SEYLAN BANK LTD

v

MANCHESTER YARN AND THREAD (PVT) LTD

SUPREME COURT
S. N. SILVA, C. J.
WIGNESWARAN, J.
WEERASURIYA, J.
SC 28/2003
CALA 192/2000
DC COLOMBO 13039/MR
SEPTEMBER 4, 2003

Monetary Law – section 2 and section 4(2) – Civil Procedure Code, section 5 and section 217 – Is a party entitled to obtain judgment in a currency other than in Sri Lankan Rupees? – Judgment prayed for in a foreign currency – Principle of Restitutio-in-Integrum-Consensus-ad-idem *– Court of Appeal (Appellate Procedure) Rules of 1990 – Rule 4 (12).*

Held:

Per Wigneswaran, J.

"When section 2 of the Monetary Law refers to the standard unit of monetary value in Sri Lanka as being the Sri Lankan Rupee it does not mean that judgments cannot be given in foreign currencies, it could only be inferred that where foreign currency is not available for payment or seizure what should be seized should be converted to the standard unit of monetary value in Sri Lanka because the foreign currency is not a standard unit of monetary value in Sri Lanka".

(1) Standard unit being Sri Lankan rupees does not mean that other currencies are not recognized in Sri Lanka.

(2) The plaintiff must necessarily be entitled to judgment in a currency which he expected at the time when the breach took place. The principles to be applied are that of Restitution-in-integrum and reasonable foreseeability.

Not to pay in a currency in which the contract was entered into would amount to an absence of consensus *ad idem.*

Per Wigneswaran, J.

> "Merely because the late 19th century and early 20th century decisions were made by Courts that judgments shall not be given in a foreign currency at a time when nations and state were functioning more or less in water tight compartments, it does not mean that those decisions must be given effect to in the 21st century as well when nations are joining together in economic unions and trade and commerce have transcended the frontiers of national boundaries".

(3) Any attempt to restrict decrees to be entered only in Sri Lankan currencies would affect International Trade and Commerce via Sri Lanka in the modern context. During the last 28 years currencies have been seen to be floating and their relative values have often changed.

APPLICATION where the Court of Appeal granted leave to appeal to the Supreme Court acting under Rule 4 (12) of the Court of Appeal Rules 1990.

Cases referred to:

1. *Cementation Company (Overseas) Ltd.,* v *Hotel International Ltd.* – 1986 – 1 Sri LR 262 (not followed).
2. *Mercantile Agency* v *Ismail* – 26 NLR 326
3. *Harrisons & Crossfield* v *Adamaly* – 5 CWR 32
4. *Schorsch Meier GMb H* v *Hennin* – 1974 - 3 NLR 823 – 75 All ER 152
5. *MV Eleftherotria* v *Owners of MV Despina* R – 1975 – 1 All ER 153
6. Services Europe Atlantique Sud (SEAS) & Stochhalum –
7. *Rederiaktie Bolagsvea of Stockholon* (the Folias – 1978 – 3 WLR 804
8. *Millangos* v *George Frank (Textile) Ltd.* 1975 3 WLR 758
9. *Tehhu (owners) & Owners of Cargo & Freight* v *Nippon Salvange Company* 1969 3 WLR 1135.
10. *Yugoslavenska Oceanska Plovidba* v *Castle Investment Company – 1973 3 WLR 847.*

Romesh de Silva PC with *Shanaka de Livera* and *Sugath Caldera* for defendant-petitioner.

A. P. Niles with *Arjuna Kurukulasooriya* and *K. Jeyaraj* for plaintiff-respondent-respondent.

December 19, 2003

WIGNESWARAN, J.

The plaintiff-respondent, Manchester Yarn and Thread (Pvt) Limited (hereinafter referred to as respondent) filed an action in the District Court of Colombo against the defendant petitioner-petitioner, Seylan Bank Limited (hereinafter referred to as petitioner), praying for judgment in a sum of 12,857/- sterling pounds or its equivalent in rupees together with legal interest and costs. The petitioner filed answer claiming *inter alia* that the respondent was not entitled to judgment in a currency other than Sri Lankan rupees and that the respondent cannot have and maintain the said action as therein constituted. The issue as to whether the respondent was entitled to obtain judgment in a currency other than Sri Lankan rupees was taken up as a preliminary issue of law. The District Court answered the said issue in favour of the respondent. The said order in this regard became the subject matter of an interlocutory appeal before the Court of Appeal.

