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DIGEST

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CM 6559– 2,500 (2006/08)

GUNASEKERA

vs

ARCHBISHOP OF COLOMBO AND OTHERS

COURT OF APPEAL
AMARATUNGA, J.
WIMALACHANDRA, J.
CALA 171/2004
DC. MT. LAVINIA 472/03/P
OCTOBER 19, 2004

Civil Procedure Code – section 666 – Interim Injunction granted – Exparte – Vacation of same under Section 666 – Is there a time limit ?

The Plaintiff obtained an interim injunction against the 1st Defendant Respondent ex-parte on 24.6.2003. Thereafter on 15.9.2003 the 1st Defendant Respondent filed papers and sought an order to vacate same under Section 666 – Court after Inquiry vacated the interim injunction. The Plaintiff Petitioner thereafter sought leave to appeal from the said Order. it was contended that the 1st Defendant had filed papers to dissolve the interim injunction after 3 months from granting the injunction and the Defendant cannot resort to Section 666.

HELD

(i) Section 666 does not speak of a time period within which a party aggrieved could avail of Section 666. An order for an interim injunction may be set aside by the same court on an application made thereto, by any party dissatisfied with such order.

(ii) An injunction issued ex-parte must be canvassed in the Court which made that order.

(iii) It was correct for the Defendant Petitioner to move under Section 666 of the Civil Procedure Code.

APPLICATION for Leave to Appeal from an order of the District Court of Mt. Lavinia.

Case referred to :

1. *Senanayake* vs *Peiris* – 1992 – 2 Sri LR 169.

Rohan Sahabandu for Petitioner.

Nihal Jayamanne P.C., with Ms *Noorani Amerasinghe* for the 1st Defendant Respondent.

cur. adv. vult.

November 30, 2004

WIMALACHANDRA, J.

This is an application for leave to appeal from the order of the District Judge of Mount Lavinia dated 20.04.2004, setting aside the interim injunction granted in favour of the plaintiff-petitioner (petitioner).

Briefly, the facts relevant to this application are as follows :

The petitioner instituted the partition action bearing No. 472/03/P in the District Court of Mt. Lavinia to partition the land called Lunawewatta and Gorakagahawatte described in the schedule to the plaint. The plaintiff also sought an interim injunction against the 1st defendant-respondent (1st defendant) restraining him from constructing buildings and/or making improvements to the existing buildings on the land.

The application for an interim injunction was supported on 17.06.2003 and the Court issued a notice of interim injunction returnable for 24.06.2004 on the 1st defendant. Admittedly, it was served on one B.L.A.V. Emmanual who was residing in the Archbishop's House, which is the residence of the 1st defendant. The said B.L.A.V. Emmanual swore to an affidavit (marked X) stating *inter-alia* that there was no possibility of the said notice being brought to the notice of the 1st defendant, prior to 24.06.2003 which date was the notice returnable day. On 24.06.2003, since there was no appearance for the 1st defendant, the Court issued the interim injunction as prayed for in the prayer to the plaint. Thereafter on 15.09.2003 the 1st

defendant filed a petition and affidavit and sought an order to vacate the interim injunction under Section 666 of the Civil Procedure Code. Thereafter when the matter was taken up for inquiry the Court directed the parties to file written submissions, and the learned Judge having considered the submissions, delivered the order on 30.04.2004 setting aside the interim injunction granted by the Court. It is against that order the plaintiff has filed this application for leave to appeal.

The learned Counsel for the plaintiff-petitioner (plaintiff) submitted that the learned District Judge has failed to consider the following two preliminary objections raised by the plaintiff at the inquiry in to the application made by the 1st defendant for the vacation of the interim injunction. They are :

(i) the 1st defendant has filed papers to dissolve the interim injunction after 3 months from granting the injunction.

(ii) the 1st defendant cannot resort to section 666 of the Civil Procedure Code to vacate the interim injunction.

Section 666 of the Civil Procedure Code states that an order for an injunction or enjoining order made may be discharged, or varied or set aside by the Court, on application made thereto, by any party dissatisfied with such order.

it is to be noted that Section 666 does not speak of a time period within which a party aggrieved by the Court granting an interim injunction could avail to Section 666 of the Civil Procedure Code. Accordingly, an order for an interim injunction made by a District Court, may be set aside by that Court on an application made thereto, by any party dissatisfied with such order. The setting aside of an interim injunction may be done on a consideration of the merits and the law applicable thereto.

The order made by the learned District Judge on 24.06.2003 is an order made ex-parte as the person against whom that order has been made

was not present in Court and it was made without giving a hearing to the affected party. Accordingly, an injunction issued ex-parte must be first canvassed in the Court which made that order.

It was held in the case of ***Senanayke vs. Peiris***[11] that it has become a rule of practice deeply ingrained in our legal system that a party moving to set aside an ex-parte order must first go before the Court which made the ex-parte order to have it vacated, before moving to the Court of Appeal.

Therefore, it seems to me that it was correct for the 1st defendant to come under Section 666 of the Civil Procedure Code to have the interim injunction set aside.

The plaintiff claims that he is the owner of 1/8th share and the 1st defendant is entitled to 7/8th share, minus 29.12 perches. The plaintiff states (in paragraph 23 of the plaint) that his mother Mary Clotilda Anthony had transferred an undivided 1/8th share to the plaintiff by deed No. 306 dated 08.03.2003. It is to be noted that the plaintiff has failed to produce the said deed No. 306 for the perusal of Court to see whether he became entitled to 1/8th share of the said land. Without producing the said deed it is not possible to come to a conclusion that he has 1/8th share of the land.

The plaintiff's position as stated in the plaint is that his mother had got rights in the land by deed No. 2472 of 11.05.1942. But the plaintiff has not produced this deed.

The plaintiff admits that his father Rowland Gunasekera entered into an agreement bearing No. 1659 dated 08.09.1980 in respect of the land to be partitioned and thereafter executed Deed No. 1696 of 17.02.1981 with Archbishop restricting his rights in the land in suit to 29.12 perches. Deed No. 1696 has been produced marked "X13" by the 1st defendant.

