IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

SC/CHC/Appeal No:

54/2017

CHC Case No:

HC (CIVIL) 470/2011/MR

Kim Hyum Wook,

Ranmutugalawatte,

Kadawatha.

PLAINTIFF

Vs.

1. Don Lalith Indralal

Rajapaksha,

203/3, Tharumalyaya,

Veyangoda,

Wegowwa.

2. Daisy Rajapaksha,

203/3, Tharumalyaya,

Veyangoda,

Wegowwa.

DEFENDANTS

AND NOW BETWEEN

Don Lalith Indralal Rajapaksha,

203/3, Tharumalyaya,

Veyangoda,

Wegowwa.

1st DEFENDANT-APPELLANT

Vs.

Kim Hyum Wook,

Ranmutugalawatte,

Kadawatha.

PLAINTIFF-RESPONDENT

Daisy Rajapaksha,

203/3, Tharumalyaya,

Veyangoda,

Wegowwa.

2nd DEFENDANT-RESPONDENT

Before **:** Kumudini Wickremasinghe, J.

: Arjuna Obeyesekere, J.

: Sampath B. Abayakoon, J.

Counsel **:** Primal Ratwatte with Avinda Silva instructed by Shanika Kariyawasam for the 1st Defendant-Appellant.

: Avindra Rodrigo, P.C. with Nishika Fonseka instructed by Danukshika Priyadarshani for the Plaintiff-Respondent

Argued on : 09-05-2025

Written Submissions : 02-05-2025 (By the 1st Defendant-Appellant)

: 14-07-2023 (By the Plaintiff-Respondent)

Decided on : 01-08-2025

Sampath B. Abayakoon, J.

This is an appeal preferred by the 1st defendant-appellant (hereinafter referred to as the 1st defendant) on the basis of being aggrieved of the judgment dated 30-06-2017 pronounced by the learned Judge of the Commercial High Court of Colombo in Case No. HCC/470/2011/MR, which was determined in favour of the plaintiff of the said action.

This is a matter where the plaintiff-respondent (hereinafter referred to as the plaintiff) instituted proceedings before the Commercial High Court of Colombo to recover a sum equivalent to United States Dollars 96,000 (Rs. 11,000,000/=) and for other related reliefs as sought for in the plaint dated 27-10-2011.

At the hearing of the appeal, this Court had the benefit of listening to the oral submissions of the learned Counsel who represented the parties, as well as the privilege of considering the written submissions tendered to Court by the parties in order to determine the appeal.

The case of the plaintiff urged before the trial Court can be summarized in the following manner.

He is a Korean national who came to Sri Lanka in the year 2010 to establish a business venture and to enter into a transaction for the export of copper to South Korea.

He has been informed by one Ranasinghe, whom he came to know while in South Korea, that the 1st defendant is engaged in exporting copper, which has resulted in the plaintiff, together with the said Ranasinghe, meeting the 1st defendant at his house.

After having shown about three tonnes of copper stored in his house, the plaintiff has been made to believe that the 1st defendant is capable of supplying copper, which in turn has resulted in the plaintiff entering into an agreement with the 1st defendant for him to export 15 tonnes of copper to the port of Busan in South Korea.

Accordingly, having signed the agreement (marked P-01 at the trial) for the said purpose, the plaintiff has gotten in touch with his father's company in South Korea and has transferred USD 96,000 to the personal bank account of the 1st defendant.

It had been the position of the plaintiff that although P-01 appears to be a transaction entered between two companies, it was he who entered into the agreement with the 1st defendant on behalf of his father's company and arranged for the payment. The plaintiff has also established at the trial that although the 1st defendant had signed the agreement on behalf of a company called Vilasa Oseas PLC, it had been a company that had been struck off from the Register of Companies on 12-01-2010, which was more than 10 months before the said agreement was entered into on 03-11-2010.

The fact that the personal account number 094010003431 belonging to the 1st defendant at the Minuwangoda branch of the Hatton National Bank was credited with a sum equivalent to USD 96,000 from a bank in Korea as stated by the plaintiff in his evidence was not a disputed fact at the trial, although the only admission recorded in that relation has been as to the existence of the bank account in the 1st defendant's name.

