IN THE SUPREME COURT OF FIJI
APPELLATE JURISDICTION

CIVIL PETITION NO. CBV 0001 of 2020
[Court of Appeal No. ABU 115 of 2017]

BETWEEN	:	**NEW INDIA ASSURANCE**
		Petitioner
AND	:	**PUNJAS AND SONS LIMITED** **OCEAN SOAPS LIMITED**
		Respondents

Coram	:	**The Hon. Mr. Justice Anthony Gates** **Judge of the Supreme Court**
		The Hon. Mr. Justice Priyasath Dep **Judge of the Supreme Court**
		The Hon. Mr. Justice Priyantha Jayawardena **Judge of the Supreme Court**
Counsel	:	**Mr F. Haniff for the Petitioner**
		Mr C. B. Young for the Respondent
Date of Hearing	:	**17 October 2022**
Date of Judgment	:	**28 October 2022**

JUDGMENT

Gates J

[1] I have read the judgment of Jayawardena J. I agree with the reasons given and the orders proposed. The petition must fail both on its grounds and on its inability to meet the criteria for special leave. It raises matters that are only of concern to the parties.

Dep J

[2] I have read in draft the judgment of Jayawardena J and I agree with his reasoning and conclusions.

Jayawardena J

Facts of the Case

[3] The first respondent's (first plaintiff) building was damaged by fire on the 19th of February, 2003.

[4] The second respondent (second plaintiff), who is a wholly owned subsidiary of the first respondent, had been engaging in the business of manufacturing and distributing soap products at the same premises.

[5] As a result of the fire, the first respondent suffered loss and damage to the building. Further, the second respondent, who had been located in the same building, also suffered loss, damage and destruction to its business.

[6] At the time of the fire, there was an insurance policy which covered material damage and business interruption for the first and second respondents.

[7] After the fire, the petitioner (defendant) had admitted part of the claim and paid a sum of $3,000,000/- to the respondents in respect of the material damage. Further, $1,981,359 had been paid in respect of the business interruption claim.

[8] However, the petitioner purportedly relied on the *'malicious damage limitation'* under the insurance policy and restricted its liability to $3,000,000/- for the material damage claim.

[9] As the parties could not reach consensus on the claim, the respondents had instituted proceedings in the High Court to recover the total value of their claims under the said insurance policy.

Agreed Facts Before the learned Master of the High Court

"1. The First Plaintiff is, and was at all material times, a duly incorporated company having its registered office at 63 Vitogo Parade, Lautoka carrying on business as a manufacturer, importer and distributer of consumer goods.

2. The Second Plaintiff is, and was at all material times, a duly incorporated company having its registered office at 63 Vitogo Parade, Lautoka carrying on business as a manufacturer and distributor of soaps.

3. The Second Plaintiff is, and was at all material times a wholly owned subsidiary of the First Plaintiff.

4. The Defendant is, and was at all material times, a foreign company duly incorporated under the laws of India and having its principal place of business in Fiji at Suva carrying on business in Fiji as an insurance underwriter.

5. By a material damage and business interruption policy of insurance number 922622/1112/12376/00 ("the policy"), in consideration of premium paid by the First and Second Plaintiffs to the Defendant insured the First and Second Plaintiffs against risks (including fire) and for the amounts mentioned in the policy. The policy insured, inter alia;

   a. The First Plaintiff's buildings situated at Sautamata Street, Lautoka which buildings were, at the material time, lawfully occupied by the Second Plaintiff;
   b. The Second Plaintiff's plant and machinery and stock in the said building; and
   c. The Second Plaintiff's loss of income.

6. The provisions of the policy included:

   Section 1 – Material Damage

   Progress Claim Payments

   In the event of loss or damage giving rise to a claim under this Policy, the company will make progress claim payments on production of acceptable evidence of insured loss.

   Provided that, if the aggregate of progress payments exceeds the total amount of the adjusted loss, the insured will immediately refund the

difference between the amount of adjusted loss and the aggregate of payments actually made.

