

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

In the matter of an Appeal made in terms  
of Section 754 (1) of the Civil Procedure  
Code.

Anura Liyanage  
“Veda Niwasa”  
Belegalgoda Road,  
Ambalangoda.

**Plaintiff**

PC Colombo 3591 Spl.

Court of Appeal No.CA/809/2000 (F)

Vs.

Ceylon Electricity Board,  
Sri Chittampala A Gardiner Mawatha,  
Colombo 2.

**Defendant**

**AND BETWEEN**

Ceylon Electricity Board,  
Sri Chittampala A Gardiner Mawatha,  
Colombo 2.

**Defendant – Appellant**

Vs.

Anura Liyanage  
“Veda Niwasa”  
Belegalgoda Road,  
Ambalangoda.

**Plaintiff - Respondent**

**Before** : L.T.B. Dehideniya J, (P/CA)

&

A.L. Shiran Gooneratne J.

**Counsel** : Chaya Sri Nammuni, SC for AG.

Hugo Anthony with M.S.M. Patabed for the Plaintiff - Respondent.

**Written submission on** : 26/08/2017

**Judgement on** : 06/11/2017

**A.L. Shiran Gooneratne J.**

The Plaintiff - Respondent above named (hereinafter sometimes referred to as the Respondent) instituted action against the Defendant – Appellant (hereinafter sometimes referred to as the Appellant) in the District Court of Colombo, *inter alia*, seeking,

- a) A declaration that the orders contained in documents marked P9 and P10 are illegal and has no force or effect in law
- b) For General and Special damages in a sum of Rs. 10,500/- and Rs. 50,000/- respectively, and continuing damages at Rs. 3,500/- per month for the unlawful removal of the electricity meter and the disconnection of the supply of electricity to the Rice Mill belonging to the Respondent.

The Appellant filed answer *inter alia* praying for that the Respondents action to be dismissed and also claimed in reconvention a sum of Rs. 165,790.87 for accrued loss from the fraudulent consumption of electricity by the Respondent.

At the conclusion of evidence the Learned District Judge by Judgement dated 18<sup>th</sup> August 2000, held that the Appellant illegally disconnected the Respondents supply of electricity, and awarded the Respondent damages in a sum of Rs. 110,500/- and Rs. 3,500/- per month from the date of institution of action and continuing damages there from at the said rate.

When this case was taken up for Argument on 2<sup>nd</sup> October 2017, the parties agreed to dispose of the Appeal by way of written submissions.

The Plaintiff has obtained an electricity connection to a Rice Mill from the Ambalantota Urban Council in January 1988. The said Urban Council has supplied and distributed electricity to the Respondent as a licensee of the Ceylon Electricity Board (CEB). On 30<sup>th</sup> April 1991, the supply and distribution of electricity was taken over by the Ceylon Electricity Board. On information received by the Appellant a team of Investigation Officers of the CEB had visited the Respondent's premises on 22<sup>nd</sup> April 1992, and carried out an investigation on the Respondent's Rice Mill and has found that the electricity meter fixed to the Mill had been tampered with and the internal functions of the meter changed. It has also been found that the laboratory seals of the meter had been broken.

The Appellant contends that the evidence given by the Manager investigation Ruban Wickramarachchi clearly demonstrates that during the investigation carried out at the Respondent's Rice Mill, it was established that the laboratory seal of the electricity meter had been broken. Electrical Engineer Vithanage Sunil R. De Silva in his evidence stated that all meters are accurately

calibrated and sealed before installation and therefore the observation made on the electricity meter had clearly shown that it had been tampered with.

To establish credibility on the aforesaid evidence, the Appellant heavily relied on the fact that when the CEB took over the supply of electricity in Ambalantota area in April 1991, the electricity meter of the Plaintiff was functioning well and the seals attached were intact. The said conclusion was arrived on the basis that the meter reader had not reported any fault or breakage of the seals of the meter to the authorities.

In the circumstances the Appellant states that the electricity supply to the Rice Mill was disconnected in good faith and in terms of the powers conferred upon the Appellant in terms of Section 59 (1) of the said Act. Ceylon Electricity Board Act, No. 17 of 1969 (as amended) states that,

“No suit or prosecution shall lie,

(a) against the Board for any act which in good faith is done or is purported to be done by the Board under this Act or,

(b) against any member, officer, servant or agent of the Board for any act which in good faith is done or is purported to be done by him under this Act or on the direction of the Board.”

Therefore the Appellant submits that the District Court of Colombo has no jurisdiction to grant any relief to the Respondent in terms of Section 23 of the Interpretation Ordinance.

The Learned District Judge in Judgement dated 18<sup>th</sup> August 2000, has come to a clear finding in respect of the investigation carried out on 22.04.1992 at the Respondent's Rice Mill, where it is stated that,

- a) There is no evidence led to conclude that the Appellant's electricity meter was functioning well and the seals were intact at the time the CEB took over the supply of electricity in the Ambalantota area in April 1991.
- b) Since a new meter was not installed there is no evidence before Court to conclude that after the taking over of the electricity supply and distribution by the CEB, the Appellant's meter was checked and marked as accurately calibrated and seals were intact.

Therefore in the absence of any evidence or justification that the Respondent tampered with the meter or broke its seal the said findings of the CEB investigation clearly shows that the Respondent was deprived of a just and lawful inquiry to the allege electricity meter tampering before orders containing in documents marked P9 and P10 were issued. Therefore the purported inquiry and the subsequent disconnection of the power supply carried out on 22.04.1992 at the premises of the Appellant does not in any measure satisfy the requirement to be just and carried out in good faith in terms of Section 59 (1) of the Ceylon Electricity Board Act. It is also observed that the Appellant has no legal right to claim for any relief for losses accrued if any, from an unlawful consumption of electricity by the Respondent.

When computing General Damages the Learned District Judge has taken into consideration documents marked P19 and P22 which were compared with the average use of electricity by the Respondent for a period of 3 months. It is also observed that in computing continuing damages the Learned District Judge has taken into consideration the available evidence in support of the profits and losses incurred by the Respondent's Rice Mill in arriving at a just computation of the damages suffered by the Respondent with due consideration to the evidence led before Court.

In all the above circumstances the Learned Trial Judge has considered all facts and arrived at a decision. We see no basis to interfere with same, as such we affirm the Judgement of the Learned District Judge and dismiss this Appeal with costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

L.T.B. Dehideniya J, (P/CA)

I agree.

PRESIDENT OF THE COURT OF APPEAL