In these circumstances, in the absence of the aforesaid deed No. 306 of 08.03.2003 and Deed No. 2472 of 11.05.1942 the plaintiff cannot establish that he has 1/8th share of the land in suit. As against the aforesaid deeds referred to by the plaintiff which he failed to produce, the 1st defendant produced the Deed No. 1696 marked "X13". According to this deed the plaintiff's father, Rowland Gunasekera has got lot 2 which is in extent

of 29.12 perches and the Archbishop has got lot 1 which is in extent "X1". The plaintiff has conceded that by the said deed marked "X13" his rights were restricted to 29.12 perches. The plaintiff has failed to produce deeds for the 1/8th share he claimed in the corpus. In the absence of the deeds the Court is unable to form an opinion that in addition to the aforesaid 29.12 perches he is also entitled to 1/8th share of the land.

The resultant position is that the plaintiff has failed to establish a *prima facie* case in his favour that he is the owner of 1/8th share of the property in addition to 29.12 perches. The failure to produce the deeds he relied on to establish that he is the owner of a 1/8th share of the property will only disclose the fact that he is now confined to 29.12 perches.

According to the aforesaid partition deed No. 1696 marked "X13" it was agreed between the plaintiff's father Rowland Gunasekera and the Archbishop that lot 1 in plan 2719 belongs to the Archbishop and lot 2 to Rowland Gunasekera in plan "X1". Accordingly the portion belonging to the 1st defendant is clearly demarcated from lot 2 which was given to Rowland Gunasekera.

The plaintiff is under obligation to make the fullest possible disclosure of all material facts within his knowledge. Though the plaintiff claimed 1/9th share by deed No. 306 dated 08.03.2003, the plaintiff did not produce the said deed. In my view this is a material fact, because the failure to establish 1/8th share means that he has only 29.12 perches which is a seperate lot in terms of the deed No. 1696 of 17.02.1981 which is depicted as lot 2 in the plan marked "X1". I am of the strong view that if this fact had been disclosed by producing the relevant deed marked "X13" and the portion plan marked "X1" the learned Judge would have given a different order at the time the Court granted the interim injunction.

In these circumstances the 1st defendant has failed to establish a *prima facie* case in his favour and hence we are not inclined to interfere with the order made by the learned Judge dated 30.04.2004.

For these reasons, the application for leave to appeal is refused and accordingly dismissed without costs.

AMARATUNGA. J. — I agree.

Application dismissed.

DIRECTOR GENERAL, COMMISSION TO INVESTIGATE ALLEGATIONS OF BRIBERY AND CORRUPTION

VS

S. B. DISSANAYAKE

COURT OF APPEAL,
BALAPATABENDI, J
BASNAYAKE, J.
CALA 299/2005
HIGH COURT OF COLOMBO
B/ 1516/2004
NOVEMBER 9, 28, 2005

Commission to investigate Allegation of Bribery and Corruption Act, No. 19 of 1954 - Sections 4, 13(2), 23A(1), 23(A)3- indicated - After closure of case for the Prosecution accused was acquitted - Code of Criminal Procedure No. 15 of 1979 Sections 200(1), 340 - proving of Basic fact Burden - Unknown income - Evidence Ordinance - Section 114- Presumption - Burden of proof - Citizenship Act - Judicature Act - 9 - 13

The accused respondent was indicted on a charge of committing an offence under section 23A (1) of the Bribery Act and thereby being guilty of an offence punishable under section 23A(3).

After the evidence of the Chief Investigating Officer of the Bribery Commission was led, the High Court Judge acquitted the accused without calling for a defence. The Bribery Commission sought leave to appeal against the said order.

Held :

(i) The burden is on the prosecution to prove the 'basic fact' that the known income of the Accused Respondent was less than that of his known expenditure during the alleged period, that the accused respondent accquired property which cannot or could not have been acquired with any part of his income during the said period.

(ii) The case for the prosecution was starved of evidence to prove the basic fact contemplated by section 23 (A) (1), hence no presumption could have been drawn against the accused respondent to call for his defence

(iii) There was infact no evidence presented to court by the investigations. It had also been revealed that certain legitimately earned income of the accused - respondent which were included in Document VI prepared by the witness, were not included in the document "X" prepared by the Bribery Commission.

(iv) There is a difference between a presumption airising under section 114 Evidence Orinance and the presumption arising under section 4 of the Prevention of Corruption Act.

APPLICATION for leave to appeal under section 15 Judicature Act read with section 340 of the Code of Criminal Procedure Act, No. 15 of 1979 and section 13(2) of the Commission to Investigate Allegation of Bribery or Corruption Act, No. 19 of 1994.

Cases referred to :

1. *Attorney - General vs. R. M. Karunaratne, SC 16/74, DC Colombo No. B/ 75, SCM, 17. 06.77*
2. *Wanigaskera vs. Republic of Sri Lanka, 79 NLR 241 at 251*
3. *State of Madras vs. Naidyanthan, 1958 AiR SC 61*
4. *Attorney - General vs. Ratwatte, 72 CLW 93*
5. *Attorney - General vs. Baranage, 2003 Spl. Sri. L. R. LR 340*

Dr. Ranjith Fernando with Ms. Deshani Jayatilake and Amila Udayanganie and Asita Anthony for the applicant - appellant.

D.S. Wijesinhe, P. C. with Kolitha Dharmawardena and Chandana Perera for trhe accused - respondent.

Cur. adv. vult

JAGATH BALAPATABENDI, J.

This is an application for leave to appeal under section 15 of the Judicature Act read with the provisions of section 340 of the Code of Criminial Procedure Act, No. 15 of 1979 and section 13 (2) of the Commission to Investigate allegations of Bribery or Corruption Act No. 19 of 1994.

The Accused - Respondent was indicted in the High Court of Colombo on a charge of committing an offence under section 23A(1) of the Bribery Act and thereby being guilty of an offence punishable under section 23A(3) of the Bribery Act giving details of the offence committed in the schedules marked as 'A' and 'B' annexed to the indictment.

At the close of the case for the prosecution on an application by the counsel for the accused respondent under section 200(1) of the Code of Criminal Procedure Act, the learned High Court Judge having heard both counsel, acquitted the accused respondent without calling for a defence on 19th July 2005.

This application for leave to appeal is preferred by the Director General of the Commission to Investigate Allegations of Bribery or Corruption against the Judgment of the learned High Court Judge dated 19th July 2005.

Counsel for both parties invited Court to make an order on the written submissions filed on the question of leave to appeal. Hence having gone through the written submissions filed by both parties the Court arrives at a conclusion on the following findings.