Section 2 – Business Interruption

Progress Claims Payments
In the event of Damage giving rise to a claim under this Policy, the Company will make progress claim payments on production of a statement of claim certified by the Accountant appointed in accordance with the "Claims" condition of this policy.

7. On 19 February 2003, whilst the policy was current, the First Plaintiff's buildings, and the Second Plaintiff's business including plant and machinery and stock, was totally destroyed by fire.

8. The Defendant was duly advised of the loss and a written claim was lodged in terms of the policy.

9. As a result of such destruction by fire the First and Second Plaintiffs suffered loss.

10. The Defendant admitted the claim and has, to date, made the following process payments to the First and Second Plaintiffs:

    10.1 Material Damage claim - $3,000,000.00
    $1,000,000 on 19 May 2003
    500,000 on 4 July 2003
    500,000 on 11 April 2004
    1,000,000 on 28 August 2004

    10.2 Business interruption claim - $1,981,359.00
    $250,000 on 24 November 2003
    500,000 on 20 May 2004
    250, 000 on 4 June 2004
    981, 359 on 16 December 2005

11. The First and Second Plaintiff's balance claim is as follows:

    11.1 Balance of Material Damage claim - $2,761,647.00
    11.2 Balance of Business Interruption claim - $ 253,466.00"

Master's Order

[10] Having considered the evidence led before the learned Master of the High Court, he delivered the order on the 24th of March, 2016, and stated *inter alia*;

> "40. The Defendant did not deny their obligation to pay under the Insurance Policy. The issue was relating to the amount. Under MD Defendant had accepted liability under all headings

presented to the court, but their assessment of damages was different from the Plaintiff's."

.....

.....

"261. It should also be noted long before this date the parties have tried to settle the claims and had also agreed certain clams, but no payments regarding the said claims were settled by the Defendant. So the Defendant had unreasonably held claims due to the Plaintiff for a considerable time period. It was not my duty to evaluate the insurance claim payment process, but the time taken was too long and the Defendant had stopped the process of engaging professionals. There was no communication produced in the court indicating termination of the engagement of lost adjuster to the Plaintiff. This behavior also supports unreasonable for the Plaintiff to recover their claims for the loss early."

... ...

... ...

Final Order

a. The Defendant to pay the Plaintiffs a sum of $ 1,926,058 and interest at the rate of 10% per annum from 6th May, 2011.
b. Applicable VAT for (a) should be paid by the Defendant for the above sum.
c. Considering the circumstances of the case I will not grant costs. Each party to bear their own costs."

Judgment of the High Court

[11] Being aggrieved by the said order of the learned Master of the High Court, the respondent appealed to the High Court. After hearing the appeal, the High Court delivered its judgment on the 31st of August, 2017, and stated;

> "appeal dismissed, the Master's Decision is affirmed and the First and Second Appellants shall each pay the Respondent $750 as costs summarily assessed of the Appeal."

[12] Thereafter, the petitioner appealed to the Court of Appeal.

Judgment of the Court of Appeal

[13] After the conclusion of the hearing the Court of Appeal delivered its judgment and held inter alia;

"**The decision**

[112] I must make it clear that by virtue of this judgment, in addition to what the Master has awarded, I have allowed the claims of the Appellants in respect of the transformer ($147,200), VAT ($375,000) and Interest (from 01.12.2004). Accordingly, the judgment of the High Court dated 31.08.2017 is set aside. The appeal of the Appellants is allowed in part. The Decision of the Master dated 24.03.2016 was varied and the Court of Appeal made the following order:

The Orders of the Court are

1. The Judgment of the High Court dated 31.08.2017 is set aside
2. The appeal of the Appellants is partly allowed
3. Decision of the Master dated 24.03.2016 is varied
4. The Appellants will be entitled to a sum of $147,200 as indemnity costs in respect of the loss of the transformer
5. The Appellants will be entitled to a sum of $375,000 on account of the VAT claim
6. The Appellants will be entitled to receive simple interest at the rate of 10% on the sum of $694,699, on the sum of $147,200 and on the sum of $375,000 from 01.12.2004
7. The Appellants are entitled $5000 as costs of this appeal."