However, the 1st defendant has failed to supply the agreed 15 tonnes of copper or has failed to return the money, which has resulted in the plaintiff instituting this action.

The position taken up by the plaintiff in his evidence has been that the 2nd defendant named in the action was the wife of the 1st defendant, and part of the money credited to the bank account of the 1st defendant has been used by the 2nd defendant of the High Court action for her own use with the connivance of the 1st defendant.

The plaintiff has called the earlier mentioned Ranasinghe as a witness on his behalf, where he has substantiated the evidence of the plaintiff as to the matters that led to the deposit of money into the account of the 1st defendant and his failure to supply copper as agreed.

The position taken up by both the defendants at the trial had been that the agreement marked P-01 has been a one entered between a Korean company and a local company where the 1st defendant was not a party, and the signature in that agreement was not the 1st defendant's signature, and that it was a fraudulent document.

It has been contended further that there was nothing to show that it was the plaintiff who deposited the money since he was not a party to the agreement, and there was no authorization from the company that deposited the money authorizing the plaintiff to sue on behalf of the company, and hence, the plaintiff has no *locus standi* to proceed with this action.

Apart from the above positions, the 1st defendant has also taken up the stand that the plaintiff has failed to show that the local company had a special permit required to export copper to South Korea.

In his evidence, the 1st defendant has claimed that he entered into an agreement, which he has marked and produced as V-01, between himself and the plaintiff, who only acted as the agent of a Korean company named DAE-HEUNG-TRADE, and has denied that he signed the document marked P-01. Explaining the reason as to why he signed the document he produced as V-01, it has been claimed that it was signed in order to facilitate a Korean company to remit money to Sri Lanka, and since the plaintiff or the earlier mentioned Ranasinghe had no company in Sri Lanka, and as he was promised Rs. 150,000/- as a commission, he signed the same in order to facilitate the

plaintiff to run a business in Sri Lanka. He has also claimed that he did not know what the business was, but has stated that after he signed the document, he came to know that the business was a one related to copper.

In the impugned judgment, it is manifestly clear that the learned Judge of the Commercial High Court has considered the evidence placed before the Court by both the parties in its totality in order to come to a finding whether the plaintiff has established his case, or whether the defendant's stand should succeed. With that in mind, the learned trial Judge has considered the evidence in the balance of probabilities, which is the standard of proof required in a civil suit.

In view of the undisputed fact that the 1st defendant received a sum equivalent to USD 96,000 to his account, and also the undisputed fact that no export of copper has taken place, the learned High Court Judge has proceeded to consider the evidence in that context, being mindful of the issues raised by the parties, while reaching his conclusions.

In this process, the learned High Court Judge has considered the evidence of the 1st defendant where he has claimed that he had no knowledge of exporting copper to South Korea when the money was remitted to his account, but went on the belief that it was only to facilitate the plaintiff to have money in Sri Lanka to conduct his business.

However, as correctly observed by the learned High Court Judge, the answer of the 1st defendant filed in Court was in complete contrast to the stand taken by him in his evidence. In his answer, he has taken up the position that he agreed to act as an intermediary on behalf of the Sri Lankan company Vilasa Oseas PLC, where he was a director, and the plaintiff, who acted as an agent of the Korean company in order to supply 15 tonnes of copper locally. It has been claimed that he reached an agreement only in that regard with the Korean company.

Having considered and analysed the evidence placed before the Court, the learned High Court Judge has come to a finding that the evidence of the 1st defendant cannot be relied upon as to the manner the transaction occurred, for which I have no reason to disagree.

The learned High Court Judge has also considered the stand of the 1st defendant where he has claimed that he never signed the agreement marked P-01, but only signed the contract he marked as V-01.

The learned High Court Judge has drawn his attention to the fact that the 1st defendant, who claims that the document marked P-01 was a fraudulent document, has failed to take any steps to establish that fact before the Court. Having considered the contents of P-01 and V-01, it has been determined that both the documents have been signed for the same purpose of supplying copper as stated by the plaintiff, and the document marked P-01 was the soft offer letter, and V-01 was the sales agency agreement entered between the plaintiff as the agent of his father's company in Korea and the 1st defendant. It has been determined that since at the time of signing the said document, the company which the 1st defendant claims that he represented was not in existence, the 1st defendant has entered into the agreement in his personal capacity.

