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

People's Bank, No.75,
Sir Chittampalam A. Gardiner Mawatha,
Colombo 02.

Plaintiff.

SC/CHC / Appeal/18/2021

HC/Civil/514/2017/MR

V.

Gamlath Kaushala Duminda Yahampath,
No.65/18A, 5th Lane,
Nawala.

Defendant.

AND NOW BETWEEN

Gamlath Kaushala Duminda Yahampath,
No.65/18A, 5th Lane,
Nawala.

Defendant - Appellant

People's Bank, No.75,
Sir Chittampalam A. Gardiner Mawatha,
Colombo 02.

Plaintiff - Respondent

Before : **Achala Wengappuli, J.**
K. Priyantha Fernando, J.
Dr. Sobhitha Rajakaruna, J.

Counsel : Chandaka Jayasundere, PC with Rehan Almeida instructed by Kularatne Associates for the Defendant - Appellant.

Jaliya Bodinagoda instructed by Shamika Ranasinghe for the Plaintiff - Respondent

Argued on : 17.10.2025

Decided on : 14.01.2026

K. PRIYANTHA FERNANDO, J

1. The Plaintiff-Respondent (hereinafter referred to as the Respondent) instituted action against the Defendant- Appellant (hereinafter referred to as Appellant) in the Commercial High Court holden in *Colombo* bearing case No. CHC/514/17/MR for the recovery of monies due upon five guarantee bonds.

2. As per the plaint dated 25.10.2017, the case was instituted against the Appellant based on the grounds that, the Respondent had granted certain banking facilities to Sintesi Limited, a company in which the Appellant was the Managing Director and subsequently the said Sintesi Limited had purportedly defaulted on the aforementioned banking facilities. The Appellant had tendered five personal guarantee bonds as securities for the banking facilities granted to Sintesi Limited. Therefore, based on the five guarantee bonds (marked and produced as X1-X5) five purported causes of action had allegedly accrued against the Appellant. At the pre-trial stage, it has been admitted by the Appellant that he signed the 5 guarantee bonds upon which the five causes of action are based. (page 85 of the brief)

3. In his answer dated 02.07.2018, the Appellant has not disclosed any plausible defense but has denied all averments included in the plaint by the Respondent.

4. At the trial, the Respondent has led the evidence of its main witness Mr. G.Rodrigo, Assistant Manager of Off-shore Banking Unit. The Appellant on the other hand has not led any evidence. Written Submissions were tendered by both parties and subsequently by way of Judgment dated 12.10.2020, the learned High Court Judge held in favour of the Respondent.

5. Aggrieved by the aforesaid Judgement of the Learned High Court Judge, the Appellant has Appealed to this Court. In his petition, dated 11.12.2020, the Appellant has stated that, the learned High Court Judge has not taken the below matters into consideration in reaching its decision:

   "1. Respondent has failed to discharge the burden of proof cast on the Respondent in order to successfully claim the relief prayed for in the action.

   2. The Respondent was unable to establish as to what the applicable LIBOR rate of interest was in order to calculate which rate of interest was

applicable to the facilities in question.

3. The sole witness for the Respondent was unable to establish the calculation of interest that was levied on Sintesi Ltd. and in turn on the Appellant.

4. The Respondent was unable to establish the applicable interest to be levied on the facilities which formulate the causes of action before Court.

5. Furthermore, without being able to establish the rate of interest, the principal sums claimed by the Respondent are also not established, since the principal sums in question include interest which has been levied by the Respondent."

6. The learned Presidents' Counsel for the Appellant contended that the Respondent failed to discharge the burden of proof mandated by Section 101 of the Evidence Ordinance. The learned Presidents' Counsel asserted that, by reason of this failure, the Respondent did not establish its case against the Appellant. Accordingly, it was submitted that the learned High Court Judge misdirected himself, both in fact and in law, in the judgment dated 12.10.2020, and that the judgment entered in favour of the Respondent is fundamentally flawed. The learned Presidents' Counsel for the Appellant therefore sought to have the said judgment set aside and prayed for the relief sought in the Answer filed in Case No. HCC/514/2017.

7. In his written submissions, the learned Presidents' Counsel for the Appellant has stated that, if any errors exist in the calculation of the claims against the debtor company, Sintesi Limited, or any discrepancies between the credit facilities granted to Sintesi Limited and the guarantees forming the basis of this action, the Respondent would be precluded from obtaining relief against the Appellant. The Counsel emphasized that the Respondents' witness identified documents P7, P8, P9, P10, P27, P30, P31, P32, P33, P34, P41, P42, P43, P44, P45, and P52 as the material documentation evidencing any agreements between the Respondent and Sintesi Limited. Thus, it was argued that any errors within these documents would fundamentally undermine the Respondents' entire cause of action.