[14] Being aggrieved by the said judgment of the Court of Appeal, the petitioner preferred an application to the Supreme Court seeking special leave to appeal against the said judgment of the Court of Appeal and to set aside the judgment of the Court of Appeal.

Application for Special Leave to Appeal

[15] The application for special leave to appeal consists of the following three grounds;

"First Issue – Transformer

1. The Court of Appeal held the First Respondent to be entitled to a sum of $147,200.00 as indemnity cost for the loss of the transformer.

2. The Court of Appeal erred in law and in fact in allowing the Claim for the transformer when there was no compliance by the Respondent with the provisions of section 4(4) and section 6 of the Civil Evidence Act 2002 in accepting a FEA (EFL) letter dated 20 February, 2003 to find an insurable in the transformer.

3. The Court of Appeal erred in law in effectively reversing the onus of proof for proving an insurable interest in the transformer when it held that the Respondents had an insurable interest despite:

   (i) the transformer not being listed in the First Respondent's financial statements as an asset.
   (ii) the transformer not being listed as an asset in the valuations of the first respondent's asset before the fire.
   (iii) the first respondent's expert not giving any evidence of the ownership of the transformer.
   (iv) no evidence being led by the first respondent's accountant on the ownership of the transformer.
   (v) the transformer having FEA (EFL) insignia on it.
   (vi) the respondent not establishing the indemnity value of the transformer at the trial of the action.

4. The Petitioner will contend that the First Respondent had the onus of proving an insurable interest in the transformer at the trial."

"Second Issue – Value Added Tax (VAT) Claim

5. The Court of Appeal erred in law in allowing the VAT claim of $375,000 and 10% interest from 1 December, 2004 when there was no compliance by the Respondent with the provisions of section 4(4) and section 6 of the Civil Evidence Act 2002 in respect of the Fiji Revenue Customs Service letter of 16 July, 2003 and PWC letter of 25 October, 2005.

6. The Court of Appeal erred in law in effectively reversing the onus of proof for the proving that VAT was payable. The Petitioner will contend that the First Respondent had the onus of proving that VAT was payable at the trial.

7. The Court of Appeal erred in law in awarding interest on the VAT Claim from 1/12/2004 when there was no evidence that the First Respondent was kept out of its

money. The First Respondent did not establish that the VAT amount of $375,000 was paid in FRCS."

"Third Issue – Interest from 1 December, 2004

8. The Court of Appeal erred in awarding interest from 1 December, 2004 when the claim from the transformer, VAT Claim and the sum of $694,699.00 was still in dispute as at 1 December, 2004.

9. That the Petitioner respectfully submits by reason of the foregoing that it has suffered substantial and grave injustice and the issues raised present far-reaching questions of law to be determined. The decision of this Court will have an impact on the public and its general public importance.

10. That the subject of this case also raises issues of substantial general interest to the administration of civil justice in Fiji.

11. The Petitioner therefore, humbly prays that the Supreme Court of Fiji may graciously be pleased to grant special leave to appeal from and to vacate and set aside the judgment of the Court of Appeal dated 29 November, 2019."

In the circumstances, the petitioner prayed for;

(a) grant special leave to appeal, and

(b) vacate and set aside the judgment of the Court of Appeal dated 29th of November, 2019."

[16] Now I will consider the three aforementioned issues raised by the petitioner.

VAT Claim

[17] Payment of Value Added Tax (hereinafter referred to as "VAT") is governed by the Value Added Tax Decree, 1991. VAT is considered as a broad-based tax as it covers a wide range of goods and services. Persons who carry on a 'Taxable Activity' and have an annual gross turnover of above $100,000/- other than the exempted persons, are liable to pay VAT.

