

**MOHAMED ALI**  
**v**  
**PEOPLE'S BANK**

COURT OF APPEAL  
UDALAGAMA, J. (P / CA)  
IMAM, J.  
CALA 342/2003  
JANUARY 23, 2004  
FEBRUARY 17, 2004

*Civil Procedure Code – Sections 121 (2) and 175 (1) (2) – Document not specific – Not adequately described – Discretion of Court – to meet ends and interests of justice.*

When the plaintiff-respondent People's Bank moved to mark a document issued by the plaintiff-respondent Bank, the defendant objected to the marking of same on the basis that the document in the list of documents was not specific and was listed under a general description.

The District Court disallowed the objection.

- Held**
- (1) The District Court has the discretion in terms of Section 175 (2) to admit or to reject documents.
  - (2) The discretion of the trial Judge is exercised purely to meet the ends of justice.
  - (3) The refusal to receive the documents in question in evidence would in all probability prevent the trial Judge coming to a just and equitable determination, (The list had described the documents to be produced as those exchanged between the plaintiff and the defendant).

**APPLICATION** for leave to appeal from an order of the District Court of Colombo.

*Lakshman de Silva* for appellant.

*S. Dharmawardana SC* for respondent.

*Cur.adv.vult.*

March 4, 2004

**UDALAGAMA, J. (P / CA)**

The plaintiff-Bank in D.C. Colombo case No. 12836/MR filed 01  
action against the 1-3 defendants claiming jointly and/or severally  
a sum of Rs. 1,250,000/- with interest.

The case when taken up for trial on 24.01.2003, learned  
Counsel for the plaintiff moved to mark a document dated 07.07.88  
purportedly issued by the plaintiff-Bank. The learned Counsel for  
the defendant objected to the marking of same on the basis that the  
document produced under item 39 of the list of witnesses and  
documents previously filed was not specific and was listed under a  
general description to read as "all documents exchanged between  
the plaintiff and the 1, 2 and 3 defendants". 10

Admittedly the relevant provision of the law applicable to the  
production of documents in the trial court is section 175 of the Civil  
Procedure Code.

Provisions of section 175(1) which refers to a list of witnesses  
filed in terms of section 121 of the Civil Procedure Code contains a  
proviso which enables a court in the exercise of its discretion in  
special circumstances where the interest of justice demands to  
permit a witness not listed to be examined and section 175 (2)  
refers to documents not included in the list in terms of section 121  
referred to above and received in evidence with leave of court. The 20  
proviso to section 175(2) however refers to the non applicability of  
the provisions in section 175(2) aforesaid when such documents  
are produced in cross-examination or used to refresh the memory  
of a witness.

In the instant application undoubtedly the impugned document  
had been listed although as stated by learned Counsel for the  
petitioner was not adequately described.

It is also observed that the list had described the documents to  
be produced as those exchanged between the plaintiff and the  
defendants. 30

That the District Court has the discretion in terms of section  
175(2) referred to above to admit or to reject documents is also  
undisputed.

The discretion of the trial judge in my view is exercised purely to meet the ends of justice. As specifically referred to by the learned District Judge in his impugned order at page (4) refusal to receive the documents in question in evidence would in all probability prevent the trial judge coming to a just and equitable determination which finding in my view is rational and reason enough to receive the impugned documents and the discretion exercised by the learned District Judge to receive the documents in evidence. is a finding this court would not interfere with as the order was well within the exercise of the discretion granted to a trial judge by law. 40

In fact the learned District Judge had been careful to permit the receipt in evidence of only 4 documents specified in this order. Admittedly even these 4 documents were ones that had been exchanged between the parties to the action, clearly eliminating the element of surprise.

Besides I would hold that in the circumstances of the instant action based on an outstanding claim between the Bank and the 1-3 defendants the learned District Judge correctly exercised his discretion to receive the documents objected to in the interests of justice and to ascertain the truth considering also that fact that the authenticity of the documents was not specifically challenged. 50

For the aforesid reasons this application to vacate the order of the learned district judge dated 05.09.2000 is refused and dismissed with costs fixed at Rs. 5000/-.

**S.I. IMAM, J. –** I agree.

*Application dismissed.*