

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

In the matter of an appeal in terms of Section 5
of the High Court of the Provinces (Special
Provisions) Act, No. 10 of 1996

SC (CHC) Appeal No. 45 /2018
HC Civil Case No. 559/2010/MR

John Sylvester Horatio Joshua,
15/ 1, Beach Road, Mount Lavinia.
And presently of No. 05, Police Park Avenue,
Colombo 05.

PLAINTIFF

Vs.

Seylan Bank PLC,
Ceylinco Seylan Towers,
No.90, Galle Road, Colombo 03

DEFENDANT

And now between

John Sylvester Horatio Joshua,
15/ 1, Beach Road, Mount Lavinia.
And presently of No. 05, Police Park Avenue,
Colombo 05.

PLAINTIFF – APPELLANT

Vs.

Seylan Bank PLC,
Ceylinco Seylan Towers
No.90, Galle Road, Colombo 03

DEFENDANT – RESPONDENT

Before: **Arjuna Obeyesekere, J**
K. Priyantha Fernando, J
Dr. Sobhitha Rajakaruna, J

Counsel: Heshan Thambimuttu with Prasanth Mahendran for the Plaintiff – Appellant
Kuvera de Zoysa, PC, with Senaka De Saram and Tharindu Pasan Balasuriya for the Defendant – Respondent

Argued on: 24th September 2025

Written Submissions: Tendered on behalf of the Plaintiff – Appellant on 4th June 2024
Tendered on behalf of the Defendant – Respondent on 6th June 2024 and 10th November 2025

Decided on: 19th December 2025

Obeyesekere, J

1. The Plaintiff – Appellant [the Plaintiff] filed action in the High Court of the Western Province holden in Colombo [the Commercial High Court/High Court] on 5th January 2009 against Seylan Bank, the Defendant – Respondent [the Defendant] seeking the following relief:
 - (a) A declaration that by its refusal to issue foreign currency to the Plaintiff to enable the Plaintiff to travel to Hong Kong, the Defendant has breached the bank – customer contractual relationship between the Plaintiff and the Defendant;
 - (b) Damages in a sum of Rs. 5,000,000 arising from such breach.
2. The Defendant having filed answer, the case proceeded to trial with the Plaintiff and another giving evidence for the Plaintiff and the Defendant leading the evidence of two bank officers. By its judgment delivered on 10th April 2018, the High Court dismissed the action of the Plaintiff with costs. Aggrieved, the Plaintiff filed this appeal on 12th June 2018.

3. The cause of action of the Plaintiff is based on the premise that the Defendant breached the bank – customer relationship by its refusal to issue foreign currency to the Plaintiff. I shall therefore at the outset, very briefly, refer to the scope and extent of the bank – customer relationship and thereafter set out the applicable legal provisions that must be followed by a licensed commercial bank in Sri Lanka when called upon to issue foreign currency to a customer or any other person.

Bank – Customer relationship

4. It is admitted that at all times relevant to this case, the Plaintiff was a customer of the Defendant and maintained a rupee denominated account bearing No. 01400077159001 at the Dehiwala Branch of the Defendant. As pointed out in Paget's Law of Banking [15th Edition; pages 109 – 110]:

"The relationship of banker to customer is one of contract. It consists of a general contract, which is basic to all transactions, together with special contracts which arise only as they are brought into being in relation to specific transactions or banking services. The essential distinction is between obligations which come into existence upon the creation of the banker-customer relationship and obligations which are subsequently assumed by specific agreement; or, from the standpoint of the customer, between services which a bank is obliged to provide if asked, and services which many bankers habitually do, but are not bound to, provide. Services such as banker's drafts, letters of credit and foreign currency for travel abroad probably fall into the second category of services which the bank is not bound to supply, but this has not been judicially determined."