[18] The applicable percentage of VAT depends on the nature of the business. Those who are liable to pay VAT should file VAT returns and make the relevant payment within the specified date in terms of section 32 of the said Decree. Further, the failure to pay VAT on time is subject to the payment of penalties.

[19] Section 3(8) of the VAT Decree, 1991 states;

> "Subject to this section, except for subsection (8A), if a registered person receives a payment under a contract of insurance, whether or not the person is a party to the contract of insurance, the payment is, to the extent that it relates to a loss incurred in the course or furtherance of the registered person's taxable activity, deemed to be consideration received for a supply of services performed by the registered person –
>
> (a) on the day the registered person receives the payment; and
> (b) in the course of furtherance of the registered person's taxable activity, provided that this subsection shall not apply in respect of any payment received as compensation –
>
> (i) under the Accident Compensation Act 2017 pursuant to a contract of insurance where the supply of that contract of insurance was –
>
> (A) exempted;
> (B) zero rated; or
> (C) in respect of an entitlement for loss of earnings within the meaning of the Workmen's Compensation Act 1964 or accidental persona injury or damages;
>
> (ii) pursuant to a contract of parametric insurance."

[20] It is common ground that the respondents were liable to pay VAT as they were engaged in manufacturing goods and selling the same. Hence, the respondents have registered under the VAT Decree to pay VAT. Thus, the respondents are considered registered persons under the VAT Decree.

[21] It is also common ground that the factory, the machinery and the production etc. got damaged as a result of a fire and there was a business interruption. Therefore, the respondents have lodged a claim with the petitioner to indemnify the losses suffered from the material damage and business interruption.

[22] The petitioner admitted part of the liability under the insurance policy issued to the respondents and made some payments under both headings.

[23] However, the petitioner declined to pay VAT to the respondents on the basis that the respondents failed to produce proof of payment of the VAT to the Fiji Revenue and Customs Authority.

[24] VAT is a statutory liability of persons who are subject to the VAT Decree. In such circumstances, there is a strict liability on the respondents to pay VAT under and in terms of section 3(8) of the said Decree.

[25] Further, as stated above, the petitioner is liable to pay VAT on the money they received as indemnity payments before the specified date. The failure to make such payments on time would result in penalties followed by prosecutions to recover VAT that are due to the Revenue and Customs Authority.

[26] The honoring of claims made under insurance policies are based on indemnifying the losses. In order to indemnify the loss, generally, insurance companies would request the claimant to show the loss. In such circumstances, it is up to the claimants to provide proof of the loss.

[27] However, if a claimant is unable to prove the value of an item destroyed by an event that would not absolve the insurance company from indemnifying the loss. In such instances, the insurance company should assess the loss and indemnify the claimant. Generally it is carried out by obtaining a valuation report from a loss adjuster.

[28] It is important to bear in mind that the insurance companies would not replace the items destroyed by an unexpected incident. They would only make a monitory payment to indemnify the loss. However, it is not compulsory for the claimant to replace the lost items in order to receive the money. It is purely a matter of choice for the claimant.

[29] Further, VAT is a compulsory tax. Therefore, the claimant is liable to pay VAT under the VAT Decree. In such circumstances, insurance companies are liable to pay VAT along with payments made to claimants to indemnify the losses that are subject to VAT. Hence, producing proof of payment of VAT by a claimant will not arise.

[30] Therefore, I am of the opinion that the Court of Appeal did not err in allowing the claim for VAT forwarded by the respondent.

[31] Further, the requirement to pay VAT for indemnity payments under section 3(8) were stated in the Revenue and Customs Authority letter of 16th of July, 2003 and also in the opinion given by Price Waterhouse Cooper's letter dated 25th of October, 2005.

[32] The petitioner objected to the said letters being considered by the court on the basis that those documents were produced contrary to section 4(4) and section 6 of the Civil Evidence Act 2000.

