
SRI KRISHNA CORPORATION LIMITED
V.
GENERAL SALES COMPANY LIMITED

SUPREME COURT,
BANDARANAYAKE, J
DE SILVA, J, AND
JAYASINGHE, J
SC.(CHC) NO. 25/99A
H.C. (CIVIL) NO. 47/96(1)
28TH MARCH, 9TH AND 31ST JULY
AND 8TH AUGUST, 2003

Landlord and Tenant – Erroneous dismissal of plaintiff's action for damages on the ground of unsuitability of the premises for the agreed purpose – Failure of the High Court Judge to consider the counter claim of the defendant.

This is an appeal by the defendant against the High Court Judge's order in H. C. (Civil) No. 47/96(1) decided in SC (CHC) Appeal No. 25/99, where the Supreme Court reversed the High Court Judge's judgment which had dismissed the plaintiff's appeal. In this appeal the defendant appealed against the same judgment particularly on the ground the High Court had failed to consider the defendant's counter claim for recovery of expenses incurred by him to effect improvements to the premises to enable its use as a warehouse for storing rice brought in by lorries and to recover rents alleged to be due from the plaintiff.

Held:

1. The High Court judgment against the plaintiff was reversed when the Supreme Court upheld the plaintiff's appeal. The court also directed the High Court Judge to assess the damages based on the plaintiff's claim as well as the defendant's counter claim on the rent and to enter decree accordingly.
2. The order made on the plaintiff's appeal in S.C. (CHC) appeal No.25/99 is affirmed.

APPEAL against the judgment of High Court

S.L. Gunasekara with Kushan de Alwis for defendant – appellant.

Romesh de Silva, P.C. with Geethaka Goonawardane for plaintiff-respondent.

November 14, 2003

SHIRANI BANDARANAYAKE, J.

This is an appeal from the judgment of the High Court dated 12.05.1999. By the judgment while dismissing the plaintiff-respondent's (hereinafter referred to as the plaintiff) action against the defendant-appellant (hereinafter referred to as the defendant), the defendant's claim in reconvention against the plaintiff was also dismissed. The defendant appealed against that order to this Court.

The plaintiff instituted action against the defendant, praying *inter alia* for the recovery of a sum of Rs. 8,488,000 together with legal interest thereon from the plaint till date of decree and thereafter on the aggregate amount of the decree till payment in full. In his plaint the plaintiff had pleaded that he had taken a warehouse from the defendant on rent which later he found not to be suitable for the purpose of storing rice. Due to the non-suitability of the said premises, the plaintiff claimed that he suffered loss and damage which was estimated at Rs. 7,000,000/-. He further claimed that the defendant did not return the deposit of Rs. 1,488,000 though it was demanded.

The appeal of the plaintiff was decided and delivered today in a separate application S.C. (CHC) No. 25/99, which deals in detail, the issues pertaining to that appeal.

The contention of the defendant is that while the High Court had arrived at the correct conclusion by dismissing the plaintiff's action that the learned Judge of the High Court was in error when he dismissed the defendant's application in reconvention, *inter alia*, for the following reasons :

- (a) learned Judge of the High Court erred in holding that the defendant had notice from P2 onwards that trucks laden with rice and/or trucks laden with unlimited quantities of rice would be driven inside the said warehouse ;
- (b) learned Judge of the High Court in holding that the purported knowledge of the defendant that trucks laden with unlimited quantities of rice would be driven into the said warehouse precluded the defendant from claiming any damages for the losses caused to the defendant by reason of such trucks being driven into and or inside the said warehouse ;

- (c) there having been no dispute whatsoever between the parties that all such damage as was caused to the defendant's said warehouse was caused by lorries of the plaintiff with loads of rice being driven inside the said warehouse the learned Judge of the High Court erred in failing to give the defendant judgment as prayed for by the defendant in respect of its claim in reconvention in the prayer of its answer.

In appeal No. SC (CHC) 25/99, on a consideration of the material placed before Court, it was held that, at the time the plaintiff and defendant entered into the agreement (P2) the defendant was fully aware that the warehouse would be used for the purpose of storage of rice and in order for such storage, heavy vehicles would be driven into the warehouse. Moreover, the defendant being the owner of the warehouse, should have known whether the construction of the said warehouse would stand the rigours of storage of rice and more importantly whether the floor of the warehouse is built to withstand the loads of a lorry laden with rice. These factors are within the knowledge of the defendant and not of the plaintiff, he being a total stranger to the premises. It is pertinent to note that a mere visual inspection would not be sufficient to determine the intrinsic deficiencies of the interior of a building. Therefore the plaintiff cannot be held responsible for the damage to the building which apparently had a deficient floor that could not sustain heavy loads.

In these circumstances for the reasons given in the judgment in SC (CHC) Appeal No. 25/99, this Court held with the plaintiff and those reasons apply to this appeal, which is based on identical facts and issues, as well. Accordingly this appeal is dismissed and the relevant part of the Judgment of the High Court which refers to the claim in reconvention of the defendant against the plaintiff dated 12.05.1999 is affirmed.

There will be no costs.

DE SILVA, J. – I agree

JAYASINGHE, J. – I agree

Order in S.C. (CHC) Appeal No. 25/99 to assess damages on plaintiff's claim and defendant's counter claim on rent affirmed.