

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

In the matter of an application for *Restitutio-In-Integrum* and Revision under and in terms of Article 138 (1) of the Constitution of the Democratic Socialist Republic of Sri Lanka

Court of Appeal
Case No: RII/0093/2024

National Development Bank PLC,
No. 40, Navam Mawatha, Colombo 02

DC Colombo
Case No: DSP/0203/18

Petitioner

Vs.

Warnakulasuriya Chandima Prasad
Rajitha Fernando,
'Sarani Aquarium',
No. 297, Kolinjadiya West,
Wennappuwa

Respondent

And Now Between

Warnakulasuriya Chandima Prasad
Rajitha Fernando,
'Sarani Aquarium',
No. 297, Kolinjadiya West,
Wennappuwa

Respondent-Petitioner

Vs

National Development Bank PLC,
No. 40 Navam Mawatha, Colombo 02.

Petitioner-Respondent

Before : R. Gurusinghe J
&
M.C.B.S. Morais J

Counsel : L.P.A. Chithranganie with Ama Jayaweera
for the Petitioner

Geethaka Gunawardena P.C. with Kushlan Seneviratne
And Shane Lappen
Instructed by Anusha Hewajulige
for the Petitioner-Respondent

Supported on : 17-01-2025

Decided on : 06-03-2025

R. Gurusinghe

The petitioner-respondent, the National Development Bank (hereinafter sometimes referred to as the Bank), filed a case bearing no. DSP/203/18 in the District Court of Colombo, against the respondent-petitioner (hereinafter sometimes referred to as the petitioner) under the provisions of section 16 of the Recovery of Loans by Bank (special provisions) Act No. 04 of 1990 (hereinafter referred to as the Act) and under the provisions of Chapter XXIV of the Civil Procedure Code seeking *inter alia*;

- a) For an order directing the respondent-petitioner for the delivery of the possession of the property described in the schedule to the petition filed before the District Court of Colombo by the bank.
- b) To enter *order nisi* under the provisions of section 377A of the Civil Procedure Code read together with the provisions of Act No. 4 of 1990.
- c) That the *order nisi* be made absolute.

The respondent-petitioner filed objections to the application of the Bank before the District Court. After an inquiry, the Learned Additional District Judge of Colombo made the *order nisi* absolute on 25-11-2021. Being aggrieved by that order, the respondent-petitioner appealed to the Civil Appellate High Court of Colombo. By judgment dated 12-09-2024, the Civil

Appellate High Court of Colombo dismissed the respondent-petitioner's appeal.

The respondent-petitioner filed this application for *Restitutio-in-Integrum* and *Revision* in terms of Article 138 of the Constitution. The application was supported on 17-01-2025 with notice to the respondent Bank.

The main ground relied on by the respondent-petitioner is that the principal amount due is less than Rupees Five Million. According to Section 5A of the Act as amended by Act No. 1 of 2011 and Act No. 19 of 2011, if the principal amount of the loan is less than Rupees Five Million, the Bank has no right to initiate action in terms of Section 3, 4, or 5 of the Act.

The respondent-petitioner admitted that he had obtained a Rupees Fifteen Million (Rs. 15,000,000/-) loan from the Bank. The above argument was based on two letters of demand issued by the Bank to the petitioner respondent dated 26-02-2018. Both letters of demand refer to a loan of Rupees Fifteen Million (Rs. 15,000,000/-). In one letter of demand, the sum due from the petitioner-respondent was mentioned as Rupees Four Million Four Hundred and Sixty Thousand Seven Hundred and Forty and Forty Three cents (Rs. 4,460,740.43). The other letter of demand also refers to the loan of Rupees Fifteen Million (Rs. 15,000,000/-) granted to the respondent-petitioner and the principal amount mentioned in that letter was Rupees Four Million Five Hundred and Sixty Nine Thousand Six Hundred and Fifty One and Forty cents (Rs 4,569,651.40).

Counsel for the petitioner took up the position that both letters of demand referred to the same Rupees Fifteen Million loan, and the letter of demand referred to an amount due as less than Rupees Five Million, the Bank was not entitled to proceed with the provisions of the Act. However, Counsel for the respondent Bank pointed out that the said Rupees Fifteen Million was disbursed to the respondent-petitioner in two tranches at his request.

The resolution adopted by the Bank states that the principal amount due from the respondent-petitioner is Rupees Eight Million Four Hundred and Forty Nine Thousand One Hundred and Thirty One and Ten cents (Rs. 8,449,131.10). The aggregate of the abovementioned two principal amounts is Rupees Eight Million Four Hundred and Forty Nine Thousand One Hundred and Thirty and cents Fifty Six (Rs. 8,449,130.56), with a difference of Fifty-Four cents. Furthermore, the respondent-petitioner did not file any document to show that he had repaid an amount out of that Rupees Fifteen Million loan, to reduce the principal amount to be less than Rupees Five Million. The argument that the principal amount due to be paid to the Bank is less than Rupees Five Million cannot be accepted.

The next ground relied on by the respondent-petitioner is that at the time the transaction was made, the respondent Bank did not have a licence or authority to act under the provisions of Act No. 4, 1990 because the respondent Bank had not been authorised to carry on banking business at Wennappuwa. However, the bank has produced a copy of the documents issued by the Central Bank of Sri Lanka authorising the Bank to carry out banking business in Wennappuwa.

The third ground relied on by the respondent-petitioner is that the bank had not informed the respondent-petitioner at the time of obtaining the loan that the bank would resort to the provisions of the Act. The Act is one of the laws passed by the Parliament, and it is a part of the law of the land. The Bank is entitled to resort to the law at its discretion. The law is presumed to be known by everybody. The bank is under no obligation to explicitly inform the respondent-petitioner of every possible legal recourse available to it.

Another ground urged by the respondent-petitioner is that the property was bought by the bank manager and not by the Bank itself. On behalf of the bank, it was submitted that, as per the schedule of the NDB Bank Act, the manager of a branch of the bank is expressly authorised to buy properties on behalf of the Bank.

The Certificate of Sale No. 1472 specifically stated as follows;

'.....and at the said sale the said PROPERTY AND PREMISES described in the Schedule hereto was purchased by HERATH MUDIYANSELAGE GAYAN SANJEEWA PREMADASA (Branch Manager) Wennappuwa Branch for and on behalf of National Development Bank PLC, No.40, Nawam Mawatha, Colombo 02
.....'

The certificate of sale clearly shows that the branch manager of Wennappuwa branch of the national Development Bank has purchased the property mentioned in the schedule on behalf of the bank.

In the District Court, the Bank applied to obtain vacant possession of the property from the respondent-petitioner. The Bank pointed out that when the resolution was sent to the respondent-petitioner, he did not take any action. Thereafter, the auction took place. However, the respondent-petitioner took no steps. Now, the bank seeks only to recover possession of the property.

Under the above circumstances, we see no reason to issue formal notice to the respondent Bank. The notice is refused, and the application is dismissed.

Judge of the Court of Appeal.

M.C.B.S. Morais J.

I agree.

Judge of the Court of Appeal.