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**PEOPLE'S BANK  
VS  
WEERASINGHE**

COURT OF APPEAL.  
SOMAWANSA, J. (P/CA).  
WIMALACHANDRA, J.  
CALA 271/2004.  
DC GAMPAHA 767/M.  
JULY 27, 2006.

*Provincial High Court (Special Provisions) Act, No. 10 of 1996, sections 2 and 9 - Constitution, Article 154(3) - Cause of action – Commercial transaction ? – Exceeding 3 Million – District Court lacks jurisdiction – Transfer to Commercial High Court by operation of law – Patent or latent lack of jurisdiction ?.*

The plaintiff respondent instituted action against the defendant-respondent Bank claiming a sum of Rs. 17.5 million from the Bank being the loss caused to him due to certain negligent acts of the Bank officials. The defendant - petitioner Bank in its answer did not take up the position that the District Court has no jurisdiction to try and determine the action. When the case was taken up for further trial the petitioner Bank took up the position that the cause of action arises from a commercial transaction and that as the claim being over three Million the Commercial High Court has exclusive jurisdiction and hence the District Court lacks jurisdiction to hear the case. The trial Judge dismissed the objection, On leave being sought, it was contended by the respondent that the petitioner Bank has pleaded to the jurisdiction without any specific denial on any ground and proceeded to trial without even an issue relating to jurisdiction and that the claim is not a commercial transaction.

**HELD:**

- (1) The wrong or the cause of action in the instant action is not constituted by negligence or contrary banking practice which in isolation does not constitute any wrong or give rise to any cause of action. The wrong or the cause of action is constituted by the transfer of funds from one Bank account to another Bank account which per-se is manifestly a Banking transaction and arising out of a Banking transaction, it is a commercial transaction.

- (2) If the want of jurisdiction is patent and not latent, objection can be taken at any time. In such a case it is the duty of court ex mero moto to raise the point even if the parties fail to do so.
- (3) As provided for in section 9 of Act No. 10 of 1996 the matter shall stand removed to the High Court by operation law.

**APPLICATION** for leave to appeal from an order of the District Court of Gampaha.

**Cases referred to :**

1. *Lowe vs Fernando* 16 NLR 298
2. *Brunswick Exports Ltd vs. Hatton National Bank Ltd* 1999 1 Sri LR 219
3. *Baby vs Bandon* 1999 3 Sri LR 416

*Kolītha Dharmawardane* for defendant-petitioner.

*M. H. B. Morais* for plaintiff-respondent.

*Cur.adv. vult.*

January 27, 2006

**ANDREW SOMAWANSA, J. (P/CA)**

This is an application seeking leave to appeal from the order of the learned District Judge of Gampaha dated 13.07.2004 dismissing an application made to the said Court to transfer the instant action No. 767/M to the Commercial High Court on the basis that the action instituted by the plaintiff-respondent arises out of a commercial transaction as contemplated by the Provincial High Court (Special Provisions) Act, No. 10 of 1996 and if leave is granted to set aside and vacate the aforesaid impugned order dated 13.07.2004 and make order that the instant case being within the sole and exclusive jurisdiction of the High Court be transferred to be heard and disposed by the Commercial High Court established by the aforesaid Act, No. 10 of 1996. Also for a direction to the learned District Judge to transfer the instant action to the Commercial High Court of Colombo. The defendant-petitioner also supported and obtained an interim relief which has been extended from time to time.

At the inquiry both counsel made oral submissions and have also tendered written submissions on the question of leave as well as the main

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appeal. The only matter for determination by this Court is whether the cause of action in the instant action has arisen out of a commercial transaction as contemplated in the aforesaid Act, No. 10 of 1996.

The relevant facts are the plaintiff-respondent (hereinafter called the respondent) instituted the instant action pleading :