5. The contractual relationship between the bank and the customer was explained in Joachimson v Swiss Bank Corporation [(1921) 3 KB 110; at page 127] by Atkin, J in the following manner:

"The bank undertakes to receive money and to collect bills for its customer's account. The proceeds so received are not to be held in trust for the customer, but the bank borrows the proceeds and undertakes to repay them. The promise to repay is to repay at the branch of the bank where the account is kept, and during banking hours. It includes a promise to repay any part of the amount due against

the written order of the customer addressed to the bank at the branch, and as such written orders may be outstanding in the ordinary course of business for two or three days, it is a term of the contract that the bank will not cease to do business with the customer except upon reasonable notice. The customer on his part undertakes to exercise reasonable care in executing his written orders so as not to mislead the bank or to facilitate forgery. ”

6. Much has changed over the last hundred years since Atkin, J's above statement. Today, a customer need not visit the bank, leave alone the branch where he or she maintains an account but can request payment and other services from his bank at any time and from any location. While the significance of banks in modern market economies cannot be underestimated, the relationship between the bank and the customer has remained much the same with the opening of an account with the bank being the crucial element in establishing the relationship between the bank and the customer. One must however bear in mind that banks do offer general financial services to non-account holders, thus giving rise to a relationship between the bank and such customer where such services are provided.
7. Thus, in terms of the bank – customer relationship that existed between the Plaintiff and the Defendant, the Plaintiff was entitled to withdraw funds that were available in his rupee denominated current and/or savings account at the Defendant. It is admitted that the Plaintiff did not have a foreign currency denominated account at the Defendant and therefore any issuance of foreign currency to the Plaintiff was outside the general contract referred to by Paget. That being so, the Plaintiff was not entitled to obtain foreign currency as of right, with the provisions of the Exchange Control Act being applicable with regard to the issuance of foreign currency to the Plaintiff.

Issuance of foreign currency

8. The legal provisions applicable to the issuance of foreign currency are found in:
 - (a) The Exchange Control Act, No.24 of 1954, as amended [the Act], which Act has since been replaced by the Foreign Exchange Act, No. 12 of 2017;
 - (b) Regulations made under the Act; and
 - (c) Operating Instructions issued by the Department of Exchange Control.

9. While in terms of Section 4 of the Act, “*the Minister may authorize any commercial bank to act for the purposes of this Act as an authorized dealer in relation to gold or any foreign currency*”, Section 5(1) of the Act provided as follows:

“*Except with the permission of the [Central] Bank –*

- (a) *no person, other than an authorized dealer, shall in Sri Lanka buy, borrow or accept any gold or foreign currency from, or sell or lend any gold or foreign currency to, or exchange any foreign currency with, any person other than an authorized dealer, and*
- (b) *no person resident in Sri Lanka, other than an authorized dealer, shall, outside Sri Lanka, buy or borrow any gold or foreign currency from, or sell or lend any gold or foreign currency to, any person other than an authorized dealer:*

Provided that the preceding provisions of this subsection shall not prohibit the sale and purchase at any post office in Sri Lanka, in accordance with such directions as may be given by the bank in regard thereto, of any foreign currency in the form of postal orders or money orders.”

10. Section 38 of the Act reads as follows:

“*The bank may give-*

- a) *to bankers and to persons who are concerned with the keeping of any register in Sri Lanka or are entrusted with the payment of capital moneys, dividends or interest in Sri Lanka, directions as respects the exercise of any functions exercisable by them by virtue of, or by virtue of anything done under, any provision of this Act, and*

- (b) *to authorized dealers-*

- (i) *such directions as aforesaid, or*

- (ii) *directions as to the terms on which they are to accept gold or foreign currency, or*

(iii) directions requiring them to offer their gold or specified foreign exchange for sale to the Central Bank on such terms as may be set out in the directions."

11. According to the Operating Instructions issued to all Authorized Dealers by the Department of Exchange Control on 29th March 1993, an Authorized Dealer has been "*permitted to issue foreign exchange to persons resident in Sri Lanka at their judgment and discretion for the following purposes:*

- (a) Travel Expenses for Holiday & Pilgrimage, Business (Including conferences, seminars, workshops, sports etc) and medical;*
- (b) Travel expenses for employment abroad;*
- (c) Education expenses for employment abroad including living expenses;*
- (d) Remittances for miscellaneous purposes of a bona fide nature;*
- (e) Issue of foreign currency notes to travellers:"*

12. The said Instructions also contained the following provisions that were specific to the issuance of foreign currency for travel purposes:

"Authorised Dealers are requested to use their discretion in the issue of foreign currency notes for travel purposes.

Authorised Dealers are permitted to refuse the issue of exchange or refer the matter to the Controller of Exchange if they feel that it is to be used for purposes other than that applied for or if the amounts requested are unreasonably large or relate to illegal transactions.

