

**NARENDRA**  
**v**  
**SEYLAN MERCHANT BANK LTD. AND OTHERS**

SUPREME COURT  
S.N. SILVA, C.J.  
BANDARANAYAKE, J. AND  
YAPA, J.  
SC APPEAL (CHC) NO.10/2001  
HC CIVIL NO. 183/97(1)  
7TH OCTOBER, 2002

*Civil Procedure Code – Dismissal of action on grounds of want of a cause of action and prescription – Civil Procedure Code, sections 5 and 40 – Prescription Ordinance, section 9.*

The plaintiff instituted action against the defendant bank and its Directors alleging:

- (i) Firstly, the plaintiff having been misled by a prospectus issued by the defendant company he purchased 1,456,000 shares of the bank on 03.06.1994 at R.10/= per share.
- (ii) Secondly, when the defendant bank decided to underwrite the public share issue of a company "C" and the public share issue failed, share value of the defendant bank dropped by reason of the bank's liabilities incurred on account of such failure.
- (iii) Thirdly, the plaintiff had taken a loan from two companies having pledged 265,000 of the aforesaid shares held by the plaintiff in the defendant company which shares were sold by the lending companies, for default of the loan, at a devalued price. The said two companies were not even made defendants to the action.
- (iv) Fourthly, in view of the devaluation of the balance of 1,200,000 shares held by the plaintiff in the defendant bank, the plaintiff will suffer prospective damages in a sum of Rs. 294,000,000 on the assumption that the market value of a share had since reduced to Rs.5/-.

The plaintiff pleaded the matter at (i) above as the 1st cause of action and the matter at (iv) above as the 2nd cause of action.

**Held :**

1. Although the plaint makes out a tale of woe on behalf of the plaintiff, there is no cause of action formulated in terms of section 9 and as required by section 40(d) of the Civil Procedure Code which could be the basis of an action.

*Per S.N. Silva, C.J.*

“..... There is a tendency now to set out extensive facts in pleadings hoping to formulate a cause as you go along. This tendency should be reversed in order to prevent a party from being denied appropriate redress that he may secure according to law if the pleading is correctly presented”

2. The 1st cause of action refers to the sale of shares on 03.05.1994 based on alleged wrongful statements in the prospectus. Hence the action filed against the defendant on 21.08.1996 is prescribed in terms of section 9 of the Prescription Ordinance as the same filed after the lapse of two years.
3. The 2nd cause of action relates to a loss that the plaintiff may suffer in the event of the balance shares being sold, viz, a possible loss in future which is clearly not actionable at this stage.

**APPEAL** from the judgment of the High Court.

*Douglas Premaratne, P.C. with Hemantha Situge for plaintiff-appellant.*

*C.V. Vivekananthan with P. Joseph and V.Sasitharan for 3rd defendant-respondent.*

*Romesh de Silva, P.C. with Hiran de Alwis for 1st, 2nd and 4th to 10th defendants-respondents.*

*Cur.adv.vult.*

June 12, 2003

**SARATH N. SILVA, C.J.**

The plaintiff-appellant has filed this action on 21.8.1996, against the 1st defendant bank and its directors being the 2nd to 10th defendants, claiming damages in respect of two causes of

action. Five of the issues raised by the defendants were taken up as preliminary issues of law. The Commercial High Court has held with the defendants and by its judgment dated 04.05.2001, dismissed the action without costs. The appeal is from that judgment.

According to the averments in the plaint, in October 1993, the 1st defendant bank issued a prospectus inviting members of the public to invest in shares of the bank. The plaintiff has placed the contents of the prospectus in the fore-front of his case. Paragraphs 4, 5 and 6 of the plaint refer extensively to the contents of the prospectus. In paragraph 6 it is stated that the plaintiff relying on the credibility and veracity of the representations made in the prospectus purchased a total of 1,456,000 of the shares of the bank valued at Rs. 10/- each. It is revealed that the plaintiff financed this purchase partly on a loan that he had obtained.

Paragraphs 10-20 of the plaint refer to action on the part of the 1st defendant bank where the bank decided to underwrite the public share issue of M/s Connaissance De Ceylan Ltd., at a premium of Rs. 30/- per share and the liability incurred by the bank due to the failure of the public issue. The plaint states that the share value of the 1st defendant bank dropped as a result of this transaction. After a narration of the foregoing matters the plaintiff has set out the 1st cause of action in paragraphs 26 to 28. It states "that from 04.05.1995 to 15.05.1995 M/s Vanik Incorporation Services Ltd, and M/s Vanik Incorporation Ltd, acting jointly and wrongfully, and unlawfully sold 265,000 of the plaintiff's shares for a sum of Rs. 2,731,126 whereas the value should have been Rs. 66,250,000/-. It is pleaded that a cause of action has accrued to the plaintiff to sue the 1st to 10th defendants to recover the said amount that was lost by the plaintiff. The 2nd cause of action states that the balance 1,200,000 shares would fetch only about Rs. 5/- per share in the current market and thereby the plaintiff will suffer prospective damage in a sum of Rs. 294,000,000/-.

The preliminary issues of law that have been raised are on the basis that, the plaint does not conform to the imperative provisions of the Civil Procedure Code; that there is a misjoinder of parties and/or causes of action; that there is no cause of action properly set out in the plaint; that the averments are vague; that the plaint is prolix and that the plaintiff's action is prescribed.