Provisons of the section 23A(1) of the Bribery Act reads as follows:-

Where a person has or had acquired any property on or after March 1, 1954, and such property-

(a) Being money, cannot be or could not have been-

(i) part of his known income or receipts; or

(ii) money to which any part of his known receipts has or had been converted ; or

(b) Being property other than money, cannot be or could not have been-

(i) property acquired with any part of his known income ; or

(ii) property which is or was part of his known receipts; or

(iii) property to which any part of his known receipts has or had been converted,

Then, for the purposes of any prosecution under this section, it shall be deemed, until the contrary is proved by him, that such property is or was property which he has or had acquired by bribery or to which he has or had converted any property acquired by him by bribery.

It is obvious that the above mentioned section required to prove by the prosecution, that the accused acquired property which cannot or could not have been acquired with any part of his income or receipts known to the prosecution after thorough investigation; the prosecution is not required to prove that the acquisitions were made with income or receipts from bribery. Once the above 'basic fact' fact is proved by the prosecution, a rebuttable presumption could be drawn against the accused and it shall be deemed until the contrary is proved by the accused; that such property is or was property which he has or had acquired by bribery or to which he has or had converted any property acquired by him by bribery.

In the case of *Attorney- General Vs. R. M. Karunaratne*[1] Samarawickrema, J. observed as follows:- "to require proof that such an individual has infact received a reward would be to defeat the purpose of section 23(A) which is designed against a person in respect of whom there is no proof of the actual receipt of a gratification, but there is presumptive evidence of bribery."

In the case of *Wanigasekera Vs Republic of Sri Lanka*[2] it is stated as follows" The Supreme Court of India has taken the view that a presumption of law cannot be successfully rebutted by merely raising a probability, however reasonable, that the actual fact is the reverse of the fact which is presumed. Something more than a reasonable probability is required for rebutting a presumption of law. The bare word of the accused is not sufficient and it is necessary for him to show that his explanation is so probable that a prudent man ought, in the circumstances, to have accepted it. This view is based on the difference between a presumption arising under section 114 of the Evidence Ordinance, and the presumption arising under section 4 of the Prevention of Corruption Act. In the former case it is not obligatory upon the court to draw a presumption as to the existence of one fact from the proof of another fact, where as in the latter case, the Court has no alternative but to draw the presumption". "See *State of Madras Vs. Naidyanathan Iyer,*[3].

In Karunaratne' s case (supra) Samarawickrema, J expressed a view, although an obiter. "What a person (accused) has to prove is that a property was not acqired by bribery or was not property to which he had converted any property acquired by bribery. The ordinary and usual method by which a person (accused) may prove this is by showing the source with which he acquired the property and demonstrating that it was not by bribery. As

this is a matter in which the onus is on the accused person, it will be sufficient if he establishes it on the balance of probabilities."

"If the Court is reasonably satisfied, that is, satisfied to the extent that it can say 'we think it more probable than not that the accused acquired the property by proceeds other than income or receipts from bribery'; then the accused is entitled to an acquittal."

In the instant case, after the prosecution case was closed, on the application made by the counsel for the accused respondent the learned Trial Judge acting under the provisons of section 200 (1) of the Code of Criminal Procedure Act, has acquitted the accused - respondent without calling for his defence, for the reasons given in her Judgement.

Section 200(1) of the Code of Criminal Procedure Act is as follows:- "when the case for the prosecution is closed, if the Judge wholly discredits the evidence on the part of the prosecution or is of opinion that such evidence fails to establish the commission of the offence charged against the accused or of any other offence of which he might be convicted on such indictment he shall record a verdict of acquittal; if however the Judge, considers that there are grounds for proceeding with the trial he shall call upon the accused for his defence."

The words used in the above mentioned section 200(1) signify the scope of the function, giving a wide discretion and power to the judge. In the case of Attorney - General Vs. Ratwatte[4] provides an example of a situation where the judge has wholly discredited the evidence for the prosecution. The first accused in that case, at the time of the alleged offence was the Private Secretary of the Prime Minister of Ceylon. He was indicted for accepting a bride of Rs. 5000/- (given in two instalments) as an in ducement for obtaining a grant of citizenship in terms of the Citizenship Act to a Malaysian National. According to the evidence of the prosecution witness, on the first occasion a sum of Rs. 1000/- was openly given to the 1st accused in his house and the latter, in the presence of other unknown persons who had come with the person who gave the bribe, has put the money into his shirt pocket. Again two days later the same person has given Rs. 4000/- to the first accused at the latter's ancestral house and even on that occasion the accused has openly accepted the money in the presence of persons unknown to him. At the end of the prosecution case

the trial Judge, acting under section 210(1) of the Criminal Procedure Code of 1898, (which is similar to section 200(1) of the present Code) has acquitted the first accused without calling for his defence.

In his reasons the trial Judge has stated as follows "On both occasions the 1st accused does not appear to have been in any way hesitant about accepting the money. He does not appear to have been anxious to conceal the acceptance from any person who may have seen it. He does not take the precaution even of accepting the money without being seen by the unknown persons. It can not be said he is unaware of the seriousness of the offence he is committing. He does not seem to care as to whether he is led into a trap or not. I do not think any ordinary person would accept a bribe in such a manner, least of all a person in the position of 1st accused who holds such a responsible post under the Government." The Learned trial Judge has therefore concluded that "no reasonable Court can accept the oral testimony of papuraj that this gratification was given to the 1st accused." In appeal the Supreme Court accepted the correctness of this reasoning and dismissed the appeal filed against the acquittal of the 1st accused.

In the case of Attorney - *General Vs Baranage*[5] Amaratunga, J observed as follows:-

"In a trial by a Judge without a jury the Judge is the trier of facts and as such at the end of the prosecution case in order to decide whether he should call upon the accused for his defence he is entitled to consider such matters as the credibility of the witnesses, the probability of the prosecution case, the weight of evidence and the reasonable inferences to be drawn from the proven facts. Having considered those matters, if the Judge comes to the conclusion that he cannot place any reliance on the prosecution evidence, then the resulting position is that the judge has wholly discredited the evidence for the prosecution. In such a situation the Judge shall enter a verdict of acquittal".

Even if the judge has not wholly discredited the prosecution evidence, the words in the section that the "Judge is of opinion that such evidence fails to establish the commission of the offence charged against the accused or any other offence of which he might be convicted on such indictment", give him the power to enter a verdict of acquital without calling for the defence.

Now I would like to examine the Judgment in the instant case to see whether the learned Trial Judge had erred on questions of law and/or misdirected herself in relation to the matters of facts, as alleged by the applicant - appellant.

