Judgments

Hatton National Bank Limited v Rumeco Industries Limited

SC Appeal No. 99A/2009
Before:
H. G. Amaratunga J, S. I. Imam J, R. K. S. Sureshchandra J,
Decided On: 8th June 2011

The Plaintiff Appellant has granted a long-term loan to the 1st Respondent where the 3rd Respondent was a guarantor. The 1st Respondent had defaulted the re-payment and the Plaintiff Appellant instituted action against the said brower and the two guarantors. At the 3rd Defendant Respondent's trial it was revealed that the facility was given in 1992, that there was a rescheduling of that loan in 1995, which was referred to as a term loan. The initial loan was covered by a security given in 1992 by the 3rd Defendant. The 3rd Defendant's position was that the term loan was a different transaction and that he had not guaranteed the payment of that loan. The document pertaining to the rescheduling has not made any reference to the 3rd Defendant's guarantee.

Held:
The action brought to court by the plaintiff especially against the 3rd Defendant was based on the term loan granted in 1995, and that the guarantee given by the 3rd Defendant in 1992 cannot be considered as a continuing guarantee.
This is often a practice adopted by the banks to get optimum guarantee and security when granting loans. It would be in the best interest of both banks and customers, for the Banks to explain with care the type of documents obtained from customers and their effect in granting facilities.

2011/03/01

G. C. Karunaratne Perera v P. U. Sanath Fernando and Another

SC Appeal 8A/2009
Before
J. A. N. de Silva CJ, N. G. Amaratunga J, R. K. S. Sureshchandra J,
Decided On: 09th May 2011

The Plaintiff Appellant instituted action in the District Court seeking a declaration that the 1st Defendant was holding the property which was the subject matter of the case under constructive trust in favor of the plaintiff. In 1987 plaintiff obtained a loan of Rs. 50,000/- and transferred the land in question to one Dharmalatha. Thereafter both Dharmalatha and the Plaintiff wanted more money and transferred the said property to 1st Defendant for a sum of Rs. 75,000/-. Plaintiff remained in possession throughout.

The Main issue was whether the two deeds conveyed by the Plaintiff and Dharmalatha were subject to constructive Trust or whether they were absolute transfers.

Held:
Both the transfers did not convey absolute title to the transferees and that they held the property in trust for the transferor as the transferor in both instances had not intended to convey the beneficial interest in respect of the property. This is in line with the principles laid down in section 83 of the Trust Ordinance.

2011/03/02

Deerasinghe Archchige Saroja Nisansala v John Laurence Rose Aberfoyle

SC Appeal 82/2009
Before:
Dr. Shirani A. Bandaranayake CJ, K. Sripavan J, S. I. Imam J,
Decided On: 28th June 2011

The Appellant was employed in Dubai and stayed in the Respondent's (a foreigner) house. When the Appellant returned to Sri Lanka Respondent purchased a land in the name of the Appellant. Subsequently the Respondent requested the Appellant to transfer the said land to his nominee, which had been refused by the Appellant and she continued to be in possession.

The main issue in question at the appeal was whether a purchase of a property by a third party for and on behalf of a foreigner, allegedly in order to evade the payment of 100% tax on the sale could create a constructive trust on the basis of section 4(1) and 98 of the Trust Ordinance.

Held:
The non-payment of tax by a person or evade of tax can be dealt with by the provisions of Section 58(1) and 59 of the Finance Act, and the default sum can be recovered. Hence it does not create an illegality coming under section 4(1) of the Trust Ordinance and there was no material to substantiate the fact that the transaction in question is not a lawful one as per section 4(1) of the Trust Ordinance. (Decision of Muniyandy Natchie v Kayambo (1988 ii CALA 56) followed)

The trust alleged by the Respondent is not contrary to the provisions of Sections 4(1) and 98 of the Trust Ordinance, and the Respondent could successfully plead a constructive trust.

2011/03/03

Tissa Attanayake v Commissioner General of Elections and Others

SC (SPL) LA No. 55/2011
Before:
Dr. Shirani A. Bandaranayake CJ, P. A. Ratnayake PC, J, Priyasath Dep PC, J,
Decided On: 21st July 2011
The Petitioner instituted a special leave to appeal application against a judgment of the Court of Appeal. When filing the appeal the instructing attorney for the Petitioner filed the papers in the Registry of the Supreme Court, and had sent the notices direct to the Respondent without filing them at the Registry. When the matter came for support a preliminary objection was raised by the 4th Respondent that the application before the court should be dismissed as the Petitioner had not complied with Rule 8(3) and Rule 40 of the Supreme Court Rules of 1990.

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Held:

It is to be noted that Rule 8(3) of the Supreme Court Rules, 1990 clearly provides for the need to tender the relevant number of notices along with the application for special leave to appeal, and it is mandatory.