In releasing foreign exchange for travel abroad Authorised Dealers may permit travel for any purpose without any restrictions to applicants who are permanently resident in Sri Lanka, on the frequency of travel and the selection of airline subject to the production of a valid visa and return air ticket.

Authorised Dealers should also note that exchange should not be granted to Sri Lankan Nationals, who have been granted dual citizenship and permanently resident abroad and to those in possession of emigrant visas or permanent resident visas permitting indefinite stay abroad.”

13. Acting on the above Instructions issued by the Department of Exchange Control, the Defendant had issued an Internal Circular on 11th July 2005, in terms of which a valid visa and return air ticket had to be produced by any person desirous of obtaining foreign exchange for travel abroad, subject to an upper limit of USD 500 per day.
14. The aforementioned provisions of the Act together with the Operating Instructions have been introduced by the Department of Exchange Control with a view of ensuring that foreign currency is issued only to genuine travellers who are entitled to obtain foreign currency. The said provisions complements the bank – customer relationship that I have referred to above that any person, whether such person be a regular customer of the bank or otherwise, who is desirous of obtaining foreign exchange for travel abroad is not entitled to obtain foreign exchange as of right and while the issuance of foreign exchange is at the discretion of the Bank, it is mandatory that an applicant must produce his passport, visa and air ticket.
15. Thus, the bank – customer relationship that existed between the Plaintiff and the Defendant did not entitle the Plaintiff to be issued foreign currency as of right and while the Bank retained the right to exercise its discretion with regard to the issuance of foreign currency to the Plaintiff, it was mandatory for the Plaintiff to submit at its minimum, a valid passport, a valid air ticket and a valid visa. Thus, on the face of it, the basis of the Plaintiffs cause of action that the Defendant breached the bank-customer relationship by its refusal to issue foreign currency to the Plaintiff is flawed.
16. Be that as it may, I shall now consider the factual basis of the case of the Plaintiff.

Case of the Plaintiff

17. The averments in the plaint can be categorised into two segments. The first is as to what transpired at the bank upto the refusal of the Defendant to issue foreign currency. The second segment is what occurred after the Plaintiff left the bank including the events that took place once the Plaintiff arrived in Hong Kong.

18. With regard to the first segment, the Plaintiff stated as follows:

- (a) The Plaintiff is a customer of the Defendant and at all times relevant to this case, maintained account No. 01400077159001 denominated in Rupees at the Dehiwala Branch of the Defendant;
- (b) He is a dual citizen, holding Sri Lanka Passport No. N1539738 and British Passport No. 704881875;
- (c) He was due to travel to Hong Kong on a business trip on 30th June 2008;
- (d) On his way to the Katunayaka Airport, he stopped at the Millennium branch of the Defendant at about 7.30 pm to obtain USD 800 from his '*account*';
- (e) He produced his air ticket, **his Sri Lankan and British passports** and Form 1 to the Officer on duty and requested him to issue USD 800 for his travel expenses;
- (f) Having examined the documents tendered by him, the bank officer had asked him to produce his visa to enter Hong Kong, and informed him that unless the visa is produced, he is not in a position to issue foreign currency to the Plaintiff;
- (g) He informed the bank officer that he was a dual citizen holding a British passport and therefore does not require a visa to travel to or enter Hong Kong;
- (h) He also informed the bank officer that he has obtained foreign currency on previous occasions in a similar manner and had shown the relevant pages of his passport to the bank officer, including the endorsement on his Sri Lankan passport confirming that he is a citizen of Britain;
- (i) He had informed the bank officer that he was on a pre-arranged business trip to Hong Kong for only one and a half days which he could not cancel;
- (j) The bank officer had thereafter telephoned another officer and having sought instructions, persisted in his refusal to issue foreign currency stating that there was no visa stamped on the passport;

