

**BROWN & CO., LTD**

v.

**G. S. FERNANDO**

COURT OF APPEAL.

T. D. G. DE ALWIS, J. AND DHEERARATNE, J.

C.A. No. 258/77.

D.C. COLOMBO No. 1/616/M.

FEBRUARY 27, 1986.

*Contract – Written estimate detailing items of work and costing the materials – Written contract – Prescription – Prescription Ordinance, ss. 6 and 8.*

For the purpose of constituting a written contract no special form of writing is required. A contract entered into on a comprehensive written estimate detailing every item of work and costing the materials in minute detail is a written contract for goods supplied and for work and labour done. The estimates and their acceptance do not merely constitute evidence that a contract to do work and deliver goods existed. They set out all the terms and conditions on which the parties were agreed and constitute the contract. Therefore it is s. 6 of the Prescription Ordinance that applies and not s. 8.

Hence the cause of the action is prescribed only in six years.

**Cases referred to:**

- (1) *Walker Sons & Co., Ltd. v. Kandiah* – (1919) 21 N.L.R. 317.
- (2) *Amerasinghe v. De Alwis* – (1974) 48 N.L.R. 519.
- (3) *Ceylon Insurance Co., Ltd. v. Diesel and Motor Engineering Co., Ltd.* – (1977) 79 N.L.R. Vol. 2 page 5.
- (4) *Pretty v. Selly* – (1859) 26 Beav. 606.

APPEAL from judgment of the District Court of Colombo.

*J. W. Subasinghe, P.C.* with *P. Naguleswaram* for plaintiff-appellant.

*R. D. C. de Silva* with *N. D. R. Casiechitty* for defendant-respondent.

*Cur. adv. vult.*

April 30, 1986.

**T. D. G. DE ALWIS, J.**

The plaintiff-company is an engineering firm which carried out work in connection with the development of a tea factory on Ottery Estate, Dickoya, belonging to the defendant. At the request of the defendant, the plaintiff submitted an estimate dated 13.12.71 for

Rs. 353,550.00 for the development of the factory, which estimate the defendant duly accepted by his letter dated 23.12.71. Accordingly work on the factory on this estimate commenced and was concluded. The defendant has paid the plaintiff a sum of Rs. 339,917.00 in respect of this estimate, and a sum of Rs. 13,092.48 is outstanding thereon. On 18.12.72 also at the request of the defendant the plaintiff submitted a supplementary estimate of Rs. 39,130.00 for extra work on the factory. This estimate was accepted by the defendant on 28.12.72. Work to the value of Rs. 37,420.00 was carried out on the supplementary estimate. Giving credit to the defendant in a sum of Rs. 315.00 credited in his favour, a sum of Rs. 37,105.00 is due and owing to the plaintiff on the supplementary estimate. The plaintiff sued the defendant for the recovery of a sum of Rs. 50,197.48 being the aggregate amount outstanding on the two estimates with interest thereon at 12% per annum from 25.4.74. The defendant took the defence that the claim of the plaintiff was prescribed.

The defendant contended that this was a contract for goods sold and delivered and for work and labour done in respect of which section 8 of the Prescription Ordinance applied, and accordingly the claim was prescribed in one year, whilst the plaintiff contended that there was a written contract between the plaintiff and the defendant and that section 6 of the Prescription Ordinance applied, and that the action would be prescribed only after six years. The District Judge held with the defendant and dismissed the plaintiff's action.

The relevant portion of section 6 of the Prescription Ordinance is:

"No action shall be maintainable . . . . . upon any written promise, contract, bargain, or agreement, . . . . . unless such action shall be brought within six years of such written promise, contract, bargain or agreement . . . . ."

and the relevant portion of section 8 is:

"No action shall be maintainable for or in respect of any goods sold and delivered . . . . . or for work and labour done . . . . . unless the same shall be brought within one year after the debt shall have become due."