At the outset, I would like to reiterate the very words used by the Learned High Court Judge in her Judgdment for her conclusion, *viz* "It is my view that according to the findings which I have made both of law and fact the Commission had failed to establish a *prima facie* case against the accused that there were unknown income and receipts not from legitimate sources constituting under section 23A of the Act. If there has not been any proof as to the existence of any sources of income unknown to the prosecution after investigation then the accused cannot be asked to submit a defence on his behalf for there is no case against him to defend. I therefore do not call for the defence, and I order the acquittal of the accused from all the charges."

Hence, It is apparent that the finding of the learned High Court Judge on the evidence led, was that the prosecution (Applicant - appellant) after investigation had failed to establish or put in issue that there had been in existence any sources of income of the Accused respondent, unknown to the prosecution (applicant - appellant) to call for a defence from the accused respondent. Thus no presumption could have been drawn against the accused respondent as envisaged by the provisions of the section 23A of the Act.

As aforsaid learned High Court Judge had expressed her opinion to this effect in her Judgement. The Judges employ varying language to express their opinion.

In the instant case the only witness called by the prosecution (the applicant appellant) was the chief Investigating Officer of the Bribery Commission Epa Kankanange Don Chandrapala. He had commenced an investigation against the accused - respondent on a letter received by the Bribery Commission from one Dharmadasa of Veyangoda. On inquiries into the said letter the witness had found that there was no such person and their was no such address as stated in the said letter.

The burden is on the prosecution (applicant appellant) to prove the *'basic fact'* that the known income of the accused - respondent was less

than his known expenditure during the period between 31.3.1995 to 30.09.2001 (as per indictment) *i.e*, that the accused - respondent acquired property which cannot or could not have been acquired with any part of his known income during the said period.

The learned High Court Judge having considered the evidence led, had correctly come to a finding that the contents of the documents p1 to P13 (Marked by the prosecution. as to the income of the accused respondent could be classified as "known income", since admitted by the witness Chandrapala. The contents of the docements P 14 to P22 (marked by the prosecution) are also found to be true on investigation carried out by the witness Chandrapala.

The contensts of the document marked as "X" prepared and relied on by the Bribery Commission (Applicant - appellant) shows the total income as Rs. 19, 736,11.84 and total expenditure as Rs. 48,333123.52 ; Theerefore the expenditure over income of the accused - respondent was Rs. 28,597,003.68. However the only witness Chandrapala, had stated that he was unaware of the preparation of it, and had no knowledge of its contents.

In cross examination of the witness Chandrapala, the documents VI and V2 were marked by the accused - respondent which were in the custody of the Bribery Commission. The documents VI and V2 had been prepared by the invetigating officers Chandrapala and Nandasena respectively in connection with this case and had been submitted to the Bribery Commission and VI shows the total known income of Rs. 54, 667, 685.87 and known expenditure of Rs. 30,203,915.03 therefore known income over expenditure of the accused - respondent was Rs. 24,463,770.84. The document 'X' shows a contrasting position of the total expenditure over the total income of the accused - respondent as being Rs. 28,597,003.68 as against the document VI. It had been revealed that certain legitimately earned income of the accused respondent which were included in the document VI prepared by the witness were not included in the document 'X' prepared by the Bribery Commission.

On analysis of the evidence of the prosecution case, the learned High Court Judge had correctly come to a finding and stated in the judegment as follows:- "Therefore in the present case, I find that there was cogent and compelling evidence to establish that the income which the accused had received was within the statutory concept of "known income" which

did not constitute an offence under the Act. This was a finding made by the investigators employed by the Commission. There was in fact no evidence presented to the court of a finding of any "unknown income ". by the investigators. Moreover, in his evidence, the principal investigator Chandrapala, admitted to Court that he found no evidence to establish that the accused had any 'unknown income'. Further Chandrapala, who was the only witness for the Commission informed Court that he had made a Report to the Bribery Commissioner that there was no evidence of any 'Unknown income'.

Further, the learned High Court Judge had come to a conclusion, as follows - "It was clearly evidenced by the sole witness for the commission that all moneys and acquistions of the accused were from the sources of income claimed by the accused. When the witness for the Commission concluded his evidence by establishing that there was no money or property acquired by this accused which were from unknown sources, and not by legitimate means there is no obligation upon the accused to prove that the property or money he had received and acquired were not by bribery."

It is pertinent to note that case for the prosecution was starved of evidence to prove the 'basic fact' contemplated by the provisions of the section 23A (1) of the Bribery Act, hence no presumption could have been drawn against the accused respondent to call for his defence.

As mentioned above, I cannot see any other conclusion that the learned High Court Judge could have arrived at than the one set out in her judgment for the reasons mentioned therein.

The ultimate conclusion of the learned High Court judge was correct in law and on the facts. I am of the view that the learned Hight Court Judge's decision to acquit the accused appellant without calling for his defence was correct.

Thus, the application for leave to appeal is of no merit.

BASNAYAKE, J. — I agree

Leave to appeal refused. The application is dismissed.

UPALI SARATHCHANDRA & OTHERS
VS
REPUBLIC OF SRI LANKA

COURT OF APPEAL
BALAPATABENDI, J.
IMAM, J.
C. A. 63-64/2001
HIGH COURT NEGOMBO No. 61/95
JULY 19, 2004
AUGUST 5, 2005
SEPTEMBER 24, 2004
OCTOBER 19, 2004

Penal Code - Sections 32, 296 - Murder - Conviction - Evidence Ordinance - Section 134 - Proof of any fact? - Numberf of witnesses required?- Evidence of a child admissibility? - Criminal Procedure Code Section 203, 279, 283 (1), 283(5), 436 - Applicable section? - Old Criminal Procedure Code - Sections 304, 425 - Compared.

The 2nd and 3rd accused appellants along with the 1st accused (since dead) were indicted for committing murders of five persons and after trial they were sentenced to death.

It was contended that (1) the High Court Judge has failed to assess the credibility of the only eye witness who was only 12 years old at that time (2) the High Court Judge has failed to evaluate and consider evidence of the 2nd accused appellant (3) that High Court Judge failed to comply with the provisions of section 279, 283 (1) and 283 the code of Criminal Procedure.

HELD

(I) The Court had carefully analyzed and evaluated and weighed the evidence of the 12 year old eye witness and was convinced that he had given cogent and truthful testimony in court, also by observing the demeanour and deportment of this witness. No particular number of witnesses shall in any case be required for proof of any fact. Evidence must not be counted but weighed.