[33] Even if those documents are disregarded by the court, that would not prevent the court from considering the liability to pay VAT on indemnity payments, as consideration of such payments are purely a question of law and an interpretation of section 3(8) of the VAT Decree.

Interest – What is the Effective Date of Computation

[34] In terms of section 34(1) of the Insurance Law Reform Act 1996, insurers are liable to pay interest to claimants for delayed payments. The said section states;

> "Where an insurer is liable to pay to a person an amount under a contract of insurance or under this Act in relation to a contract of insurance, the insurer is also liable to pay interest on the amount to that person in accordance with this section."

[35] The computation of the period for the payment of interest is stipulated in section 34(2) of the said Act. i.e.

> "The period in respect of which interest is payable is the period commencing on the day as from which it was unreasonable for insurer to have withheld payment of the amount and ending on whichever is earlier of the following days -
>
> (a) The day on which payment is made
> (b) The day on which the payment is sent by post to the person to whom it is payable."

[36] A careful consideration of the aforementioned sections show that the computation of payments is purely dependent on the facts and circumstances of each case.

[37] Further, the provisions applicable to the progress payments in the insurance policy says;

> "In the event of loss or damage giving rise to a claim under this policy, the Company will make progress claim payments on production of acceptable evidence of insured's loss.
>
> Provided that, if the aggregate of progress payment exceeds the total amount of the adjusted loss, the insured will immediately refund the difference between the amount of adjusted loss and the aggregate of payments actually made."

[38] In view of the phrase "*unreasonable for insurer to have withheld payment of the amount*", in section 34(2) of the said Act, it is required to consider whether there was an unreasonable delay in making payments to the respondents.

[39] In the case of ***Bankstown Football Club v CIC Insurance Ltd (1997) 187 CLR 384***, where the Supreme Court of New South Wales held that the date on which the interest starts to accrue ' must be determined objectively". This was a case where section 57 of the ICA, which was identical to section 34 of the Insurance Law Reform Act of 1996, came up for consideration.

[40] Hence, I will set out the important dates to consider whether there was an unreasonable delay in making payments.

- 19.02.2003 date of the fire
- 29.04.2003 Appellants' claims preparer claimed a nonspecific progress payment of $3,500,000 plus VAT
- 13.06.2003 Respondent admitted liability and invoked malicious liability limitation of $3 million
- 19.06.2003 Respondent paid $1 million as progress payment.
- 04.07.2003 Respondent paid $500,000 as progress payment
- 28.08.2003 Respondent paid $500,000 as progress payment
- 11.04.2004 Respondent paid $1 million as progress payment
- 18.05.2003 Mr. Yee (on behalf of Appellant) informed Respondent by letter that Respondent will be liable to pay interest in view of delay in payments
- 28.05.2003 Appellants made claim of $1 million under Business Interruption (BI) claim

- 25.11.2003 Respondent paid $250,000 under Business Interruption (BI) claim
- 20.05.2004 Respondent paid $500,000 under Business Interruption (BI) claim
- 08.06.2004 Respondent paid $250,000 under Business Interruption (BI) claim
- 29.08.2005 Writ of Summons issued
- 28.12.2005 Respondent paid $981,359 under Business Interruption (BI) claim (after Summary Judgment was obtained in October 2005)
- 06.05.2011 liability judgment delivered by High Court
- 16.10.2013 assessment of damages hearing begins before Master
- 12.04.2013 assessment of damages hearing before Master concluded
- 24.03.2016 Decision of Master on assessment of damages

[41] The petitioner had admitted liability on the 19th of August, 2004 which is eighteen months after the factory was damaged by the fire.

[42] After months of discussions with the loss adjuster appointed by the petitioner, the respondents has furnished financial information as required by the said loss adjuster on the 14th of October, 2004. Further, the Profit and Loss accounts of the respondents had been handed over on that date. The loss adjuster had in turn acknowledged receipt of the financial information and had promised to finalise the claim.