When this matter came up before the Court of Appeal it was pointed out that the District Judge had followed the decision of the Supreme Court in the *Cementation Company (Overseas) Limited* v *Hotel International Limited* [1] and since the said judgment was binding on the District Court, as well as the Court of Appeal, the Counsel for the petitioner moved the Court of Appeal to dismiss his appeal and to grant Leave to Appeal to the Supreme Court on the question of law raised in appeal. Rule 4(12) of the Court of Appeal (Appellate Procedure) Rules of 1990 was referred to in this regard. Acting under the said Rule, the Court of Appeal without hearing the case *proforma* dismissed the petitioner's appeal and granted the petitioner leave to appeal to the Supreme Court on the following question of law -

"Assuming that the facts had been correctly set out in the plaint, is the plaintiff in any event entitled to obtain judgment in a currency other than Sri Lankan rupees?"

The matter came up for argument before this Court on 04.09.2003. Judgment was reserved pending the filing of written submissions by parties.

The submissions made by the Counsel for the petitioner were as follows:

a. Section 2 of the Monetary Law reads as follows -

"The standard unit of monetary value in Sri Lanka shall be the Sri Lanka rupees which shall be represented by the signs Re. and Rs". Therefore, all decrees in this country must be entered in rupees.

b. No person can be ordered to pay money in a currency other than Sri Lankan rupees nor can writ be taken out and property seized in money other than in Sri Lankan rupees. If writ was taken in a foreign currency no person would be able to pay money in foreign currency. (Mercantile Agency v Ismail.) (2)

c. Even if there was a contract in a foreign currency and there was subsequent default, the foreign currency owing must be converted into local currency and decree obtained for that amount. **(Weeramanthri - Law of Contract Vol 2 paragraph 967 at page 945) (also paragraph 689 at page 664).**

d. The 2nd Schedule to the Civil Procedure Code has stipulated that all costs are claimable in Sri Lankan rupees. Thus decree must therefore be also in Sri Lankan rupees.

e. An executable decree perforce had to be in Sri Lankan rupees since at the stage of execution, a writ can be taken out only in terms of the decree. The Court ordering execution was bound to look only at the decree and make orders accordingly. If the amount due happens to be in a foreign currency, for example, U.S. dollars, the decree must be entered in Sri Lankan rupees which would be equivalent to that sum of U.S. dollars at the time of payment.

f. The Court had the discretion to order conversion of the foreign currency to Sri Lankan rupees as at the date of

default, at the date of judgment or at the date of payment. In this connection the following were mentioned:

(i) *Harrisons & Crossfield* v *Adamaly* (3)
(ii) *Mercantile Agency* v *Ismail* (*supra*)
(iii) Weeramanthri Law of Contract Vol II page 945

g. Conversion must take place at the time of decree since the Court in each case had no jurisdiction to award damages in a foreign currency.

The learned Counsel for the petitioner argued that the judgment in *Cementation Company* v *Hotel International Ltd.* abovesaid was wrongly determined. In any event it was pointed out that the said judgment did not consider whether or not a judgment could be entered in a foreign currency. The learned Counsel submitted that judgment in Sri Lankan currency equivalent to the foreign currency due, was the proper manner in which judgment and decree could be entered, to be in consonance with the provisions of the Monetary Act and the Exchange Control Act. The English Law principles would not apply to Sri Lanka since our law was statutorily enshrined.

It was also pointed out by Counsel for the petitioner that even in England judgment could only be entered in sterling until the decisions of Lord Denning were delivered. Lord Denning's judgments, were originally given in sterling because it was a stable currency. But in *Schorsch Meier Gmb H* v *Hennin*(4) Lord Denning had opined that sterling was no longer a stable currency compared to other currencies of Western Europe and in view of the Treaty of Rome, judgments could be given in other currencies. The learned President's Counsel argued that the reasoning of Lord Denning was faulty since the question of judgments being given in sterling had nothing to do with the fact of pounds sterling being a stable currency. The stability of the pounds sterling was an irrelevant consideration, he argued. He also argued that the Treaty of Rome did not give jurisdiction to a domestic Court to enter judgment in foreign currency. The reasoning of Lord Denning in any event had no application to Sri Lankan Law and that the Treaty of Rome was not applicable to Sri Lanka. He further pointed out that Lord Wilberforce's judgment in the said *Eleftherotria* case(5) was based

on the question whether conversion had to be on the date of action, date of judgment or payment.

The learned Counsel finally reiterated that judgments must necessarily be in Sri Lankan currency but that the date of conversion could be as at the date of the cause of action, date of judgment or date of payment.