8. The learned Presidents' Counsel for the Appellant also submitted that, with respect to the document marked P7 (and the remaining statements

of account pertaining to the additional fifteen banking facilities), it had been put to the witness that although P7 provides the Respondent with the discretion to select the applicable interest rate either 6.75% plus the three-month LIBOR rate, or 8% the document fails to specify the basis upon which such a choice is to be made. It was therefore argued that, unless the Respondent establishes the methodology applied in determining the applicable interest rate, its claim must necessarily fail, as each cause of action is predicated upon an indeterminate rate of interest.

9. At the hearing, the learned Presidents' Counsel for the Appellant brought in two points of contest. Firstly, he stated that the interest rate and calculation has not been proved and secondly that the LIBOR rate of interest has also not been proven. The Presidents' Counsel contended that the Respondent had not produced any evidence during cross examination to establish the rate or calculation of the applicable interest and therefore, the interest component was not proved. Adding on to that, the learned Presidents' Counsel also added that the witness in fact specifically admitted in cross examination that the Respondent cannot establish the LIBOR rate which is part and parcel of the rate of interest claimed.

10. Furthermore, the learned Presidents' Counsel for the Appellant sought this Court's attention to the alleged ambiguities in the causes of action pleaded by the Respondent which were namely 1. Ambiguity in the rate of interest and 2. Ambiguity in relation to the link between the guarantees and the facilities sought to be recovered. The Presidents' Counsel argued that, in relation to Ambiguity in the rate of interest each of the sixteen facilities granted to Sintesi Limited by the Respondent have a similar term in relation to the interest component applicable to the facility (as set out in the documents marked as P7, P8, P9, P10, P27, P30, P31, P32, P33, P34, P41, P42, P43, P44, P45 and P52). Namely, clause 2 of the agreement which read as "... with interest at the rate/s of 6.75% + 3M LIBOR or 8% per annum or higher/rate or rates as may be fixed..." The Appellant stressed on the inherent ambiguity in the wording of the said clause. The clause provides several possible calculations for interest, namely 6.75% + 3M LIBOR or 8% or any higher rate or interest as may be specified. The learned President's Counsel argues that there is no wording which sets out as to how or which interest rate shall be applicable for the calculation. As such, in the midst of this ambiguity, and the Respondents' inability to explain this to Court, it is contended that the Respondent is unable to seek the relief prayed for in the Plaint.

11. On the other hand, the learned Counsel for the Respondent submitted that

the Respondents' witness, upon repeated questioning, has clearly stated that had the LIBOR rate been higher than 8% per annum, the Respondent bank would not have charged 8% per annum, but would instead have applied the prevailing LIBOR rate. The learned Counsel further submitted that the witness correctly explained that in circumstances where the LIBOR rate exceeded 8% per annum, the Respondent would have charged interest at the LIBOR rate. Therefore, even on the assumption that LIBOR was higher than 8% per annum, and the Respondent nonetheless charged only 8%, such a situation would operate to the benefit of the debtor — namely, the Appellant as a lower rate of interest would have been applied.

12. It was further contended by the learned Counsel that the Respondents' witness gave evidence in his affidavit with regard to the 5 causes of action and submitted that the Respondent established that the 5 guarantee bonds executed by the Appellant, P11, P26, P29, P40 and P51 secured the short term loans granted by the Respondent to the debtor company. The Debtor Company has acknowledged and admitted that it received the said facilities by signing the the signatories is the Appellant himself.

13. It was also submitted by the learned Counsel for the Respondent that, page 2 of the said Bond, sets out that the Respondent is entitled to demand 6.75% above 3 months LIBOR or floor rate of 8% p.a. whichever is higher. The Respondent's Witness gave evidence that 8% p.a. is higher than the 6.75% above 3 months LIBOR.

14. The learned Counsel for the Respondent asserted that, notwithstanding several reminders sent to the said Debtor Company including the letters dated 27 December 2016 marked P5 and 04 January 2017 marked P6 to repay all outstanding credit facilities, the said Debtor Company failed and neglected to repay the same. He argued that, on that basis the Appellant as a director of the said Company was fully aware that the aforesaid short term loan facilities are payable to the Respondent.