[43] Thereafter, the petitioner had discontinued the services of the loss adjuster on the 1st of December, 2004 and tried to settle the matter by mutual consent.

The Master of the High Court stated in his order:

> "It should be noted that long before the date the parties have tried to settle the claims and had also agreed certain claims, but no payments regarding the said claims were settled by the Defendant. So the Defendant had unreasonably held claims due to the Plaintiff for a considerable time period. It was not my duty to evaluate the insurance. claim payment process, but the time taken was too long and the Defendant had stopped the professionals.... process of engaging "(para 261 of his Decision). [emphasis added]

[44] In the case of ***Sayseng v Kellog Superannuation Pty Ltd [2007] NSWSC 857***, where it was held:

> "In my opinion it should now be accepted that the correct approach to be taken by the court on this question is that taken by Cole J in Bankstown Football Club. In my assessment, the cases to which I have referred establish that the question of reasonableness is to be judged by reference to the true position in respect of the claim with allowance to be made for the insurer to have a reasonable period of time within which to investigate the claim and to consider its position. The discretionary determination is to be made having regard to the particular circumstances of the case, including the probable issues which require investigation ... ... It is not relevant that the insurer acted bona fide in denying the claim, or when the judgment of the court established the insurer's liability to pay it. In short, the award will be calculated on the basis of what the court finds is a reasonable time for completion of *the insurer's investigation of the claim* ... ... [emphasis added]

[45] Further, in **Sutton on Insurance Law, 4th Edition (2015), Vol 2** at page 180 states;

> "....an insurer is not entitled to wait until a judgment of the court holding her or him liable has been given. Bona fides on the part of the insurer is not the test..... In other words, an insurer disputes liability at her or his peril and once he or she has been adjudged liable to indemnify the insured, the insurer's obligation to pay interest will run from the elapse of a reasonable time after a formal claim has been made".
>
> [emphasis added]

[46] However, contrary to his own findings the Master of the High Court has ordered the interest to be paid from the date of his order where the liability of the petitioner was determined by the court.

[47] Having considered the above, I am of the opinion that there was an inordinate delay on the part of the petitioner to accept liability and indemnify the respondents for their losses.

[48] Further, at a time when the respondents furnished all the materials requested by the loss adjuster and when it was time that the loss adjuster had to adjust the loss, the petitioner had terminated his services, i.e. on the 1st of December, 2004. Having terminated the services of the loss adjuster the petitioner had tried to settle the claim by mutual consent, which had not materialized. In those circumstances, the respondents had to seek redress from the court to obtain the damages caused to him by the fire.

[49] Thus, I am of the opinion that the Court of Appeal did not err in ordering the petitioner to pay the interest with effect from the 1st of December, 2004 which is the date on which the petitioner terminated the services of the loss adjuster.

Transformer

[50] Mr. Fair, who gave evidence at the trial, stated that a sub-station was built in the factory to obtain electricity for the factory. He further stated that at the time the factory was built the respondents purchased the transformer from the Fiji Electricity Authority and installed it in the sub-station.

[51] In his evidence, Mr. Fair stated that he had furnished a letter from the Fiji Electricity Authority stating that the transformer was owned by the respondents. He also stated that the respondents had been using the transformer until it got damaged by the fire.

[52] The interpretation section of the insurance policy defined 'Insured Property' as –

> "Tangible property of every description not expressly excluded, the Insured's own or held by the Insured jointly or in trust or on commission **or** for which the insured is responsible **or** has assumed responsibility all while located at any situation or other place anywhere in Fiji or as otherwise." [emphasis added]

[53] The aforementioned interpretation given to 'insured property' shows that it has given a very wide interpretation to insured property. Further, it goes beyond the properties owned by the insured.