(2) The evidence of the 12 year old witness was trustworthy and credible.

(3) The judgment in every trial under the Code should be pronounced in open court immediately after the verdict is recorded or save as provided in section 203 and at some subsequent time of which due notice shall be given to the parties/pleaders.

(4) Section 203 deals with trial by Judges of the High Court without a Jury.

On an examination of section 283 (1) and 283 (5) it appears that these two provisions are mandatroy for Primary Court Procedure.– S. 279 and S. 283 will apply to every Primary Court Judgment.

Section 279 and 436 of the present Code could be construed and equated to section 304 and section 425 of the old Code.

(5) In the circumstances the relevant section which should be complied with is section 203 of the Code, the High Court Judge had correctly complied with the section.

(6) Upon the facts and circumstances in the instant case, even if there had been an irregularity, such irregularity is not fatal to the conviction and is cured by section 436 and it has also not caused any prejudice to the accused appellants.

APPEAL from the judgment of the High Court of Negombo.

Cases referred to :

1. *Palaniyandi vs. State,* 76 NLR 145
2. *Fatusontal Vs Emperor 1921 22 Cr. LJ 417*
3. *Walimunige John vs. State,* 76 NLR 488
4. *Sumanasena vs. Attorney General (1999)* 3 Sri LR 137
5. *K vs. Davodulebbe, 50* NLR 274

Ranjith Abeysuriya, P. C., with Thanuja Rodrigo for 1st accued appellant.
Dr. Ranjit Fernando with H. Kularatne for 2nd accused appellant.
Sarath Jayamanne, Senior State Counsel for the Attorney - General

Cur. adv. vult.

13 December 2004,
JAGATH BALAPATABENDI, J.

The 2nd and 3rd accused appellants along with the 1st accused (Since dead) were indicted for committing murders of five persons (as per indictment) under section 296 read with section 32 of the Penal Code, and were sentenced to death by the High Court Judge of Negombo after trial on 01. 06. 2001.

The following facts were established at the trial by the prosecution:- The deceased No. 1 Somapala, the Deceased No.2 Nandawathie (Wife of Somapala) the deceased No.3 Nadeeka Shiromi (daughter of 1st and 2nd deceased), the deceased No. 4 Anil Jayasinhe, the deceased No. 5 Chandra (wife of 4th deceased) were killed on 3rd September 1987. The 1st 2nd and 3rd deceased were living in the same house; the 4th and 5th were running a boutique in the close vicinity, and used to stay at the residence of the 1st 2nd and 3rd deceased. The 4th ceceased Anil was a disabled person having a difficulty in walking. The only eye - witness to the incident had been 12 year old Nadeera Somananda son of the 1st and 2nd deceased, (Somapala and Nandawathie), and the brother of the 3rd deceased Shiromi.

The 2nd and 3rd accused appellants are brothers and were living very close to the residence of the 1st, 2nd and 3rd deceased. The 1st accused was an uncle of the 2nd and 3rd accused appellants who died before the commencement of the trial.

At the trial the only eye witness to the incident Nadeera Somananda (24 years at the time of giving evidence and 12 years old at the time of the incident), in giving evidence had stated that, on the previous day of the incident he with his sister Shiromi (3rd deceased, 10 years old) after school went for a tuition class by bicycle held in a house in the village, while they were in the tuition class their mother and father (1st ande 2nd deceased) had come and informed them not to return home as there had been some trouble to their neighbour Anil (4th deceased), thus they had spent the night at the tuition - house, and had returned home next day early morning around 5.30 a. m. by bicycle. When he was relaxing on the bed at home around 6.00 a. m. he had heard some stones being pelted at the house; had walked towards the kitchen and seen his father (1st deceased) walking out from the kitchen - door carrying a pointed weapon ('මඩමිටි') and his mother 2nd deceased) was standing near the kitchen door. At that stage the 1st accused (now dead) who was in the garden near the Thambili tree had fired a shot from a pistol, then his father the (1st deceased) ran back home and fell on the floor in the room near the kitchen, wheras his mother (2nd deased) followed the father and fell on the floor near the place where his father fell. The witness due to fear hid himself under the table which was placed near the wall close to a bed in

the adjoining room of the hall. Chandra (the 5th deceased) also came and hid herself under the same table, Anil (the 4th deceased) hid himself under the bed. The witness had seen the three accused entering the house after breaking the kitchen door. The 1st accused was armed with a pistol, the 2nd accused appellant was armed with manna knife (මඟුනය) and the 3rd accused appellant was armed with a gun. The 1st accused having seen the father who was fallen on the floor and screaming had told the 2nd accused appellant to cut him as he was not dead, then the 2nd accused appelllant had cut both father and mother to death. On seeing Chandra who was hinding under the table she was dragged out and cut to death by the 2nd accused appellant. The 1st accused had seen Anil the 4th deceased who was hiding under the bed had said that he likes to see the face of Anil and shifted the bed, then the 3rd accused appellant had shot Anil at close range with his gun. The witness had heard his sister Shiromi (10 year old) pleading "not to kill her and she would do anything she was asked to do" (මාව මරන්න එපා කියලා කියන ඕනෑම දෙයක් කරන්නම්) despite her appeal the 1st accused had told "if she was left, she would give evidence, kill her" (මේකි හිටියොත් සාක්ෂි කියනවා මේකිව මරන්න) then the 2nd accused appellant had cut her to death. The witness had stated that he felt accused were looking out for him, as they failed to track him, they left the house from the rear - door.

Immediately thereafter, the witness had gone to the Co - operative stores where his mother (2nd deceased) had been employed left the bicycle in the Co-operative stores and gone to his aunt's place (Mother's sister's place) in Seeduwa and immediately narrated the whole incident to his aunt Premawathie.

Later, Premawathie and the said witness had first gone to Seeduwa Police, and on the direction of Seeduwa Police they had gone to Divulapitiya Police to lodge the complaint. (as the incident had taken place in Divulapitiya Police area)

In addition to the eye witness Nadeera Somananda, the evidence of the witness Premawathie, the medical evidence and the evidence of the Police officers, had been led by the Prosecution.