- (a) that on or about 06.11.1998 the respondent and D. M. Peries opened a Joint account bearing No. 00262071327831 at the "Gampaha Branch" of the defendant-petitioner Bank (hereinafter called the petitioner Bank) by depositing a sum of Rs. 54,000,000.
- (b) that on or about 16.11.1998 and 09.12.1998, the respondent and D. M. Peries withdrew a sum of Rs. 5,000,000 and Rs. 7,500,000 respectively.
- (c) on or about 30.12.2000 D. M. Peries died.
- (d) that on or about 07.01.1999 an employee of the petitioner Bank informed the respondent that the petitioner Bank has received a letter from D. M. Peries requesting to withdraw a sum of Rs. 20,000,000 from the said Joint Account.
- (e) that immediately after receiving the information, the respondent met the Manager of "Gampaha Branch" of the petitioner Bank and the petitioner informed the respondent that upon the request made by D. M. Peries, by letter dated 15.11.1998, the petitioner Bank transferred a sum of Rs. 17,500,000 to an account maintained by D. M. Peries at the Head office of the petitioner Bank.
- (f) that D. M. Peries did not open an account at the Head Office of the petitioner Bank prior to his death and D. M. Peries by a letter dated 08.01.1999 had informed the petitioner the same.
- (g) that by letters dated 26.02.1999 and 28.02.2001 the petitioner Bank informed the respondent that the respondent's query is being investigated and the respondent will duly be informed of the result of the said investigation.
- (h) on or about 13.01.1999 the respondent lodged a complaint at the Criminal Investigation Department and upon the said complaint

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the Criminal Investigation Department instituted criminal action bearing No. 54871/B in the Magistrate's Court of Gampaha.

- (i) that on or about 14.07.1999 the learned Magistrate directed the Examiner of Questioned Documents to examine the signature of D. M. Peries on the documents pertaining to a similar incident, in respect of an account held by D. M. Peries at Hong Kong and Shanghai Banking Corporation (HSBC).
- (j) that in terms of the Examiner of Questioned Documents Report dated 30.11.1999, the signatures on the letters dated 15.11.1998 and 07.01.1999 differed to the signature of D. M. Peries.
- (k) that the petitioner has acted unsatisfactorily, against the Banking procedures, practices and principles and acted negligently by transferring the said sum of Rupees 17.5 million.
- (l) that D. M. Peries's name is not disclosed in the pass book of the said account held at the "Head Office" of the petitioner Bank and the respondent is unaware that D. M. Peries maintained such an account.
- (m) that the respondent has acted in violation of the normal banking procedure and regulations in opening the said account held at the "Head Office" of the petitioner Bank.
- (n) that the procedure adopted by the petitioner whilst crediting Rs. 17.5 Million to the account said to be opened by the deceased D. M. Peries was unsatisfactory, negligent and inconsistent with established banking practices and as a result a cause of action has accrued to the respondent to file action in respect of the loss of Rs. 17.5 million to him.

In the premise he prayed for a decree that directs the defendant Bank to pay a sum of Rs. 17.5 million and the accrued interest to the Joint Savings account of the respondent.

The petitioner Bank in his answer did not take up the position that the District Court has no jurisdiction to try and determine the instant action.

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The case proceeded to trial and on 26.05.2004 when the case was taken up for further trial the petitioner Bank took up the position that the cause of action in the instant action arises from a commercial transaction and that the claim being over three million the High Court has exclusive jurisdiction and hence the District Court lacks jurisdiction to hear and determine this instant action. The learned District Judge having inquired into this objection made the aforesaid order dismissing the objection to jurisdiction taken by the petitioner Bank. It is from this order that the petitioner Bank seeks leave to appeal.

Counsel for the respondent submits that the petitioner Bank having pleaded to the jurisdiction without any specific denial on any ground proceeded to trial without even an issue relating to jurisdiction. Respondent's claim is for a sum of Rs. 17.5 million with interest and therefore this is not a matter that arose in the course of the trial or on respondent's evidence. He submits that in any event the cause of action on which the claim is based is not a commercial transaction within the meaning of section 2 and falling within the 1st Schedule in Act, No.10 of 1996. He further submits that the transaction complained of is based as averred in his pleadings on a negligent, fraudulent or dishonest act or acts between the Bank and those who withdrew money forging the depositor's signature causing loss to the depositor and it is from this fraud or wrongful withdrawal to which the respondent is not a party that the cause of action springs or arises. Therefore there is no transaction between the respondent and the petitioner Bank from which the cause of action has arisen. He also submits that the dishonest withdrawal in no way can be called a commercial transaction. The money had been withdrawn after committing a criminal act or acts. Hence it is a criminal transaction causing loss and damage to the respondent which is the basis of the cause of action and the petitioner Bank negligently or wrongfully without following the proper banking procedure has given into the criminal or criminals who forged the signature and thereby depriving the respondent of his money and to that dishonest transaction the respondent is no party. I am unable to agree with the aforesaid submission of counsel for the following reasons.

