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

Bank of Ceylon, No. 4, Bank of Ceylon Mawatha, Colombo 1.

Plaintiff

Vs.

C.A. No. 83 / 2000 F

D.C. Colombo No. 474 / DR

- 1. Nadesan Manoharan,
- 2. Bawathi Manoharan,
 Are carrying on a business in the name and style of "Glamorutte",
 At No. 451, Galle Road,
 Colombo 3.

Defendants

AND NOW BETWEEN

- 1. Nadesan Manoharan,
- 2. Bawathi Manoharan,
 Are carrying on a business in the name and style of "Glamorutte",
 At No. 451, Galle Road,
 Colombo 3.

Defendant Appellants

Vs

Bank of Ceylon, No. 4, Bank of Ceylon Mawatha, Colombo 1.

Plaintiff Respondent

BEFORE : UPALY ABEYRATHNE, J.

COUNSELS: 1st and 2nd Defendant Appellant- Absent and

unrepresented

A.H.M.D. Nawaz DSG for the Plaintiff

Respondent

ARGUED ON : 16.10.2012

<u>DECIDED ON</u> : 23.01.2013

UPALY ABEYRATHNE, J.

The Plaintiff Respondent (hereinafter referred to as the Respondent) instituted the said action against the 1st and 2nd Defendant Appellants (hereinafter referred to as the Appellants) in the District Court of Colombo seeking to recover a sum of Rs. 3,116,387.15 and the interest under and in terms of the Debt Recovery (Special Provisions) Act No 02 of 1990.

Accordingly a decree nisi has been entered against the Appellants as prayed for in the prayers to the plaint. The Appellants, upon the receipt of the said decree nisi, have preferred an application seeking permission of court to appear and defend the case. The learned Additional District Judge after inquiry has dismissed the said application of the Appellants. Being aggrieved by the said order dated 27.01.2000 the Appellants have preferred the instant appeal to this court.

The Appellants have admitted that they were carrying on a business in the name and style of "Glamoroutte" at No 451, Galle Road Colombo 3, they were operating a current account No.0260220306 at Main Street Branch of the Respondent's Bank and they have obtained an overdraft facility of Rs 2900000/on 14.08.1996. The Appellants have further averred that the 1st Appellant who was also a partner of City Tex Traders had invest a part of said sum at City Tex Traders, the 1st Appellant had certain problems with the other partners of City Tex Traders which ended up in litigation and the 1st Appellant was prevented from carrying out any business activity of City Tex Traders thereby affecting his other businesses and as a result of the said problems there has only been a delay in depositing money in the current account of the Appellants.

Needless to say that under Section 6 (1) of the Debt Recovery (Special Provisions) Act No. 9 of 1990 a Defendant shall not appear or show cause against a decree nisi issued by court unless the defendant first obtains leave from court to appear and show cause. For this purpose a defendant should disclose a valid defence. But the Appellants in their affidavit have not disclosed such a defence other than raising some trivial objections to the Action filed by the Respondent.

On other hand the Debt Recovery (Special Provisions) Act does not provide the aggrieved party a right of appeal. The right of appeal is a statutory right. It should be expressly created and granted by the statute.

In the case of Martin Vs Wijewardena (1989) 2 SLR 409 (SC) it was held that "A right of appeal is a statutory right and must be expressly created and granted by statute. It cannot be implied. Article 138 is only an enabling Article and it confers the jurisdiction to hear and determine appeals to the Court of Appeal. The right to avail of or take advantage of that jurisdiction is governed by the several statutory provisions in various Legislative Enactments."

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In the case of Bandara Vs The Peoples Bank (2002) 3 SLR 25 it was held that "The Debt Recovery (Special Provisions) Act is an Act which has created special jurisdiction and it is a procedure whereby no right of appeal has been bestowed on a party aggrieved by a decree absolute."

In the aforesaid circumstances I see no reason to interfere with the order of the learned Additional District Judge dated 27.01.2000. Therefore I dismiss the appeal of the Appellants with costs.

Appeal dismissed.

Judge of the Court of Appeal