The 2nd accused appellant in giving evidence had stated that on the day of the incident he with his brother the 3rd accused appellant, went to

work early in the morning to their Brick Clink about one and a half miles away from their home, when they were informed that the Police was searching for them they stopped the work and went to their Aunt's place. Later, they surrendered to the Police. In cross examination he had admitted that it takes only 10 to 15 minutes to go to the Brick Clink from home, In addition to the alibi, he had denied any involvement in the incident and they were not aware of the deaths of these five deceased though they were neighbours.

At the hearing of the Appeal the counsel for the accused appellants assaled the Judgment on the following grounds:-

(1) The Learned High Court Judge had failed to assess the credibility of the only eye - witness Nadeera Somananda

(2) The Learned High Court Judge had failed to evaluate and consider the evidence of the 2nd accused appellant.

(3) Failure of the High Court Judge to comply with the provisions of section 279, 283 (1) and 283 (5) of the Criminal Procedure Code, have deprived the accused - appellants of a fair trial.

The evidence of the eye - witness Nadeera Somananda revealed that he had come home with his sister Shiromi from the tuition house around 5.30 a. m. in the morning on the day of the incident. The dead body of Shiromi was found inside the house with cut injuries, established that the version of the witness that he came home with his sister Shiromi. There was no doubt as to the identity of the assailants as the incident had occurred around 6 a. m. According to the witness there was enough light to identify the assailants, and the witness knew the accused - appellants well as they are neighbours. The State Counsel contended the fact that there was enough light inside the house had been established as the assailants, had directly attacked all the deceased without any support of artificial illumination. Soon after the incident the witness had gone to his aunt's place (mother's sister) and immediately narrated the whole incident, which had been corroborated by Premawathie (Aunt of the witness). The learned Hight Court Judge had observed and commented on the spontaneity of the witness. The medical evidence of the Doctor who conducted the post - mortems of the five deceased had corroboratd the evidence of the eye - witness Nadeera as to the injuries found on the dead bodies. (cut injuries and gun - shot injuries) The Police officer who investigated had corroborated the evidence of the eye witness Nadeera as to the positions

of the five dead bodies found inside the house, and recovery of empty cartridges outside the house and inside. On a perusal of the judgement it is obviously clear that the Learned High Court Judge had evaluated the evidence with reference to spontaneity, consistency, probability and demeanour of the eye - witness.

The Counsel for the accused - appellants strongly contended that it is impossible to belive the witness Nadeera, who had been hinding under the table, where the 5th deceased Chandra also took shelter under the same table was dragged out by the 2nd accused - appellant and cut to death, the said table was 1 1/2 ft long and 2 ft wide which could give little cover to two people, as such the version of the eye witness was improbable, as to how the witness escaped from seeing by the assailants.

The State Counsel contended that, the eye - witness Nadeera in his evidence had shown the size of the table was similar to the table that was there inside Court, which was 3 ft long and 2 1/2 ft wide (as observed by Court). The Police officer in answering a question had stated the table was 1 1/2 ft long and 2 ft wide may be a typing error, further he contended there the defence counsel had not even suggested to the eye - witness or to the Police Officer whether there was enough space for two people to hide under it. His contention also was the 5th deceased Chandra came and hid under the same table as there was enough space to hide her - self under it, and the table was placed inside the room near the wall close to the bed, so that a small boy of 12 years old (the witness) could have hid himself without being seen by the assailants.

The Section 134 of the Evidence Ordinance sets out that "no particular number of witnesses shall in any case be required for proof of any fact". In *Planiyandi Vs State*[1] *Alles J* had quoted the observation made in *Fatusantal Vs Emperor*[2] the Patna High Court held that "The mere fact that the evidence of the only eye - witness of a crime is that of a child of 6 years of age, is not a ground for not relying upon it, especially when the evidence is given without hesitation and without the slightest suggestion of tutoring or anyting of that sort, and there is corroboration of the evidence in so far as narrates the actual facts, and of the child's subsequent conduct immediately afterwards."

In *Walimunige John Vs State*[3] G. P. A. de Silva (S. P. J) observed that " no particular number of witnesses shall be required for the proof of any

fact. The adequacy of one witness to prove a fact in terms of the section 134 of the Evidence Ordinance will hold good in a case where only one witness is available to the party desiring to establish a fact, and where only one witness is called even though others are also avilable." In the instant case the only eye witness available for the prosecution to prove the case was the witness nadeera Somananda 12 years old son of the 1st and 2nd deceased. The offence had been committed not in a public place within the sight of many. Sothat, his testimony should be truthful and trustworthy. The learned trial Judge could act on the evidence of this solitary witness Nadeera Somananda provided the trial Judge was convinced as regard to his testamonial trustworthiness and credibility.

in the case of *Sumanasena Vs Attorney General* (4) it was held " Evidence must not be counted but weighed and the evidence of a single solitary witness if cogent and impressive could be acted upon by a Court of Law."

It is appearent that the learned High Court Judge had carefully analyzed, evaluated and weighed the evidence of the eye witness Nadeera Somananda, and was convinced that the eye - witness had given cogent, and truthful testimony in Court, also by observing the demeanour and deportment of this witness who was subjected to very long and protracted cross - examination, had arrived at findings in regard to credibility and trustworthiness of the testimony of this witness. in view of those circumstances he had belived the evidence given by the witness without any hesitation or doubt. (at page 513, 526, 527 and 535 of the Brief)

On a perusal of the evidence, we are also of the opinion that the evidence given by only eye - witness Nadeera Somananda was trustworthy and credible.

It appears that the learned High Court Judge was of the view that as the prosecution had established a strong case with incriminating and cogent evidence against the Accused - appellants, in the circumstances the evidence of the 2nd accused - appellant (the alibi and the denial of any involvement in the incident) had failed to create any reasonable doubt on the prosecution version.

Having considered all the evidence led in the case we are also of the view that the learned Hight Court Judge had come to a correct conclusion that the prosecution had proved the case against both accused appellants beyond reasonable doubt, and the evidence given by the 2nd accused appellant had failed to raise any reasonable doubt or even a suspicion on

the prosecution case, and no reliance could be placed on the evidence of the 2nd accused appellant.

In regard to the third ground alleged, that the learned Hight Court Judge had failed to comply with section 279, 283 (1) and 283 (5) of the Criminal Procedure Code:-

(1) Section 279 of the Criminal Procedure Code states as follows:-

The Judgment in every trial under this Code shall be pronounced in open Court immediately after the verdict is recorded or **save as provided in section** 203 at some subsequent time of which due notice shall be given to the parties or their pleaders, and the accused shall if in custody be brought up or if not in custody shall be required to attend to hear judgment delivered except when his personal attendance during the trial has been dispensed with and the sentenced is one of fine only or when he has been absent at the trial.