[54] In ***Lucena v Craufurd [1806] Eng R12; (1806) 127 ER 630*** Lawrence J stated;

> "Aman is interested in a thing to whom advantage may arise or prejudice happen from the circumstances which may attend it ... ... interest does not necessarily imply a right to the whole part of a thing, nor necessarily and exclusively that which may be the subject of privation but having some relation to. Or concern by the happening of perils insured against may be so affected as to produce a damage, detriment, or prejudice to the person insuring ... ... he may be said to be interested in safety of the thing."

[55] **MacGillivray & Parkington on Insurance Law (7th edition)** at page 643 cited the case of ***Lucena v Craufurd [1806] Eng R12; (1806) 127 ER 630,*** and stated that apart from any question of contract, the mere fact of possession, if lawful, was sufficient to give an insurable interest.

[56] Having considered the facts and circumstances of the instant case and the relevant law, I am of the opinion that the transformer falls within the interpretation given to 'Insured Property' in the insurance policy.

[57] Further, to prove a fact in court, it is not compulsory to produce documentary evidence. fact can be proved by oral evidence given by a witness in court. Moreover, it is unreasonable to expect anyone to keep receipts of goods purchased by him several decades ago.

[58] Accordingly, I hold that the Court of Appeal did not err in holding that the petitioner is liable to indemnify the loss arising from the damage caused to the transformer by the fire.

[59] Now I will consider the applicability of section 7 of the Supreme Court Act 1998 to the instant application.

Consideration of Granting of Special Leave to Appeal

[60] The jurisdiction of the Supreme Court with respect to special leave to appeal is set out in section 7 of the Supreme Court Act, 1998. It states as follows;

> "7(1) In exercising its jurisdiction under section [98 of the Constitution of the Republic of Fiji] with respect to ... leave to appeal in any civil or criminal matter, the Supreme Court may, having regard to the circumstances of the case –
>
> (a) refuse to grant leave to appeal;
>
> (b) grant leave and dismiss the appeal or instead of dismissing the appeal make such orders as the circumstances of the case require; or
>
> (c) grant leave and allow the appeal and make such other orders as the circumstances of the case require.
>
> 7(2) In relation to a criminal matter, the Supreme Court must not grant special leave to appeal unless-

(a) A question of general legal importance is involved;

(b) A substantial question of principle affecting the administration of criminal justice is involved; or

(c) Substantial and grave injustice may otherwise occur."

7(3) In relation to a civil matter (including a matter involving a constitutional question) the Supreme Court must not grant special leave to appeal unless the case rises-

a. A far reaching question of law;

b. A matter of great general or public importance;

c. A matter that is otherwise of substantial general interest to the administration of civil justice."

[emphasis added]

[61] The criteria laid down in section 7(3) of the Supreme Court Act, 1998 to obtain special leave to appeal shows that special leave to appeal to the Supreme Court cannot be obtained as a matter of course, but only after satisfying the criteria set out in the said section.

[62] In view of the fact that the legislator has set out a criteria that needs to be satisfied to obtain special leave to appeal, it is necessary to consider whether the petitioner has met the threshold set out in section 7(3) of the Supreme Court Act.

[63] I have considered the grounds of appeal, the questions of law stated in the petition and the submissions made by the both parties and I am of the view that the issues urged in the instant application are only matters between the parties.

[64] Further, none of the grounds pleaded in the petition fall within the criteria set out in section 7(3) of the Supreme Court Act.

[65] Thus, I hold that the petitioner has not satisfied the threshold contemplated in section 7(3) of the Supreme Court Act, 1998 to obtain special leave to appeal. Therefore, the application for special leave to appeal is refused.

Orders of Court

(I) Application for special leave is refused.

(II) I order $ 5,000.00 as costs to be paid to the respondents by the petitioner.

The Hon. Mr. Justice Anthony Gates
JUDGE OF THE SUPREME COURT

The Hon. Mr. Justice Priyasath Dep
JUDGE OF THE SUPREME COURT

The Hon. Mr. Justice Priyantha Jayawardena
JUDGE OF THE SUPREME COURT