- (k) He had reiterated his position to the bank officer to no avail, and as he had no alternative, he proceeded to Hong Kong without obtaining any foreign currency;
 - (l) By its refusal to issue foreign currency to him, the Defendant has breached the contractual relationship that existed between the two parties.
19. The second segment relates to what happened after the Plaintiff left the bank and upon his arrival in Hong Kong. The averments in the plaint in that regard are as follows:
- (a) The Plaintiff arrived in Hong Kong on 1st July 2008 at 12.15pm and then discovered that it was a bank holiday in Hong Kong, which meant he could not withdraw any money by using his debit card;
 - (b) The Plaintiff had telephoned his friend in Hong Kong, Sarathchandra Seneviratne but he could not contact him;
 - (c) The Plaintiff could not attend two important business meetings on the 1st of July 2008 at 2.00 pm and 4.00 pm as he had no money to travel from the airport to the business meetings, and as a result of his failure to attend those meetings, he lost the opportunity of doing business with those parties which caused a financial loss to him;
 - (d) The Plaintiff borrowed a sum of USD 650 from his friend and tried to reschedule his business meetings but failed to do so as he had to leave Hong Kong on 3rd July 2008 to Singapore;
20. It is in the above factual circumstances that the Plaintiff claimed that the wrongful refusal on the part of the Defendant to issue foreign currency had caused severe embarrassment, inconvenience, humiliation, pain of mind and loss of business which has been calculated at Rs. Five Million [Rs. 5,000,000]. This formed the factual basis for (a) the declaration that the Defendant has breached the bank – customer contract between them, and (b) damages in a sum of Rs. 5,000,000.

Case of the Defendant

21. In its answer, the Defendant denied that it wrongfully refused to issue foreign currency to the Plaintiff and stated as follows:
 - (a) The Plaintiff called over at the night banking counter at the Seylan Bank Millennium branch situated in Colombo 03 at around 6.30 pm on 30th June 2009 and requested foreign currency in United States Dollars;
 - (b) Upon the said request of the Plaintiff, the officer at the counter had requested from the Plaintiff his passport and the air ticket to the destination;
 - (c) The Plaintiff only submitted a Sri Lankan passport together with an air ticket to Hong Kong;
 - (d) Upon finding that the Sri Lankan passport submitted by the Plaintiff was not stamped with a valid visa to travel to Hong Kong, the officer at the counter had informed the Plaintiff that the Defendant cannot issue any foreign exchange to the Plaintiff;
 - (e) Though requested, the Plaintiff failed to produce any documentary or other evidence to the satisfaction of the Defendant to enable the Defendant to process the application of the Plaintiff to purchase foreign currency and therefore, the Defendant refused to issue foreign currency to the Plaintiff;
 - (f) Its refusal to issue foreign currency to the Plaintiff is in accordance with the provisions of the Act and the Operating Instructions issued by the Department of Exchange Control.
22. The Defendant alleged further that the Plaintiff and his wife have instituted action against the Defendant in the District Court of Colombo with regard to the non-honouring of a cheque issued by the Plaintiff and/or his wife, and that the Plaintiff has acted maliciously in instituting this action against the Defendant and hence, presented a counter claimed for a sum of Rs. 25 million as damages.

Evidence before the High Court

23. This brings me to the evidence that was available to the High Court.
24. On the one hand was the Plaintiff's version that he produced his air ticket and both passports of his to the Defendant's officer at the counter and requested him to issue USD 800 for travel expenses abroad but that the officer wrongfully refused to issue foreign currency on the ground that there was no visa stamped on the Plaintiff's passport to travel to Hong Kong although he being a dual citizen and a British passport holder, a visa was not required to travel to Hong Kong.
25. On the other hand, the Defendant's position was that the Plaintiff submitted only the Sri Lankan passport and return air ticket but the Plaintiff's passport was not stamped with a valid visa to travel to Hong Kong and therefore the Defendant could not issue any foreign exchange to the Plaintiff in accordance with the Exchange Control Act and the Central Bank instructions. Ashan Jayamal Chaminda, the Officer at the counter on 30th June 2008 who dealt with the Plaintiff and another witness testified on behalf of the Defendant.
26. I have already stated that the Plaintiff led the evidence of another, that being his friend in Hong Kong, Sarathchandra Seneviratne, who spoke of what transpired in Hong Kong. His evidence is not important as far as deciding the core issue in this case.
27. The Plaintiff stated that his wife and the General Manager of his Company accompanied him to the Airport that evening but stated in cross examination that none of them went inside the bank with him. However, by the time the Plaintiff gave evidence, his wife had passed away.
28. Responding to the letter dated 15th August 2008 sent by the Attorney-at-Law for the Defendant, the Attorney-at-Law for the Plaintiff had stated that, "*The General Manager of my client's organisation who accompanied my client to the bank will bear testimony on oath as to what happened.*" The General Manager thus became the most important witness to corroborate the evidence of the Plaintiff and was

listed as witness No.2 on the list of witnesses. However, the General Manager was not called to give evidence.

