegal activities. Moreover, paragraph 24 of the affidavit confirms that the vehicle has not been returned to the owner.
15. Even though the Magistrate Court of Panadura has granted custody of the vehicle to the absolute owner under specific conditions, such custody does not equate to a lawful or contractual handover by the hirer. The absolute owner remains deprived of full proprietary rights, including the right of alienation (e.g., to sell the vehicle). Accordingly, this custody given by Court on a bond cannot be deemed a proper recovery of the vehicle under the terms of the agreement.

16. To deny the appellant's 4th cause of action on the basis of such limited recovery would set a dangerous precedent. It may incentivize hirers to misuse rental vehicles for illegal purposes while evading their obligations under lawful agreements. Such an outcome would be detrimental to commercial certainty and fairness in hire-purchase transactions.
17. Therefore, I find it appropriate to grant relief in favor of the Appellant pursuant to the terms of the agreement and the 4th cause of action. Documents marked X and Y, presented during appeal, appear to indicate that the vehicle was confiscated. However, as these constitute fresh evidence not admitted without a formal application and notice, I consider it inappropriate to rely on their contents in this determination.
18. As such, the learned Judge of the Commercial High Court was correct in his conclusions regarding the 2nd and 3rd causes of action. However, he erred in his determination of the fourth cause of action. The Plaintiff's claim under the first cause of action was rightly allowed.
19. Put differently, the second and third causes of action had not yet arisen at the time the plaint was filed. It is trite law that the rights and obligations of the parties must be determined as they existed at the time the action was instituted - see *Silva v. Fernando*¹; *Jayaratne v. Jayaratne*²; *HNB v. Silva and Another*³; *Sheriff v. Marikkar*⁴; *Eminona v Mohideen*⁵; *Lenorahamy v Abraham*⁶; *Kader Mohideen & Co Ltd v Nagoor Gany*⁷; *Sirisena v Doreen de Silva and Others*⁸; *Klamazoo Industries Ltd and Others v Minister of Labour &*

¹ 15 NLR 499

² (2002) 3 Sri.L.R 331

³ (1999) 3 Sri.L.R 11

⁴ 27 NLR 349

⁵ 32 NLR 145

⁶ 43 NLR 68

⁷ 60 NLR 16

⁸ (1998) 3 Sri.L.R 197

Vocational Training and Others⁹; Jamal Mohideen & Co v Meera Saibo¹⁰

20. It is pertinent to note that the applicability of a *quia timet* action was neither raised nor argued before this Court in the course of the instant appeal. Accordingly, the scope or merits of such an action do not arise for consideration in this judgment.

21. Accordingly, the claims under the first and fourth causes of action are hereby allowed. The claims under the second and third causes of action are dismissed. To this extent, the judgment of the Commercial High Court dated 10th September 2013 is varied, and subject to this variation, the appeal in respect of the second and third causes of action is dismissed.

Judge of the Supreme Court

P. Padman Surasena, J

Judge of the Supreme Court

I agree

E.A.G.R. Amarasekara, J

Judge of the Supreme Court

I agree

⁹ (1998)1 Sri.L.R 235

¹⁰ 22 NLR 268