The Supreme Court Procedure laid down by way of Supreme Court Rules made under and in terms of the provisions of the constitution cannot be easily disregarded as they have been made for the purpose of ensuring the smooth functioning of the legal mechanism of this country. When there are mandatory rules that should be followed and when there are preliminary objections raised on non-compliance of such Rules, those objections cannot be taken as mere technical objections.

2011/03/04

Priyanthi Chandrika Jinadasa v Pilatthu Wasam Gallage Pathma Hemamali

SC HC (CA) LA No. 99/2008

Before

Dr. Shirani A. Bandaranayake CJ, P. A. Ratnayake PC, J, Chandra Ekanayake J

Decided On: 07th July 2011

In an appeal, the Civil Appellate High Court of Gampaha delivered the judgment on 15/08/2008. The leave to appeal application in the Supreme Court on 01/01/2008 was filed by the wife of the initial Appellant, as the said Appellant had died on 15/08/2008.

A preliminary objection was raised by the Respondent's Counsel that the application should be dismissed as it was filed out of time.

The Counsel for the Petitioner took up the position that since this is an application for leave to appeal from a judgment of the High Court, the Supreme Court rules of 1990 would not apply, and hence the leave to appeal application can be filed within a reasonable time.

Held:

Categories B and C of Part 1 of the Supreme Court Rules, 1990 deal with leave to a appeal and other appeals, respectively. Whilst the category of leave to appeal deals with instances, where Court of appeal had granted leave to appeal to the Supreme Court, other appeals refer to all other appeals to the Supreme Court from an order, judgment, decree or sentence of the Court of appeal or any other Court or tribunal. The Civil Appellate High Court Come under the said category C. The said rules apply to the leave to appeal applications to the Supreme Court from the Civil appellate High Courts.

The language used in Rule 7, clearly shows that the provisions laid down in the said rules are mandatory and an application for leave to appeal should be made within six weeks of the order, judgment, decree or sentence of the Court below of which leave is sought from the Supreme Court

2011/03/05

G. M. Dharmawardhena v Divisional Secretary, Moratuwa

CA 26/06

Before:

Rohini Marasinghe J, Sarath De Abrew J

Decided On: 25th May 2010

In an appeal from a decision of the Land Acquisition Review Board, a preliminary objection was raised by the Counsel for the Respondents as the question of law urged by the appellant does not have a bearing on the quantum of compensation awarded as contemplated by Section 28(1) and 28(5) of the Land Acquisition Act. In *Hewage v Perera* (2005_BLR_108) it was held that the question of law urges in an appeal of this nature must have a bearing on the quantum of compensation awarded.

Held:

Section 28(5) of the Land Acquisition Act should not be restrictively constructed, if it is done so the Court of Appeal would lack jurisdiction to hear appeals on any questions of law unless they contain direct implications on the quantum of compensation. This restrictive construction negates the very stipulation in section 28(1) of the Act where the Court of Appeal was vested with jurisdiction to hear appeals form the Board of Review on land acquisitions.

Since an appeal on a question of law is intended to be a beneficial remedy, the provisions of Section 28 of the Act have to be interpreted broadly and liberally.

It is inconceivable that the legislature intended to curtail and reduce the appellate powers and the appellate jurisdiction of the Court of Appeal under the Land Acquisition Act.

2011/03/06

Anthony Michael Morril v Attorney General

CA Appeal No. 02/2003

Before:

RohiniMarasinghe J,Sarath De Abrew J,

Decided On: 27th October 2009

The Accused Appellant was charged under section 54(A) (b) and 54 (A) (d) of the Poisons, Opium and Dangerous Drugs Act No. 14 of 1984 (As amended). After the Trial the Learned High Court Judge found the Accused guilty for both the counts and sentenced with life imprisonment.

In the Appeal the main grounds of appeal among others were;

- The prosecution version was not probable and cannot be relied upon,
- The Learned High Court Judge had come to the conclusion that prosecution has proved the case beyond reasonable doubt before considering the defense evidence,
- Even though the accused were convicted of two chargers on both counts, the trial judge had imposed only a single term of life imprisonment.

Held:

The learned trial judge had failed to employ the yardstick of the test of Probability and Improbability which is a sine qua non in assessing the evidence of a trained police witness, which teat if it had been property used, would have created serious doubts as to the credibility of the said police witness.

It is a cardinal rule in our criminal law that every person charged with an offence is entitled to a fair trial and shall be presumed innocent until he is proved guilty. This presumption of innocence should be operative until the learned trial judge had perused and analyzed the entirety of the evidence led in the case, that of the prosecution as well as that of the defense. Before arriving at a conclusion whether the chargers are proved beyond reasonable doubt, there is sacred duty cast on each trial judge to examine the defense evidence, and come to a conclusion whether a reasonable doubt is generated by the defense, the benefit of which should necessarily accrue to the accused person.

There is an imperative duty cast on every trial judge to impose separate sentence on each charge an accused person is found guilty of.

2011/03/07