

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

Industrial Finance Limited
63, Dr. C.W.W. Kannangara Mawatha
Colombo 07.

PLAINTIFF

Case No. CA.895/95(F)
District Court of Colombo 10521/MR

Vs.

1. M. Careem
No. 37, Wijaya Road
Colombo 06.

And 22/3, Mallika Road,
Colombo 06.

2. A.C.N. Mohamed
No. 34, Daya Road,
Colombo 06.

3. A.R.S. Hameed
14, Paratha Road,
Gorakana,
Moratuwa.

DEFENDANTS

AND

1. M. Careem
No. 37, Wijaya Road
Colombo 06.

And 22/3, Mallika Road,
Colombo 06.

2. A.C.N. Mohamed
No. 34, Daya Road,
Colombo 06.

3. A.R.S. Hameed
14, Paratha Road,
Gorakana,
Moratuwa.

DEFENDANT APPELLANTS

Vs.

Industrial Finance Limited
63, Dr. C.W.W. Kannangara Mawatha
Colombo 07.

PLAINTIFF RESPONDENT

Counsel: Plaintiff/Respondent absent and unrepresented.

Pavithra Welivita for Defendant/Appellant

Written Submissions: 22-11-2010 (Appellant)

Before: Rohini Marasinghe J

Judgment: 24-5-2011

The Plaintiff/Respondent had instituted action in the District Court to recover money due on an Agreement dated 13-5-1986 marked as "A". The defendant had filed answer and accepted that he had entered in to the said Agreement. After trial the judgment was held in favour of the plaintiff. This appeal is against that judgment.

The main contention of the appellant was that the Agreement referred to as "A" did not contain an interest rate. The learned trial judge had addressed this point. He had correctly stated the main issue in the case was whether the parties have entered into a contract and whether any party had breached that contract. According to the trial judge's finding the defendant had continued to pay on the Agreement which was marked as P 3 at the trial. The Agreement P3 was based on the facts agreed upon by the parties at the time

of the Agreement "A". The only differences between these 2 Agreements were that the Agreement "A" in clause 8 did not refer to the rate of interest, and it did not have the registered number of the vehicle which was the subject matter of this Agreement. However, the document P3 contained the interest rate. The defendant was aware of the interest rate. The defendant continued to pay for several months. The ledger book reflects the said payments. Therefore, having paid on the Agreement marked as P3 for several months the defendant cannot now allege that the Agreement was a fraudulent Agreement. These rates interest were known by the defendant when he placed his signature at clause 8 of P3. Additionally, even in clause 8 of the Agreement "A" the defendant had placed his signature. Therefore, it further reinforces the fact that the parties had negotiated and had agreed upon the rate of interest at the time of the Agreement. The court must ascertain the intention of the parties at the time of the Agreement. The court cannot invent a contract which the parties never intended. In this case what was the intention of the parties at the time of the contract? The defendant had paid the monthly rental s according to the interest rate mentioned in P3. Therefore, the obligation of the defendant is very clear. He is now unable to rescind merely because one of the copies of the Agreement did not contain the rate of interest. There is sufficient evidence that the parties have acted upon the faith of the Agreement marked "P3".

These are hire purchase Agreements. The parties who enter into such Agreements are clearly aware of their obligations under such contracts. At the trail the defendant did not give any evidence to establish that he did not agree to enter into such an Agreement marked as P3.

The defendant had breached his obligations under the Agreement. Consequently, plaintiff is entitled to recover damages under the Agreement. The judgment is affirmed.

The appeal is dismissed.

Rohini Marasinghe J
Judge of the Court of Appeal.