The learned High Court Judge has also made a note of the fact that when the 1st defendant was arrested and produced before the Magistrate Court in relation to a complaint lodged by the plaintiff to the police of this transaction on the basis that a fraud has been committed, at no point the 1st defendant has claimed that the documents produced by the plaintiff to the police are fraudulent documents.

The argument that the plaintiff has no *locus standi* to institute an action against the defendants as argued before this Court has also been a matter considered by the learned High Court Judge in his judgment.

It has been determined that at all times relevant to this transaction, it was the plaintiff who had acted on behalf of his father's company, and it was on his behalf that USD 96,000 has been remitted to the 1st defendant's personal bank account.

Having considered and analysed the facts and the circumstances specific to the matter, the learned trial Judge has come to a firm finding that the plaintiff is entitled to sue the 1st defendant based on the agreement reached between the parties.

The learned President's Counsel who represented the plaintiff-respondent made extensive submissions both oral and written, regarding an agent's right to sue upon contracts.

At this juncture, I would like to cite the judgment made available to this Court by the learned President's Counsel in that regard, which I find relevant.

In the case of **Jack Hunt Vs. R. C. Wright, Supreme Court of Iowa, United States - dated 17 November 1964,** it was held;

1. **Right of an agent to sue on a contract for disclosed principal** – if an agent has a beneficial interest in a contract executed for a disclosed principal he may sue in his own name.
2. **Nominal and real party interest** – the law looks beyond the nominal parties to the real parties in interest, and determined the case according to the rights of the latter.
3. **Real party in interest** – a party is to be regarded as the real party in interest whenever a payment to him would protect the defendant from the claims of third persons.

I am of the view that the principles discussed in the above-mentioned case is directly applicable to the facts and the circumstances of the case under appeal.

It is abundantly clear that although the money had been transferred by a Korean company owned by the father of the plaintiff to the account of the 1st defendant for him to supply copper, the actual party in interest had been the

plaintiff, and the actual transaction had been between the plaintiff and the 1st defendant.

Under the circumstances, it is my considered view that there exists no basis to argue that the plaintiff has no *locus standi* to sue the defendants in order to recover the money paid to the 1st defendant on the basis that he failed to abide by the agreement to export 15 tonnes of copper to Korea.

I find that the learned High Court Judge has well considered all the relevant legal aspects in that regard and has come to a correct finding with sound reasoning that the plaintiff has *locus standi* to maintain this action, for which I again find no reason to disagree.

In the impugned judgment, the learned High Court Judge has given extra attention to the claim of the 1st defendant that it was a 3rd party called Millapitiya that agreed to supply copper, and that he paid Rs. 7,000,000/- to him, to conclude that such a claim has no basis, and it was only a claim to justify the 1st defendant's failure to supply copper as agreed.

Since this is a determination that has been reached after having considered the evidence with utmost care, I find that the learned High Court Judge was correct when he reached the said determination.

When it comes to the argument that the money was never demanded by the Korean company from the 1st defendant, I find no merit under any circumstances to sustain such an argument. The plaintiff's evidence is clear and unambiguous that he, on numerous occasions, demanded from the 1st defendant to abide by the agreement to send 15 tonnes of copper to Korea or else to return the money. I am of the view that the demand has been well established before the trial Court.

For the reasons as considered above, I find no reason to interfere with the judgment of the learned Commercial High Court Judge, which is a judgment pronounced after having considered the evidence placed before the Court by both sides in its correct perspective, and after having given sound reasons as to his conclusions.

Accordingly, the appeal is dismissed. The judgment pronounced on 30-06-2017 is hereby affirmed.

The 1st defendant shall pay a sum of Rs. 100,000/- as costs of this appeal to the plaintiff.

I hold that the plaintiff is entitled to recover his costs in relation to the High Court suit as well.

Judge of the Supreme Court

Kumudini Wickremasinghe, J.

I agree.

Judge of the Supreme Court

Arjuna Obeyesekere, J.

I agree.

Judge of the Supreme Court