

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

In the matter of an application for
Restitutio in Integrum under Article 138
of the Constitution of the Democratic
Socialist Republic of Sri Lanka.

CA Case No: RII/40/2024
High Court - Kandy
Case No. ARB/85/2020

People's Leasing and Finance PLC,
Head Office,
No. 1161, Maradana Road, Borella,
Colombo 08.

Applicant

Vs.

Dissanayake Mudiyanseelage Priyantha
Dhananjaya Dissanayake,
No. 128, Pichchamalwatta Road,
Gurudeniya.

Respondent

AND BETWEEN

People's Leasing and Finance PLC,
Head Office,
No. 1161, Maradana Road, Borella,
Colombo 08.

Applicant- Petitioner

Vs.

Dissanayake Mudiyanseelage Priyantha
Dhananjaya Dissanayake,
No. 128, Pichchamalwatta Road,
Gurudeniya.

Respondent- Respondent

AND BETWEEN

Dissanayake Mudiyanseelage Priyantha
Dhananjaya Dissanayake,
No. 128, Pichchamalwatta Road,
Gurudeniya.

Respondent- Respondent- Petitioner

Vs.

People's Leasing and Finance PLC,
Head Office,
No. 1161, Maradana Road, Borella,
Colombo 08.

Applicant- Petitioner- Respondent

AND NOW BETWEEN

Dissanayake Mudiyanseelage Priyantha
Dhananjaya Dissanayake,
No. 128, Pichchamalwatta Road,
Gurudeniya.

**Respondent- Respondent- Petitioner-
Petitioner**

Vs.

People's Leasing and Finance PLC,
Head Office,
No. 1161, Maradana Road, Borella,
Colombo 08.

**Applicant- Petitioner- Respondent-
Respondent**

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

Counsel: Isuru Abeygunawardhana with P.D.P. Pathirage instructed by Lakmali Fonseka for the Respondent- Respondent-Petitioner- Petitioner.

Keerthi Thilakaratna with Chanuka Ekanayaka for the Applicant-Petitioner- Respondent- Respondent.

Written Submissions: By the Respondent- Respondent- Petitioner-Petitioner – on 15.01.2025

By the Applicant- Petitioner- Respondent- Respondent – on 15.01.2025

Argued on: 12.11.2024

Decided On: **06.02.2025**

JUDGMENT

M.C.B.S. Morais J.

This is an application for *Restitutio-in-integrum* under Article 138 of the Constitution of Democratic Socialist Republic of Sri Lanka.

The Respondent-Respondent-Petitioner-Petitioner, Dissanayake Mudiyansele Priyantha Dhananjaya Dissanayake (hereinafter sometimes will be referred to as the Petitioner) has appealed the order dated 6th of December 2022 of the High Court of Kandy, in the case No. ARB/85/2020 against the Applicant-Petitioner-Respondent- Respondent (hereinafter sometimes will be referred to as the “Respondent”). Accordingly, the Petitioner has prayed the following,

I. Issue notice on the Respondents

- II. Set aside and/ or vacate the order dated 6/12/2022 pronounced by the learned High Court Judge.
- III. Set aside and/ or vacate the decree dated 6/12/2022 of the learned High Court Judge.
- IV. Set aside and/ or vacate the order dated 29/2/2024 of the learned High Court Judge.
- V. Grant relief prayed for by the Petitioner in the prayer to the Petition dated 6/2/2024
- VI. Issue and grant an interim order preventing the Respondent and his Agents from selling/auctioning the property of the Petitioner described in the schedule to the Petition at public auction and engaging in further activities based on the auction notice dated 13/3/2024 and /or suspending the auction described in the auction notice dated 13/3/2024 until hearing and final determination of this application by your Lordships' Court.
- VII. Grant costs and;
- VIII. Grant such other and further reliefs that your Lordships' Court seems meet.

The Respondent entered into a loan agreement with the Petitioner on 14th of February 2019, for a principal amount of Rs.15,000,000.00 which also contained an arbitration agreement. The arbitration agreement stipulated that any disputes arising from the agreement would first be attempted to be resolved through mutual negotiation and, if unsuccessful, would be submitted to arbitration. Having failed the initial mutual negotiation, the issue was referred to arbitration and an arbitral award was entered on 9th of October 2019 and both parties have agreed to adhere to the terms of the settlement entered therein. Thereby, the Petitioner is required to pay an amount of 26 million odd to the Respondent within the following 53 installments.

As per the terms agreed upon by both the parties, the Petitioner is obligated to pay a total sum of Rs. 26,820,828.00 to the Respondent in 53 installments from the 25th of November 2019 to the 25th of March 2024. However according to the Respondent, as of the 1st of November 2023, the Petitioner has only remitted Rs. 12,303,891.00. Consequently, the Respondent initiated proceedings in the High Court of Kandy under Section 31(1) of the Arbitration Act No. 11 of 1995 to enforce compliance with the arbitral award. Thereby, on the 18th of January 2024, the learned High Court Judge issued a writ authorizing the seizure of the Petitioner's property and ordering payment of the outstanding amount of Rs. 14,516,936.97 (fourteen million five lacks and sixteen thousand, nine hundred and thirty-six and ninety-seven cents) to the Respondent.

Accordingly, the Arbitration settlement which was entered on the 9th of October 2019, encompasses specific clauses as follows:

“ (1) ඉල්ලුම්කාර සමාගම සහ වග උත්තරකරු විසින් ඇති කර ගන්නා ලද වර්ෂ 2019/02/14 දිනැති අංක KDLEEP1900130600 දරණ ණය ගිවිසුමේ ජරකාරව හිඟ තබා ඇති මුදල අය කර ගැනීම සම්බන්ධයෙන් ඇති කර ගන්නා ලද සමථය ජරකාරව එකී වග උත්තරකරු විසින් ඉල්ලුම්කාර සමාගම වෙත ගෙවිය යුතු මුදල සම්පූර්ණ සමස්ථයක් වශයෙන් රුපියල් දෙසිය හැට අට ලක්ෂ විසි දහස් අටසිය විසි අට (රු.26,820,828.00) කට සීමා කිරීමට දෙපාර්ශවයම එකඟ වේ.

