UNION BANK OF COLOMBO LTD.
v
WIJAYAWARDANE AND ANOTHER

COURT OF APPEAL
WIMALACHANDRA, J.
CA (REV). 1245/06
DC COLOMBO 969/DR
AUGUST 31, 2006
SEPTEMBER 25, 2006

Debt Recovery (Special Provisions) Act 2 of 1980 amended by Act 9 of 1994 – Section 7 matter adjusted or compromised in the Supreme Court – Case remitted to District Court – Supreme Court granting time to file answer – Contrary to Section 7 of the Act? – Can the correctness of an order given by the Apex Court be decided by an inferior Court?

In the action filed under the Debt Recovery Act (DR Act), the defendant sought leave to appear and defend– District Court granted leave upon depositing a sum of Rs. 17 million as security. The Court of Appeal set aside the said order and granted unconditional leave to appear and show cause. In the Supreme Court the matter was adjusted, with the defendants agreeing to deposit Rs. 6 million, the District Court was directed to grant time to the defendants to file answer, if the security was deposited. When the defendants sought to file

answer in the District Court the plaintiff objected on the ground that the defendants are not entitled to file answer in terms of Section 7 of Debt Recovery Act. This objection was overruled by the District Court.

The plaintiff moved in revision.

Held:

(1) The Supreme Court is the apex Court, it is not open to the District Court to disregard the directions given by the Supreme Court.

(2) When the Supreme Court has made order or has given a direction to a judge of an inferior Court it is not for a suit or a Counsel to challenge such an order on the basis that it is irregular or void or is an invalid order. It will remain valid until it is set aside by the apex Court.

Per Wimalachandra, J.

"The said order was made by the Supreme Court with the agreement of parties and the learned President's Counsel who was present did not object to the said directions being made by the Supreme Court – the District Court has no power to review the order of the Supreme Court or to reject the defendant's answer.

APPLICATION in revision from an order of the District Court of Colombo.

Cases referred to:

1. *Jeyraj Fernandopulle* v *Premachandra de Silva and Others 1996 1 Sri LR 70 at 94.*
2. *Hadkinson v Hadkinson* 1952 2 All ER 567 at 569.
3. *Chuck v Cremer* 1846 1 Coop. Hmp. Cott 342.
4. *Isaacs v Robertson* 1984 3 All ER 140.

Nigel Hatch PC with *Ms. K. Geekiyanage* for plaintiff-petitioner.

Nihal Fernando PC for 1st defendant-respondent.

A.R. Surendran PC with *K.V.S. Ganesharajah* for 2nd defendant-respondent.

March 2, 2007

WIMALACHANDRA, J.

The plaintiff-petitioner (plaintiff) has filed this application in revision from the order of the learned Additional District Judge of Colombo dated 18.7.2005. The facts relevant to this application are as follows:

The plaintiff instituted action in the District Court of Colombo bearing No. 969/DR against the 1st and 2nd defendant-

respondents (defendants) under the Debt Recovery (Special Provisions) Act No. 2 of 1990 as amended by Act No. 9 of 1994 to recover a sum of Rs. 50,763,293/66 jointly and severally together with interest thereon at the rate of 20% per annum from 18.07.2002. In the first instance the learned Judge entered a *decree nisi* and called upon the 1st and 2nd defendants to show cause against the said *decree nisi.* The defendants filed petition and affidavit and sought leave to appear and defend. After an inquiry the learned Additional District Judge made an order on 23.1.2004 granting the 1st and 2nd defendants leave to appear and defend upon depositing a sum of Rs. 17 million as security. Being aggrieved by the said order the 1st and 2nd defendants filed two separate applications bearing No. CALA 48/2004 and 49/2004 in the Court of Appeal. The Court of Appeal by order dated 14.6.2004 allowed the applications made by the 1st and 2nd defendants and granted unconditional leave to appear and show cause. Against that order the plaintiff preferred an application for special leave to appeal to the Supreme Court bearing No. SC (Spl.) LA 179/2004.

When the matter was taken up in the Supreme Court on 20.09.2004 it appears that the parties had agreed to have the matter adjusted or comprised and the Supreme Court, accordingly made the following order which reads as follows:

> "*It is agreed that the two defendants would be permitted to appear and defend the action in the District Court provided that they deposit as security jointly sum of Rs. 6 million composed of Rs. 3 million in cash and Rs. 3 million by an acceptable guarantee or guarantees, on or before 01.11.2004. The order of the District Court is amended accordingly. In the event of such security being deposited, the District Court is directed to grant time to file answer, in default steps would be taken according to law in the proceedings.*"

After the Supreme Court made the said order the parties went back to the District Court. Upon providing the security as ordered by the Supreme Court, the defendants filed their answer as per the aforesaid consent order of the Supreme Court. The plaintiff objected to the same being accepted by the learned District Judge on the ground that the defendants were not entitled to file answer in this case in terms of Section 7 of the Debt Recovery (Special

Provisions) Act as amended. However, the learned District Judge by his order dated 18.7.2005 accepted the answers filed by the defendants. The District Judge held that as the Supreme Court had directed the Court to accept the answer upon the defendants depositing the security as stated in the order of the Supreme Court, the District Court has no power to override the direction given by the Supreme Court. The present application in revision has been made against this order of the learned Additional District Judge of Colombo.