In the case of *Walker Sons & Co., Ltd. v. Kandiah* (1), the plaintiff, a motor firm, sued the defendant to recover a certain sum of money for repairs done to the defendant's motor car and for materials supplied in

connection with that work. The order of the defendant-requesting the plaintiff to effect the repairs was given by a letter, and the acceptance of the order by the plaintiff was also by a letter. It was contended for the plaintiff that the contract was a written contract and that section 7 (now section 6) applied. De Sampayo held that it was a contract for goods supplied and for work and labour done, and that section 9 (now section 8) applied. In the case of *Amarasinghe v. De Alwis (2)* following the judgment in *Walker Sons & Co., Ltd. v. Kandiah (supra)* it was held that a claim for repairs effected and materials supplied to a motor car falls within section 8 of the Prescription Ordinance and is barred after one year because the contract is one for goods sold and delivered and work and labour done. De Sampayo, J. dealing with the facts in *Walker Sons & Co., Ltd v. Kandiah (supra)* states:

“Section 7 (now section 6) relates to actions ‘upon any deed for establishing a partnership, or upon a promissory note, or upon a written promise, contract, bargain, or agreement, or other written security’. The written contract it would seem, is one in the nature of a security, and must have a certain degree of formality, and it is difficult to say that the letters exchanged between the parties in connection with the motor car is a security in this sense.”

It would seem that De Sampayo, J. was here dealing with the particular correspondence in that case, namely the letters exchanged between the plaintiff and the defendant. The nature and contents of these letters are not set out in the judgment.

In the case of *Ceylon Insurance Co. Ltd. v. Diesel and Motor Engineering Co., Ltd.* (3) the plaintiff-company carried out repairs to certain motor vehicles at the request of the defendant-Company. Two estimates for carrying out repairs (P1 and P4) were submitted by the plaintiff. In these estimates the details and the cost of each item were set out. By letters P2 and P5 the defendant-company accepted the offers subject to the modifications set out therein and a promise to pay, and on this faith the work was carried out. Vythialingam, J. held that all the terms and conditions on which the parties were agreed are set out in the correspondence, and they constituted written contracts.

For the purpose of constituting a written contract no special form of writing is required. De Sampayo, J. thought that there must be some degree of formality to constitute a written contract, and Vythialingam, J. thought that where the correspondence between the parties contained all the terms and conditions on which the parties were agreed the contract was a written one. So that in the instant case it

would be useful to examine the terms of the estimates and the letter of acceptance. The estimates are very comprehensive and as complete and detailed as one could desire. Every item of work that had to be done is detailed, as is the material that had to be supplied. The cost of every item of work and the cost of material are given in minute detail. The ultimate paragraph of the estimates read as follows:

"Our estimate has been prepared on the basis that payment for the goods supplied and the work done will be made to our Head Office in Colombo in accordance with Clause 7 'payment' printed on the CETA Form 8/69. It is agreed that this contract has been made in Colombo and the customer hereby consents to the District Court of Colombo exercising jurisdiction in any legal action that may become necessary to be filed and waives all objections to such jurisdiction."

All these terms and conditions the defendant has accepted when in his letter of acceptance he has stated that he confirms acceptance of the estimates and requests necessary action on the estimates be taken. On the faith of that acceptance the work on the estimates was completed, and a large portion of the money due on the estimates was paid. The estimates and their acceptance do not merely constitute evidence that a contract to do work and deliver goods existed. They in fact set out all the terms and conditions on which the parties were agreed. They satisfy even the test of a 'degree of formality.' I therefore hold that the contract was a written contract for goods supplied and for work and labour done.

The further question that arises is whether section 6 or section 8 applies to this contract. Since it is a written contract it comes within section 6. But it is also a contract for goods supplied and for work and labour done, and hence comes within the ambit of section 8. This conflict would have to be resolved with reference to the Rules of Construction of Statutes. This particular Rule of Construction was enunciated in the case of *Pretty v. Selly* (4) and also referred to in Craies Statute Law (4th Ed. p. 201) as follows:

"The general rules which are applicable to particular and general enactments in statutes (if they are repugnant) are very clear. The only difficulty is in their application. The rule is that whenever there is a particular enactment and a general enactment in the same statute, and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply."

Applying this rule, and following earlier decisions on this point, it was held in *Ceylon Insurance Co., Ltd. v. Diesel and Motor Engineering Co., Ltd.* (*supra*) (that in written promises or contracts section 6 being the particular enactment, must in keeping with the rules of construction, prevail over section 8 of the Prescription Ordinance which is the general section. Whilst respectfully agreeing with this judgment, it is also a judgment of the Supreme Court at a time when it was the highest court of appeal in this country, and as such this Court is bound by that judgment. I therefore hold that the plaintiff's cause of action fell within the prescriptive period of six years within which period this action has been brought. The judgment of the learned District Judge is accordingly set aside and judgment is entered for the plaintiff as prayed for. The plaintiff will in addition be entitled to costs of appeal which we fix at Rs. 525.

DHEERARATNE, J. – I agree.

*Appeal allowed.*

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