The arguments of the Counsel for respondent were as follows:

a. The Bank Draft in this case was for 12,857 sterling pounds. Therefore the plaintiff prayed for judgment in a sum of sterling pounds 12,857 or its equivalent in rupees. He submitted that neither the Monetary Law nor the Civil Procedure Code prohibited a judgment being given in a foreign currency.

b. He pointed out that the Cementation Company Case abovesaid gave judgment in favour of the plaintiff "in a sum of pounds 68,723 shillings 12 and pence 8 in sterling and in rupees at the exchange rate prevailing at the date of payment together with legal interest in terms of prayer(a)". Similar judgment could be entered in this case too.

c. Referring to section 2 of the Monetary Law the learned Counsel for the respondent submitted that the Monetary Law did not specify that all judgments must be given in Sri Lankan rupees.

d. He further pointed out that according to section 4(2) of the Monetary Law where an obligation is by agreement expressed in any monetary unit other than Sri Lankan rupees the necessary conversion shall be effected on the basis of the legal parities ruling at the time, if by some reason such agreement was rendered invalid or unlawful by any other written Law. He argued that since the present transaction did not come within the scope of foreign currency transaction which were prohibited or restricted, the question of conversion was not contemplated in such transaction. Therefore it was legal to have transactions in foreign currencies unless there was a statutory bar to such transactions being in foreign currency.

e. He further pointed out that the cases mentioned by the learned Counsel for the petitioner were archaic authorities and that the law has developed and changed by judicial decisions both in the United Kingdom and Sri Lanka.

f. He referred, to the decisions of owners of *M. V. Eleftherotria* v *Owners of M V Despina R, (supra) Services Europe Atlantique Sud (SEAS) of Paris* v *Stockholms*(6) *Rederiak-tiebolagsvea of Stockholm (the Folias),*(7) and *Miliangos* v *George Frank (Textile) Ltd.* (8) He pointed out that the three decisions in the *Despina R,* the *Folias* and *Miliangos* had together transformed the English Law with regard to foreign currency judgments. This change in judicial perception, he said, was seen in Sri Lanka too in the determination made in the Cementation Company case.

g. He pointed out that a plaintiff who transacted business in a hard foreign currency would be subjected to severe disadvantages if he were to collect his dues in Sri Lankan rupees. Especially so, if the conversion was calculated at the rate prevailing on the date of the breach.

h. He further pointed out that in Admiralty matters the High Court of Sri Lanka gives foreign currency judgments virtually in every case decided in favour of the plaintiff.

i. He finally pointed out that there is no difference in substance between the law of United Kingdom and the law of Sri Lanka with regard to judgments being entered in foreign currencies.

The respective arguments of Counsel in this case would presently be compositely dealt with.

It will be useful in this case to examine certain basic concepts in Sri Lankan law. For example section 5 of the Civil Procedure Code interprets the word "decree" as follows - "decree" means the formal expression of an adjudication upon any right claimed or defence set up in a civil court when such adjudication, so far as regards the court expressing it, decides the action or appeal".

Thus a decree must formally express the Court's adjudication upon any rights claimed. When a plaintiff comes into Court stating that there has been a breach of contract between him and the defendant and that his rights under the contract must be upheld, if the Court believes that the plaintiff is entitled to the upholding of his rights what in effect is the Court expected to accomplish by upholding the rights of the plaintiff? Is the Court not expected to restore the plaintiff as far as possible to a position where there had been no breach of the contract but a fulfilment of the contract? If perceived from this angle a plaintiff must necessarily be entitled to judgment in a sum of money in a currency which he expected at the time when the breach took place. The principles to be applied in this connection are that of *restitutio in integrum* and reasonable forseeability. There could be applied equally in contractual relationships as well as in tortious liabilities. When section 217 of the Civil Procedure Code refers to a decree to pay money, the plaintiff reasonably expects the payment of such money to him in the currency in which he had contracted. Not in any other currency. If the parties had contracted for the transaction to take place in a particular hard currency, the defendant cannot be expected to pay the dues to the plaintiff in any currency as good. Not to pay in the currency in which the contract was entered into would amount to an absence of *consensus ad idem*. The only reason why a plaintiff may not be able to claim his dues in the currency in which he had originally contracted, could be due to any statutory prohibition which debars such payment in that particular currency. The learned Counsel for the petitioner has not referred to any statutory prohibition in Sri Lanka to the entering of a judgment in a foreign currency. He has only said that there would be procedural difficulties in executing a writ if and when a judgment is entered in a foreign currency. What the learned President's Counsel had failed to take into consideration when making his submissions was that in a free market country as ours which has moved far away from a state manipulated, state regulated and state restricted economy of the past there could be foreign currency available for payment or seizure. Banks have allowed their customers to open non resident foreign currency accounts and resident foreign currency accounts in which foreign currencies are deposited and interest paid by Bank in foreign currencies. The question of the Court having the right to

seize such foreign currency accounts had not been taken into consideration by the learned Counsel. Why should such foreign currency be converted into Sri Lankan rupees when seized be Court?