It is the position of the learned President's Counsel for the plaintiff that the Debt Recovery (Special Provisions) Act No. 2 of 1990 (as amended) does not permit the filing of an answer. The learned Counsel contended that if the Court grants the defendants leave to appear and defend, the provisions in Sections. 384 to 389 will apply and there is no provision in the Act for a defendant to file answer.

The Supreme Court made the said order upon a compromise or after an adjustment of the dispute between the parties, and the Supreme Court accordingly directed the learned District Judge to accept the answers, provided the defendants deposit a sum of Rs. 6 million. It is to be noted that when the Supreme Court made the said order the Counsel for both parties were present in Court and Mr. Nigel Hatch himself was present in Court. It appears that the learned President's Counsel had without any demur accepted the order.

In my view as the Supreme Court is the apex Court, it is not open to the District Court to disregard the directions given by the Supreme Court.

In the case of *Jeyaraj Fernandopulle* v *Premachandra de Silva and Others*(1) at 94 it was held that when the Supreme Court has decided the matter is at an end, and there is no occasion for other judges to be called upon to review or revise the matter.

It was the contention of the learned President's Counsel for the plaintiff that the said order made by the Supreme Court is contrary to the provisions of the Debt Recovery (Special Provisions) Act, as there is no provision in the Act to file answer. I am unable to agree with the submissions of the learned Counsel for the plaintiff as the

said order was made by the Supreme Court with the agreement of the parties and the learned President's Counsel who was present, did not object to the said directions being made by the Supreme Court.

When the Supreme Court has made an order or has given a direction to a Judge of an inferior Court, it is not for a suit or a Counsel to challenge such an order on the basis that it is irregular or void or is an invalid order.

In the English case of *Hadkinson* v *Hadkinson*[2] at 569 it was held that, it is the plain and unqualified obligation of every person against, or in respect of, whom an order is made by a Court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void in *Chuck* v *Cremer*[3], Lord Cottenham, L.C., said:

> *"A party, who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it ..... it would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid – whether it was regular or irregular. That they should come to the court and not take upon themselves to determine such a question. That the course of a party knowing of an order, which was null or irregular, and who might be affected by it, was plain. He should apply to the Court that it might be discharged. As long as it existed it must not be disobeyed".*

The correctness of an order given by the apex Court cannot be decided by an inferior Court. It will remain valid until it is set aside by the apex Court. It is the obligation of every person against or in respect of, whom an order is made by a Court with competent jurisdiction to obey it unless and until that order is discharged.

In the Privy Council case of *Isaacs* v *Robertson*[4] Lord Diplock held that the orders made by a Court of unlimited jurisdiction in the Course of contentious litigation are either regular or irregular. If an order is regular it can only be set aside by an appellate court; if it is irregular it can be set aside by the Court that made it on application

being made to that Court either under rules of Court dealing expressly with setting aside orders for irregularity or *ex debito justitiae* if the circumstances warrant. In this case the Lord Diplock approved the *dictum* of Romer L.J. in *Hadkinson* v *Hadkinson (supra).*

In the instant case, the Supreme Court adjusted the matter by agreement or compromise in the presence of the Counsel on both sides and in terms of the compromise arrived at between the parties made the aforesaid order giving the directions to the District Judge. In the case of *Jeyaraj Fernandopulle* v *Premachandra de Silva and Others (supra)* the Supreme Court held that a Court has power to vary its own orders in such a way as to carry out its own meaning and where the language is doubtful to make it plain or to amend it. Accordingly, in the instant case if the plaintiff is of the view that the aforesaid order made by the Supreme Court is irregular he must apply to the Supreme Court which is entitled to vary the same. The District Judge is bound to carry out the directions given by the Supreme Court and in this instance the Additional District Judge cannot be blamed or faulted for complying with the directions given by the Supreme Court.

In any event I am of the strong view that the order made by the Supreme Court is in accordance with law. The Supreme Court made order that in the event the defendants deposit security, the District Court is directed to grant time to file their answer, and in default steps to be taken according to law. In my view this order must be sensibly interpreted. If the defendants deposit the security the defendants must be allowed to show cause why the *decree nisi* should not be made absolute. They can show cause by filing an answer supported by an affidavit. Moreover, the plaintiff cannot challenge the said order of the Supreme Court in these proceedings when the plaintiff's Counsel who appeared in the Supreme Court did not object to the directions given by the Supreme Court. He has filed this revision application against the order of the learned Additional District Judge. The District Court has no power to review the order of the Supreme Court or to reject the defendants' answers. Accordingly, the District Court was right in accepting the defendants' answers. If the order made by the Supreme Court needs clarification, the plaintiff should have made

an application to the Supreme Court for any such clarifications.

It is my further view that the order of the learned District Judge is correct as the learned Judge had complied with the directions given by the Supreme Court. It is not the function of this Court to review the orders of the Supreme Court and it has no power to do so.

For the reasons stated above, I dismiss this application with costs.

Application dismissed.