Section 203 of the Criminal Procedure Code, (which deals with the trial by Judge of the High Court without jury) states as follows:- "When the cases for the prosecution and defence are concluded, the Judge shall forthwith or within ten days of the conclusion of the trial record a verdict of acquittal or conviction giving his reasons therefore and if the verdict is one of conviction pass sentence on the accused according to law."

Thus I am of the opinion that the relevant section which should be complied with, by the Judge of the High Court is section 203 of the Criminal Procedure Code. And it appears that the Learned High Court Judge had correctly complied with the Section.

On examination of the provisions of the Section 283 (1) and 283 (5) it appears that these two provisions are mandatory for Primary Court procedure.

(Foot note under Provisions of Section 283 indicate that "Section 279 and 283 shall apply to every Judgment of a Primary Court")

In the case of *King Vs Davodulebbe*[5] - the accused - appllants had urged that, the failure of the Judge to observe the provisions of section 304 of the Criminal Procedure Code amounted to an irregularity which could not be cured. Wijewardena, CJ held that " failure to comply with section 304 is an irregularity curable under section 425 of the Criminal Procedure Code."

Section 304 and section 425 of our Old Criminal Procedure Code could be construed and equated to the sections 279 and 436 respectively of the present Criminal Procedure Code (Chapter 26).

Thus, I am of the opinion that upon the facts and circumstances in the instant case, even if there had been an irregularity, such irregularity is not fatal to the conviction, and is cured by section 436 of the Criminal Procedure Code also it had not caused any prejudice to the accused - appellants.

Futher, on a persual of the proceedings at the trial it is apparent that the Learned High Court Judge on 01. 06. 2001 after conclusion of the submissions of both counsel, had commenced to deliver the Judgement around 3.20 p.m. in Court, intially he had dealt with the ingredients necessary for the charge of muder, common intention, presumption of innocence of the accused, burden of proof by the prosecution, proof beyond reasonable doubt, benefit of the doubt, and the evidence available to establish the above mentioned legal principles with reference to the evidence of the witness Nadeera Somananda and other evidence led in the case, thereafter he had proceeded to convict the 2nd and 3rd accused applleants the charges mentioned in the indictment, and the allocutus were recorded. The Learned High Court Judge had mentiond in the judgment as it would take about six hours to evaluate all the evidence giving reasons for conviction, he had continued to dictate the Judgement to the stenographer in chambers, and passed the death sentence on both accused appellant on the same day in Court (as reflected in the case record).

Thus, the argument of the counsel that it was practically impossible to deliver page type written Judgment on the same day, do not hold water, as the normal practice in the Hight Court is to dictate the Judgement to the stenographer, and if convicted pass the sentence, typing of the Judgment is done by the stenographer thereafter.

Having considered all the grounds of appeal urged by the accused appellants, I find no reason whatever to set aside the conviction.

For the reasons aforesaid, I uphold the conviction and sentences passed on the accused - appellants. The appeal is dismissed.

Immam, J. - I agree.

appeal dismissed.

KIRAN ATAPATTU
VS
PAN ASIA BANK LIMITED

COURT OF APPEAL
WIMALACHANDRA, J.
CALA 299/2004
D. C. COLOMBO 1010/DR
NOVEMBER 09, 2004

Debt Recovery Special Provisions Act'2 of 1990 - Section 30 amended by 4 of 1994 - Section 6(2)(C) - Do overdrafts come within the meaning of the provisions of the Debt-Recovery Law ? -What is a Debt ? -Can the Bank charge compound interest ?- Evidence Ordinance (Amendment) Act -14 of 1995 - Evidence Ordinance Special Provisions Act -34 of 1997 - Computer Printouts - Method of proving - Is an affidavit necessary ?- Evidence Ordinance Section 90 (C) - Civil Procedure Code - Section 705(1) Affidavit to state "Justly due?" Interest exceeding capital - legality ?- Conditional leave to defend - Can it granted ? - Sustainable defence to grant leave to appear and defend action?

The plaintiff Respondent (Bank) instituted action against the Defendant Petitioner under the Debt Recovery Special Provisions Act to recover a certain sum. The trial court entered Decree Nisi in favour of the plaintiff. The Defendants thereafter moved for unconditional leave to appear and defend. The Defendant was ordered to deposit Rs. 3.5 Million as a precondition to the grant of leave to appear.

It was contended that -

(i) The Debt. Recovery Special Provisions Law does not apply to overdrafts ;
(ii) The Bank cannot charge compound interest ;
(iii) The Statement of Claim is not admissible as it is a computer printout ;
(iv) That the affidavit does not contain the words that, the monies are lawfully due ;
(v) that the interest claimed exceeds the capital.

Held –

1. Whether one calls the sum borrowed on overdraft or a loan if it is capable of being ascertained it falls within the meaning of 'debt,' on his own explanation the sum borrowed by the Defendant and the interest component can be ascertained. Term debt in Section 30 includes overdrafts, if the amount is capable of being ascertained or is ascertained at the time of institution of action.

2. Compound interest is recoverable. Roman Dutch Law prohibitions against compound interest is no longer in force in Sri Lanka.
3. In terms of Section 6 - Evidence Ordinance (Amendment) 14 of 1995 - The plaintiff is entitled to produce computer printouts if they are accompanied by an affidavit of a person occupying a responsible position in relation to the operation of the relevant machine. The Plaintiff had in fact filed an affidavit.
4. There is nothing in Section 705 (1) of the Code that the Plaintiff shall make an affidavit that the sum is lawfully due to him from the Defendant thereon it only states that he must make an affidavit that the sum which he claims is justly due. In any event the Defendant should not be granted unconditional leave to defend merely because such word was not used.
5. Section 21 of the Principal Act lays down that the institution may receive as interest, a sum of money in excess of the money claimed as principal.
6. Section 6(2) does not permit unconditional leave to defend the action. The minimum requirement is the furnishing of security.
7. Defendant-Appellant does not disclose a sustainable defence to grant leave to appear and defend the action.

APPLICATION for leave to appeal from an Order of the District Court of Colombo.