29. Thus, the only evidence that was available to the High Court to support the Plaintiff's position as to what transpired inside the Bank is of the Plaintiff himself, with the evidence mostly being in line with the averments in the plaint. With the burden of proof being with the Plaintiff, it was the responsibility of the Plaintiff to prove on a balance of probability that the Defendant refused to issue foreign currency to the Plaintiff in spite of him having presented his British passport.

Judgment of the High Court

30. The High Court has correctly stated that in the absence of any corroboration of the Plaintiff's version as to what transpired inside the Bank, the issue that needs to be considered is whether the Plaintiff's version that he submitted both passports is credible or improbable, with his evidence being evaluated by applying the tests of (a) probability, (b) consistency *per se* and *inter se*, (c) inconsistency, contradictions and discrepancies, and (d) spontaneity.
31. I have examined the judgment of the High Court and find that the High Court has arrived at the conclusion that the Plaintiff has not discharged the burden of proof cast on him on four grounds.
32. The first was the failure to call the General Manager as a witness.
33. While no reason was adduced during the trial for this failure, the High Court has drawn an adverse inference arising from the failure on the part of the Plaintiff to call the General Manager as a witness without affording any explanation, in spite of having listed him as a witness. It is clear that the High Court was concerned that the evidence of the General Manager was being withheld since the Plaintiff was of the view that, had the General Manager given evidence, such evidence would have been unfavourable to the case of the Plaintiff. Even though during the hearing before this Court, the learned Counsel for the Plaintiff submitted that the General Manager too had passed away, the date of his passing was not intimated to Court, thus leaving wide open the reason for not calling the said witness.

34. I am in agreement with the view taken by the High Court that the failure to call the General Manager affected the credibility of the Plaintiff's version especially since prior to action being filed, the Attorney-at-Law for the Plaintiff took up the position that the General Manager accompanied the Plaintiff to the bank, which position was contradicted by the Plaintiff during his cross examination.
35. The second ground relied upon by the High Court in reaching the conclusion that the evidence of the Plaintiff is not credible revolved around a letter issued by the travel agent who issued the air tickets to the Plaintiff. During his cross examination, the Plaintiff stated on three separate occasions that apart from presenting his two passports and the ticket, he had also presented to the Bank a letter dated **25th March 2010** issued by the travel agent who issued the two air tickets to the Plaintiff and his wife to travel to Hong Kong, addressed to the Plaintiff himself, confirming that, "*the above passengers are British Passport holders and dual citizens of Sri Lanka and England, as per the air travel requirement for British passport holders Hong Kong visas are on arrival.*"
36. Quite apart from the necessity for the travel agent to issue such a letter addressed to the Plaintiff, the above letter is dated **almost two years after the alleged incident took place** and therefore could not have been presented to the Bank at the time the Plaintiff called over at the Bank on 30th June 2008. That the said letter was prepared for the purposes of the trial is evident by the fact that no reference thereto has been made either in the letter of demand or at the very least, in the plaint. This letter therefore appears to be a fabrication and in my view, seriously affects the credibility of the Plaintiff's version that he presented both passports to the bank.
37. The third ground relied upon by the High Court was the belatedness of the complaint. With the incident having occurred on 30th June 2008, the Plaintiff brought this issue to the attention of the Defendant only by way of the letter of demand sent on 30th July 2008. The High Court has noted that the Plaintiff left Hong Kong on 3rd July 2008 for Singapore and thereafter to London and that the Plaintiff has not disclosed when he returned to the Country and the reason for the delay in raising the issue with the Defendant. The High Court has in fact noted that the "*belatedness*

of the complaint would have reduced the weight of the evidence of the Plaintiff, particularly where there would have been opportunities for the alteration of the true story to suit a possible litigation with legal advice from lawyers against the Defendant."