Learned judge of the High Court has come to findings in favour of the plaintiff in respect of all issues.

President's Counsel for the appellant, whilst conceding that there are some defects in the plaint, submitted that the dismissal itself is referable to the findings on prescription, since the other defects are curable. The finding on prescription is on the basis that the cause of action dates from the statements in the prospectus, that induced the plaintiff to purchase the shares. It was submitted that is an erroneous computation of the time period and that the cause of action should stem from the date the plaintiff suffered loss by the sale of shares at a low price. 50

An examination of the plaint the contents of which have been set out briefly in the preceding paragraphs reveals that it has been presented without a proper notion of the cause of action in respect of which the action is filed.

I would pause at this point to refer to certain salutary provisions of the Civil Procedure Code that have been observed in the breach in presenting this plaint.

In terms of the Civil Procedure Code an action can be instituted for the prevention or redress of a wrong described in section 5 as the cause of action and to include, a denial of a right, the refusal to fulfil an obligation, the neglect to perform a duty and the infliction of an affirmative injury. This elaboration of what constitutes an actionable wrong covers the gamut of civil law in relation to rights in respect of property, obligations arising from contract, duties that arise from status and damage resulting from delict. 60

It is incumbent on any person presenting a plaint being the means of commencing a regular civil action, to have proper perception of the cause of action in respect of which the action is filed. If the plaint is not structured in this way, the subsequent proceedings in the action may become clouded and disoriented and the party may ultimately be denied relief in respect of the wrong perceived by him. 70

The need to have a proper perception of the cause of action in respect of which the case is filed is brought forth in section 40 which sets out the requisites of the plaint.

Paragraph (d) of this section requires the plaint to contain;

“a plain and concise statement of the circumstances constituting each cause of action, and where and when it arose. Such statement shall be set forth in duly numbered paragraphs; and where two or more causes of action are set out, the statement of the circumstances constituting each cause of action must be separate, and numbered.”

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This requirement of a properly formulated cause of action being contained in the plaint is linked up to the other provisions which deal with the later stages of the action.

Section 146 deals with the determining of issues and subsection (2) requires the court to formulate issues “upon material propositions of facts or law the parties are at variance”. The core of such material propositions of fact or law would be the cause of action set out in the plaint. The sequence follows upto explanation 2 to section 150 which sets out the manner in which the party having the right to begin should state his case. This useful explanation which sets out the parameters of the trial itself provides as follows:

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“The case enunciated must reasonably accord with the party’s pleading, i.e. plaint or answer, as the case may be. And no party can be allowed to make at the trial a case materially different from that which he has placed on record, and which his opponent is prepared to meet. And the facts proposed to be established must in the whole amount to so much of the material part of his case as is not admitted in his opponent’s pleadings.”

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I have set out the relevant provisions in some detail in order to emphasize the need for pleading the cause of action properly in the plaint.

The plaintiff in this case has set out a whole sequence of events commencing from what induced him to purchase shares and ending at the point where he claims to have suffered loss. It is to be generally observed that there is a tendency now to set out extensive facts in pleadings hoping to formulate a case as you go along. This tendency should be reversed in order to prevent a party from being denied appropriate redress that he may secure accord-

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ing to law if the pleading is correctly presented. The sequence of events set out in the plaint commences with the prospectus that was issued by the company. Then it leads to the decision in respect of the "Connaissance transaction" which would have been taken by the Board of Directors. The loss pleaded as the cause of action in paragraphs 27 and 28 of the plaint results from alleged wrongful action of two other companies in selling the plaintiff's shares. It appears that the shares have been pledged in respect of a loan taken by the plaintiff from these companies and the companies sold the shares because the plaintiff defaulted on the loans. These two companies are not even named as defendants in the action. The 2nd cause of action relates to a loss the plaintiff may suffer in the event of balance shares being sold. The wrong that is contemplated is something that may occur in the future and is clearly not actionable at this stage. Thus it is seen that although the plaint makes out a tale of woe on behalf of the plaintiff there is no cause of action that is formulated which could be the basis in an action for damages.

As regards the submission in respect of prescription it is seen that the plaint sets out a series of events described as wrongful. The first, is the narration with regard to wrongful statements in the prospectus which led the plaintiff to purchase shares of the 1st defendant bank. If some sense is to be made out of the plaint, it is this purchase which resulted in what is claimed as a loss. Therefore the High Court cannot be faulted for computing the period of prescription from the date of the purchase of shares being 3.6.1994. An action to recover any loss or damage should be commenced within 2 years, in terms of section 9 of the Prescription Ordinance. On that basis the action that has been filed on 21.08.1996 is prescribed. Learned counsel contended that the cause of action is made out when the plaintiff suffered the loss by the shares being sold at a lower price and that the period should be computed from the date of the sale. It is seen that the sale was done by two companies who are not even parties to the action. Hence the date of sale cannot possibly be taken as the date on which the cause of action arose for the purpose of computing the period of prescription. The argument therefore does not bear scrutiny.

For the reasons set out above I see no merit in the appeal.  
The appeal is dismissed. No costs.

**BANDARANAYAKE, J.** - I agree.

**YAPA, J.** - I agree.

*Appeal dismissed*