It was wrong on the part of the petitioner to have said that where decree is entered in a foreign currency writ cannot be taken out because nothing can be seized. So long as the defendant is legitimately entitled to retain foreign currency in Sri Lanka, the plaintiff must be entitled to seize such foreign currency in the hands of the defendant or defendant's debtors. Otherwise the plaintiff who enters into a contract with another knowing that such other person has foreign currency for disposal in Sri Lanka could be deceived by such other person by breaching the contract and forcing the plaintiff to seize Sri Lankan currencies in lieu of foreign currencies. Not only that. If it were to be argued that the Sri Lankan equivalent foreign currency at the time of the breach was to be the sum to be adjudicated in the decree, taking into consideration the delay in litigation and currency fluctuation, the plaintiff would be subjected to immense disadvantages since the amount recovered by the plaintiff would be far less than the actual amount due in foreign currency at the time of payment in Sri Lankan rupees. So long as the State for any reason does not categorically prohibit the entering of decrees in foreign currencies there should not be any reservation in restoring the position of a party to a contract as far as possible to the time or stage when the contract was breached so that the contract as far as possible could be given effect to. The criticisms levelled at the Judge or Judges who had formulated the English law decisions in this connection were most uncharitable. Incidentally Lord Denning was not on the Bench of the House of Lords which decided *Eleftherotria case* or the *Folias case* or *Miliangos case*. He decided *Tehhu (owners) and Owners of Cargo and Freight* v *Nippon Salvange Company*[9] (dissenting opinion), *Yugoslavenska Oceanska Plovidba* v *Castle Investment Company*[10] and *Schorch (supra)*. In a rapid, transforming world, a Judge or Judges who prefer to keep abreast of the changes taking place all over the world are to be congratulated rather than criticized. Many of the problems which a litigant faces today in the modern metamorphosed world were not faced by our parents and forefathers in the early part of the last century when the case of *Mercantile Agency* v *Ismail* (*supra*) was decided.

When section 2 of the Monetary Law refers to the standard unit of monetary value in Sri Lanka as being the Sri Lankan rupee it does not mean that judgments cannot be given in foreign currencies. It could only be inferred that where foreign currency is not available for payment or seizure what should be seized should be converted to the standard unit of monetary value in Sri Lanka because the foreign currency is not a Standard unit of monetary value in Sri Lanka. Standard unit being Sri Lankan rupees does not mean other currencies are not recognized in Sri Lanka.

Often writs are entered for the seizure of a vehicle or in the alternative its value in Sri Lankan currency. If the vehicle is not available for seizure, the plaintiff is entitled to recover its value in Sri Lankan currency. Therefore the question arises as to what could prevent a judgment being entered in a foreign currency if it could be recovered and if unavailable in foreign currency to be recovered by its conversion rate in Sri Lankan currency. Any attempt to restrict decrees to be entered only in Sri Lankan currencies would affect International Trade and Commerce via Sri Lanka in the modern context. During the last 28 years or so, currencies have been seen to be floating and their relative values have often changed day to day. Commercial practices moreover have adapted themselves to the realities of currency fluctuation.

Many Arbitrators now make their awards in foreign currencies. As pointed out by the Counsel for the respondent admiralty awards are often made in foreign currencies and not in local currencies. If the argument of the learned Counsel for the petitioner is correct such awards made in foreign currency should be illegal since a Sri Lankan court would not have any jurisdiction to enter a decree in currencies other than Sri Lankan rupees. To quote with respect Lord Wilberforce in the Miliangos case (*supra* 768) - "The law should be responsive as well as, at times enunciatory, and good doctrine can seldom be divorced from sound practice". Merely because in late 19th century and early 20th century decisions were made by Courts that judgments could not be given in a foreign currency at a time when Nations and States were functioning more or less in water tight compartments, it does not mean that those decisions must be given effect to in the 21st century as well when Nations are joining together in economic unions, and trade and commerce have transcended the frontiers of national boundaries.

I would therefore hold that the plaintiff in this case is entitled to obtain judgment in a currency other than Sri Lankan rupees since there is no law which prohibits such a decree being entered. When entering judgment in a foreign currency it is also necessary that the rupee value at the exchange rate prevailing at the date of payment together with legal interest should also be entered therein. Therefore if the foreign currency with the legal interest contemplated at the time of contract or in contemplation of the law at the time of contract was not forthcoming or such foreign currency cannot be seized, then the rupee value of the exchange rate may be claimed at seizure. This would mean for example that, if there is a sum of money in Sri Lankan rupees in the hands of a debtor to a defendant, the plaintiff creditor cannot insist that the said sum of money in Sri Lankan currency should be converted into an appropriate foreign currency and be paid to the plaintiff. But on the other hand if the appropriate foreign currency for which the decree had been entered is in the hands of the defendant or his debtors such foreign currency could be seized by the plaintiff. I therefore conclude in answering the substantial question of law in this case as that the plaintiff would be entitled to obtain judgment in a currency other than Sri Lankan rupees.

S. N. SILVA CJ., - I agree

WEERASURIYA, J. - I agree

Plaintiff is entitled to obtain judgment in a currency other than in Sri Lankan rupees.