38. The fourth ground relied upon by the High Court was that the Plaintiff had every opportunity of obtaining rupees from his account at the Defendant and thereafter purchasing foreign currency from one of the bank counters at the airport in Sri Lanka, but chose not to do so. The Plaintiff in fact conceded in cross examination that he could have done so but chose not to.
39. I am in agreement with the High Court that this aspect goes to the root of the Plaintiff's case. Here is a passenger travelling to Hong Kong for a business meeting who goes to the bank to collect foreign currency but who claims the bank "*unfairly*" refused to issue foreign currency. Not having any money on him, a reasonable person in such circumstances would have made every effort to obtain foreign currency, either by contacting a senior officer at the bank since the Plaintiff was an account holder of the bank, or else by withdrawing rupees from his account and purchasing foreign currency at an authorised dealer in Colombo or at the least, by purchasing foreign currency at one of the bank counters at the departure lounge of the airport. The Plaintiff did not opt for any of the above and instead opted, as the Plaintiff claims, to travel outside the Country without any currency.
40. It is in this background that the High Court arrived at the following conclusion:

"There is no dispute that the Plaintiff was having a British passport, but the question that arose for consideration was whether the Plaintiff had adduced credible evidence apart from his mere oral evidence that he produced both his passports. I am of the view that when the evidence of the Plaintiff and the Bank are evaluated, the Plaintiff's mere oral evidence that he produced his British passport to the Defendant's officer is not credible and truthful without any supporting evidence that the Plaintiff produced both his passports but the said officer insisted in visa endorsement."

41. There are two other matters that I wish to advert to which demonstrates that the version of the Plaintiff is not credible. The first is, the Plaintiff admitted that he purchased his air ticket in March 2008 but waited until 6.30pm of the date of travel and that too, until he was on his way to the airport, to purchase foreign currency outside banking hours without making any pre-arrangement in that regard. This is certainly not the conduct of a businessman who claims that he had two important business meetings to attend in Hong Kong. The second is that the Plaintiff was spending only 1 ½ days in Hong Kong and then was proceeding to Singapore and England. Would such a person who is travelling with his wife not ensure that he had adequate foreign currency, at least for an emergency?
42. In view of the finding that the version of the Plaintiff with regard to what transpired inside the bank was not credible, the necessity for the High Court to have considered the claim of the Plaintiff for damages did not arise. The High Court has nonetheless considered the version of the Plaintiff as to what occurred in Hong Kong after he landed around noon on 1st July 2008 and found that the evidence of the Plaintiff cannot be accepted. For the sake of completeness, I shall therefore briefly narrate the Plaintiff's version as to what transpired when he landed in Hong Kong, as this too demonstrates that his version is not credible.
43. The Plaintiff stated that his friend who was supposed to pick him up from the airport did not come as scheduled. He stated further that he did not carry his credit card with him, which is unusual for a business traveller, but admitted that he had in his possession a debit card with a facility to withdraw Hong Kong dollars. However, the Plaintiff claimed that he did not have the Personal Identification Number [PIN] for that card, which too is unusual for a business traveller since that meant the Plaintiff was not in a position to withdraw money from an automatic teller machine located at most central locations of any country. He stated further that in order to withdraw money, he had to call over at a branch of Barclays Bank but could not do so since it was a public holiday in Hong Kong, thus making it impossible for him to obtain any money in Hong Kong.

44. The Plaintiff stated further that as a result of not having sufficient money to purchase the train ticket, he was unable to make it to the two business meetings scheduled for that afternoon and as a result, the contract that he was supposed to sign at that meeting was not awarded to him. I find it hard to accept that business meetings had been scheduled for a public holiday and that the Plaintiff was unable to reschedule those meetings for the next day.
45. Taking the above factors into consideration, I have no difficulty in agreeing with the finding of the High Court that the Plaintiff's version as to what occurred in Hong Kong cannot be accepted. To my mind, this evidence has an overall effect on the credibility of the Plaintiff's narration of events.

Conclusion

46. In the above circumstances, I am of the view that the findings of the High Court are supported by the evidence that was available before it. I would therefore affirm the judgment of the High Court and dismiss this appeal, with costs fixed at Rs. One Hundred Thousand.

JUDGE OF THE SUPREME COURT

K. Priyantha Fernando, J

I agree.

JUDGE OF THE SUPREME COURT

Dr. Sobhitha Rajakaruna, J

I agree.

JUDGE OF THE SUPREME COURT