On an examination of the respondent's pleadings, it is to be seen that the entire pleadings of the respondent refers to banking transactions and the cause of action of the respondent encapsulated in paragraph 21 of the said pleadings states as follows :

පැමිණිලිකරු කියා සිටින්නේ නොසැලකිලිමත් ලෙස සහ පිළිගත් බැංකු පරිචයට පටහැනි ලෙස විත්තිකාර මහජන බැංකුවේ ගම්පහ ශාඛාව විසින් එකී ඒකාබද්ධ ඉතිරිකිරීමේ ගිණුමෙන් රු. මිලියන 17.5ක් නිකුත් කිරීමෙන්ද, තමාට අහිමි වූ එකී රු. මිලියන 17.5ද ඒට අදාළ පොලියද එකී ගිණුමට නැවත බැර කිරීම සඳහා ඉල්ලා සිටිමින් විත්තිකාර බැංකුවට එරෙහිව නඩු පැවරීමට තමාට නඩු නිමිත්තක් හටගෙන ඇති බවය.

In essence the very nucleus of the cause of action as claimed by the respondent is the transfer of funds from one account to another. The question that arises for determination is whether a cause of action based on banking transaction cannot be treated as a cause of action arising out of banking transactions if such transactions are performed by the Bank negligently or contrary to established banking practices.

It is to be seen that all causes of action are based on a wrong and there could be no cause of action if not for a wrong. It was held in *Lowe vs. Fernando*<sup>(1)</sup>.

“Generally ‘cause of action’ is the wrong for the prevention or redress of which an action may be brought. The wrong is the combination of the right and its violation.”

In the instant action the wrong or the cause of action is not constituted by negligence or contrary banking practices which in isolation does not constitute any wrong or give rise to a cause of action. The wrong or the cause of action is constituted by the transfer of funds from one bank account to another bank account which per se is manifestly a banking transaction and arising out of a banking transaction. This is consistent with the plain and ordinary meaning of the provisions in Schedule 1 of Act, No. 10 of 1966 and any construction to the contrary would defeat the very intention and purpose of the establishment of the Commercial High Court.

Item 1 of the 1st Schedule of the Provincial High Court (Special Provisions) Act prescribes ‘all matters where the cause of action has arisen out of commercial transactions including the cause of action relating to banking in which the debt, damage or demand is for a sum exceeding three million.’ In *Brumswick Exports Ltd. vs. Hatton National Bank Ltd.*<sup>(2)</sup> it was held that item 01 of the 1st Schedule manifestly embraces within its fold all banking transactions (unless specifically excluded). Thus it is to be seen that the aforesaid provisions viz : item 01 of the 1st Schedule

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does not confine jurisdiction merely to commercial transactions or banking transactions only but extend such exclusive jurisdiction to all matters where the cause of action has arisen out of commercial or banking transactions.

For the foregoing reasons, I would hold that the instant action before the District Court has arisen out of a banking transaction and hence out of a commercial transaction as contemplated in Schedule 1 of the High Court of the Provinces (Special Provisions) Act, No. 10 of 1996. Accordingly in terms of section 02 of the aforesaid Act, No. 10 of 1996 the determination of the matter involved in the instant action would be within the exclusive jurisdiction of the High Court established thereunder read with Article 154(3) of the Constitution. Therefore as provided for in section 9 of Act, No. 10 of 1996 the matter shall stand removed to the High Court by operation of law.

Before I conclude there is one other matter that needs consideration ; that being whether the objection taken to jurisdiction is belated for the petitioner Bank has taken up this objection after the commencement of trial. As aforesaid neither any objection to jurisdiction was taken in the answer of the petitioner Bank, nor was there any issue raised on the basis that District Court Gampaha lacks jurisdiction to try and determine this action. In the case of *Baby vs. Banda*<sup>(3)</sup> it was held that if the want of jurisdiction is patent and not latent objection can be taken at any time. In such a case it is the duty of Court itself *ex mere motu* to raise the point even if the parties fail to do so. In any event, the instant action stands transferred to the Commercial High Court by operation of law.

For the foregoing reasons, I would grant leave to appeal from the order of the learned District Judge of Gampaha dated 13.07.2004 and set aside the aforesaid impugned order and direct the District Judge to forthwith transfer the instant action pending in the District Court to the Provincial Commercial High Court. The petitioner Bank is entitled to the costs of this application fixed at Rs. 15,000.

**WIMALACHANDRA, J. — I agree.**

*Order set aside. District Judge directed to transfer the instant action to the Commercial High Court.*