Cases referred to :

1. *National Bank of India* Ltd., vs Stevenson - 1913 16 NLR 496
2. *Matikar vs Supramaniam Chettiar* - 44 NLR 409
3. *Paindathan vs Nadar 37 NLR 101*
4. *Peoples Bank vs Lanka Queen Intl* (Pvt) Ltd., 1999 1 Sri LR 233
5. *National Development Bank vs* Chrys Tea (Pvt) Ltd., and another 2000 2 Sri LR 206

Romesh de Silva P. C., with Palitha Kumarasinghe for Defendant Petitioner-Petitioner.

Harsha Amarasekera with *K. Pieris* for Plaintiff Respondent-Respondent

February 19, 2005.

Wimalachandra, J.

This is an application for leave to appeal from the order of the Additional District Judge of Colombo dated 27.07.2004.

Briefly, the facts relevant to this application are as follows :–

The plaintiff-respondent (plaintiff) instituted the action bearing No. 1010/DR in the District Court of Colombo against the defendant-Petitioner (defendant) under the Debt Recovery (Special Provisions) Act. No.02 of 1990 to recover a sum of Rs. 10,518,434/69 and interest thereon. The Additional District Judge of Colombo entered. decree *nisi* in favour of the plaintiff, and it was served on the defendant. The defendant filed petition and affidavit along with certain documents and moved for unconditional leave to appear and defend action. The District Court by its order dated 27.07.2004 refused to grant unconditional leave and ordered the defendant to deposit a sum of Rs. 3.5 million to the credit of the case within three months from the date of the order, as a precondition to the grant of leave to appear and show cause. It is against this order the defendant has filed this application for leave to appeal.

The defendant admits that he obtained banking facilities amounting to Rs. 6 million from the plaintiff. (*vide* "F15" annexed to the petition) He admits that the said sum of Rs. 6 million has not been repaid. These facilities were granted to the defendant upon requests made by him. (*Vide* documents marked 'B1', 'C1', 'C2', 'C3').

Under the provisions of the Debt Recovery Act, No. 02 of 1990 where the debt (the capital plus interest) exceeds Rs. 150,000 the provision of the Act could be made use of to recover such amounts. Accordingly the aforesaid overdrafts obtained by the defendant from the plaintiff and the accrued interest could be recovered as a debt under the Debt Recovery Act, No. 02 of 1990.

Admittedly, the defendant has obtained banking facilities from the plaintiff. The plaintiff was entitled to charge the interest on the said banking facilities. It is admitted that the defendant has not paid the capital sums borrowed by him and the interest thereon.

The learned President's Counsel for the defendant in his written submissions, submitted that the defendant has obtained only overdrafts and not loans which do not come within the meaning of section 30 of the Debt Recovery (Special Provisions) Law. In terms of section 30 of the Act, No. 02 of 1990, 'debt' means a sum of money which is ascertained, or capable of being ascertained at the time of the institution of the action,

and which is in default. In the instant case, out of the total sum of Rs. 10,518,434.69, the capital sum borrowed by the defendant is Rs. 6,000,000 (Six Million Rupees), which he has admitted as being due. The balance portion of the aforesaid sum claimed by the plaintiff is the interest component.

The plaintiff's action is based on the default of the defendant to pay back the monies due to the bank. The defendant has not disputed the fact that the sums lent to him by the plaintiff in the form of over-drafts is Rs. 6 million and he has not repaid the entire Rs. 6 million. Accordingly, there is no dispute as to the amount of Rs. 6 million that the defendant obtained from the plaintiff-bank. As regards the interest, though the defendant seeks to dispute the amount of the interest, he does not deny the non payment of interest. The defendant has filed along with his petition and affidavit a document marked "R2" prepared by Thilakaratne & Co., a firm of Chartered Accountants, a summary of the facilities he obtained from the bank and the total interest component on the facilities obtained. According to "R2" the interest component is Rs. 5,409,678.48. Therefore, on his own explanation, the sum borrowed by the defendant and the interest component can be ascertained. It is to be noted that the discrepancy between what the plaintiff claims and the defendant has admitted as due is only a sum of Rs. 86,127.29. However according to the defendant's calculation, the amount due on account of capital which is Rs. 5,108,756.21 according to "R2" and the amount due as interest which is Rs. 5,409,678.48 is clearly ascertained. It is to be noted that according to "R2" he has shown the capital amount as Rs. 5,108,756.21 but he has admitted that the overdraft facilities he obtained from the plaintiff amounting to Rs. 6 million has not been paid. Accordingly, in these circumstances, it is my view that the amount borrowed by the defendant and the interest component is considered capable of being ascertained. Therefore whether one calls the sum borrowed an overdraft or a loan, if it is capable of being ascertained it falls within meaning of debt under section 30 of the debt Recovery (Special Provisions) Act. Accordingly, there is no merit in the submissions made by the learned President's counsel for the Defendant that the capital sum claimed by the plaintiff does not fall within the meaning of "debt" in terms of section 30 of the Debt Recovery (Special Provisions) Act. It is my further view that the term 'debt' described in section 30 includes overdrafts, if the

amount is capable of being ascertained or is ascertained at the time of institution of the action.

It has been argued by the learned President's Counsel for the defendant that the plaintiff-bank has charged compound interest and the defendant is not obliged to pay compound interest. In the case of *National Bank of India Ltd.* Vs. *Stevenson* [1], it was held that ;

"the rights and liabilities of the parties in connection with the account current were ; in terms of Ordinance No. 22 of 1866, which introduced into this Island the English law of banks and banking, governed by that law, and not the Roman Dutch; and that, therefore, the charge of compound interest was not, as such, unmaintainable.

While under the Roman Dutch law compound interest was not allowed, even though it had been expressly stipulated for, under the English law it was allowed where, *inter alia,* there was an agreement, express or implied, to pay it, or where its allowances was in accordance with a custom of a particular trade or business.

Held, further, that by reason of the custom with the banks, and of the acquiescence of the defendant mentioned above, he became liable to pay the compound interest charged."

C. G. Weeramantry in his book "The Law of Contract", volume II at page 925 states thus :

"The Roman Law prohibited compound interest so also the Roman Dutch Law did not allow compound interest even though expressly stipulated for, but the Roman Dutch law prohibition against compound interest is no longer in force in South Africa or in Ceylon."

It was held in the case of *Marikar Vs. Supramaniam Chettiar*[2] that compound interest is recoverable under the law of Ceylon, although the question of such a charge may be considered on the reopening of a transaction.

In the circumstances the submissions made by the learned President's counsel that the plaintiff cannot claim compound interest has no merit.