15. The learned Counsel further argued that the Appellant did not dispute the letters of demand sent by the Respondent to the Appellant and submitted that in the said letters of demand, the Respondent has clearly stated that the applicable interest rate is 8% per annum. The Respondent's witness answered upon the repeated questioning regarding LIBOR rate, that if the LIBOR rate was higher then the Respondent bank wouldn't have charged the 8% p.a., and would have charged the LIBOR rate - vide page 9 of the proceedings dated 23'd August 2019.

16. On that basis the learned Counsel for the Respondent submitted that, as very correctly answered and explained by the witness, if the LIBOR rate was higher than the 8% p.a., then the Respondent would have charged the LIBOR rate. Assuming that the LIBOR rate was higher than the 8% p.a., and the Respondent nevertheless charged interest at the rate of 8%, then the only persons who would be benefitting by this would be debtor and the Appellant, because the Respondent has charged a lower rate.

17. Upon consideration of the submissions and the documentary material placed before the Court, it is established that the Respondent tendered documents marked P1–P57 and led the evidence of Mr. G. Rodrigo, Assistant Manager of the Off-shore Banking Unit. By contrast, the Appellant produced no documentary evidence and did not call any witness to challenge or deny the alleged liability.

18. Further, during the cross-examination of the Respondents' witness, the Appellant was unable to contradict or dispute any material aspect of that evidence. Even in the Appellants' written submissions, although the methodology used by the Respondent to calculate the interest rate was questioned, no claim, evidence, or document was presented to rebutt the Respondent's position.

19. Section 114(f) of the Evidence Ordinance provides that when a defendant refrains from producing evidence that he could have produced, the Court may presume that such evidence, if produced, would have been unfavourable to him.

    Section 114(f) of the Evidence Ordinance states that,

    The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business in their relation to the facts of the particular case.

    (f) that evidence which could be and is not produced, would if produced, be unfavourable to the person who withholds it;

20. Thus, as the Appellant could not contradict or dispute the evidence of the respondents' witness, nor could they provide any documentary evidence to go against the Respondent, this Court is inclined to accept the uncontradictory evidence placed before the Court.

21. It is observed that, the contention of the Appellant is that if the Respondent is unable to establish the methodology for the calculation of the rate of interest, then the entire claim must fail since each of the causes of action are calculated on the said uncertain rates of interest.

22. The Respondents' witness was cross examined at length with regard to the rate of interest. (Pages 18 to 25 dated 3rd April 2019 and pages 1 to 19 dated 23rd August 2019) The said witness was cross examined as to whether the 6.75% above 3 months LIBOR was higher than the floor rate of 8% p.a. It can be seen that, the Offer Letters marked P3 and P4, with regard to the interest, clearly sets out that the applicable interest rate would be 6.75% above 3 months LIBOR, or floor rate of 8% p.a., whichever is higher. It is also seen from the cross examination that the Respondents' witness has repeatedly answered that the 6.75% above 3 months LIBOR was less than the 8% p.a., and so what the Respondent bank has charged is 8% p.a. The Respondents' witness, upon repeated questioning, stated that had the LIBOR rate been higher than 8% per annum, the Respondent bank would not have applied the 8% rate but would instead have charged interest at the prevailing LIBOR rate. This evidence appears at page 9 of the proceedings dated 23 August 2019.

23. Further, it is observed that the witnesses' explanation was both clear and accurate. If, hypothetically, the LIBOR rate had exceeded 8% per annum, and the Respondent nevertheless continued to charge interest at 8%, such a scenario would have operated to the advantage of the debtor, namely the Appellant, since a lower interest rate would have been applied. The cross-examination on this point therefore demonstrated that the Appellant lacked any substantive defence and was advancing claims with no merit.

24. It is also pertinent to examine the document marked P57. Following the issuance of the letters of demand marked P18 and P27 to the Appellant, the Respondents' letter dated 16.06.2017, marked P54, reflects an acknowledgement of the debtor companys' total liability and contains an undertaking to make monthly payments of Rs. 300,000/=. This clearly indicates that the Appellant has, in effect, admitted the Respondents' claim arising under the guarantee bond marked P11.

25. Thus, in light of the foregoing, this Court is satisfied that the learned Judge of the Commercial High Court has correctly concluded that the Respondent had established its case on a balance of probabilities. Accordingly, the appeal is dismissed, with costs, and the Judgment of the

Commercial High Court in case No. CHC/514/17/MR dated 12.10.2020 is hereby affirmed.

The appeal is dismissed.

JUDGE OF THE SUPREME COURT

JUSTICE ACHALA WENGAPPULI

I agree

JUDGE OF THE SUPREME COURT

JUSTICE DR. SOBHITHA RAJAKARUNA

I agree

JUDGE OF THE SUPREME COURT