(2) එකී මුදල පළමු (1) වන මාසික වාරිකයේ සිට හය (6) වන මාසික වාරිකය දක්වා මසකට රුපියල් ලක්ෂ දෙක (රු. 200,000.00) බැගින්ද හත් වන මාසික වාරිකයේ සිට පහස් තුන් වන මාසික වාරිකය දක්වා මසකට රුපියල් පන් ලක්ෂ හතලිස් පන්දහස් එකසිය විසි හතර (රු 545,124/-) බැගින්ද වන පරිදි සම්පූර්ණ මාසික වාරික 53 ක් තුළ ගෙවා නිම කිරීමට වග උත්තරකරු එකඟ වේ.

(3) ඒ අනුව එකී ගෙවීම් වර්ෂ 2019/11/25 දිනෙන් ආරම්භ කොට සෑම මසකම 25 වන දින හෝ එදිනට පෙර ගෙවීමටත් සියලුම ගෙවීම් වර්ෂ 2024/03/25 දින වන විට ගෙවා නිම කිරීමටත් වග උත්තරකරු එකඟ වේ.

(4) මෙකී ගෙවීම් කිරීමේදී වග උත්තරකරු විසින් පිපල්ස් ලීසිං ඇන්ඩ් ඕනෑන්ස් පිපල්ස් සමාගමේ ඕනෑම ශාඛාවක් වෙත KDLEEP1900130600 දරණ ගිවිසුම් අංකයට අදාළව ඉහත සඳහන් දෙවන සමථ කොන්දේසිය ප්‍රකාරව සෑම මසකම 25 වන දින හෝ එදිනට පෙර නියමිත වාරිකය බැර කිරීමට එකඟ වේ.

(5) ඉහත එකඟ වූ පරිදි ඕනෑම වාරික දෙකක් ගෙවීම නොසලකා හැරියහොත් සහ/ හෝ පැහැර හැරියහොත් සහ 2024/03/25 දින වන විට සම්පූර්ණ මුදල ගෙවා නිම නොකළහොත් මෙකී සමථය කඩ කළාක් සේ සලකා මෙතෙක් ගෙවා ඇති සියලුම මුදල් අඩු කොට මුල් ගිවිසුමට අනුව ඉතිරි මුදල් අය කර ගැනීමට දෙනු ලබන බෙරුම්කරණ ප්‍රදානය මහාධිකරණයේ බලාත්මක කොට ක්‍රියාකර වගඋත්තරකරුට විරුද්ධව ඇස්කිසි ලබා ගැනීමට පියවර ගැනීමට ඉල්ලුම්කාර සමාගමට අයිතිය ඇති බවත් ඒ සඳහා වැයවන සම්පූර්ණ මුදල් ගෙවීමටත් ගිවිසුමට අනුව දඩ පොලිය ගෙවීමටත් වග උත්තරකරු එකඟ වේ.

(6) තවද මෙකී සමථයට අනුව වග උත්තරකරු නිසි පරිදි ගෙවන්නේ නම් ඔහුට විරුද්ධව පියවර නොගන්නා බවට ඉල්ලුම්කාර සමාගම එකඟ වේ. ”

In respect of the Arbitral award entered on the 9th of October 2019, the Petitioner has agreed to pay a sum of Rs. 26,820,828.00 to any branch of Peoples' Leasing and Finance PLC for the account number KDLEEP1900130600, on or before the 25th day of every month. Furthermore, the parties have agreed that if two consecutive installments are missed or, if the total amount is not settled by 25th of March 2024, such failure will constitute a breach of the settlement agreement. Consequently, the Respondent shall be entitled to enforce the arbitral award to recover the outstanding balance, after deducting any payments made to date.

It is accepted by the Petitioner that he has come to a settlement to pay the said amount to the Respondent before the 25th of March 2024, within 53 installments. However, it is amply evident that the Petitioner has failed to comply with the said undertakings. Furthermore, clause five of the arbitral award specifies the payments made as of the date when the settlement was entered at the arbitration proceedings and does not reflect any subsequent payments.

In the Arbitration Agreement the word used in clause five is 'මෙකෙක්' which means up to the date of the settlement. Therefore, legally the Respondent was entitled to obtain a writ for such amount. Instead of the word 'මෙකෙක්' if the word 'එකෙක්' is used, the Respondent is bound in law to make a deduction up to the date of writ of enforcement. However, it is observed that the decree was drafted and issued on 6th of December 2022. It is a well-accepted rule that the writ have to be in accordance with the decree entered. As per the materials presented before me, it is evident that most of the payments claimed by the Petitioner are subsequent to that date and it is obvious that these payments are not reflected in the writ of execution.

However, once the writ is executed the Respondent is bound by law to give due credit to any such payments made thereafter. Furthermore, I observe that there are certain charges such as; check return charges, which were not duly considered by the Petitioner. When considering all the materials presented to this court, I do not see any discrepancies as claimed by the Petitioner.

Therefore, I do not observe any irreparable loss or prejudice to the Petitioner to invoke the exceptional jurisdiction of *Restitutio in Integrum* granted to this court under Article 138 of the Constitution of Democratic Socialist Republic of Sri Lanka.

Hence, this application is dismissed.

No costs.

Judge of the Court of Appeal

R. Gurusinghe J.

I agree

Judge of the Court of Appeal