

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

In the matter of an application for Restitution,
in the nature of *Restitutio-In-Integrum* under
and in terms of Article 138 of the Constitution
of the Democratic Socialist Republic of Sri
Lanka.

Court of Appeal

Case No: RII/0059/2024

Appellate High Court

Case No:

WP/HCCA/KAL/12/2023(F)

Wethsighne Halgamu Appuhamilage Don
Nandika Dhanushka Dias
No. 464/7, Mitigoda Road, Remuna
Anguruwathota

Petitioner

DC Horana

Case No: SP/3103/21

VS

Maraba Hewage Senaka Sunanda
No: 28 Suderis Silva Mawatha, Horana

Respondent

AND BETWEEN

Maraba Hewage Senaka Sunanda
No: 28 Suderis Silva Mawatha, Horana

Respondent-Appellant

VS

Wethsighne Halgamu Appuhamilage Don
Nandika Dhanushka Dias
No. 464/7, Mitigoda Road, Remuna
Anguruwathota

Petitioner-Respondent

AND NOW BETWEEN

Maraba Hewage Senaka Sunanda
No: 28 Suderis Silva Mawatha, Horana

Respondent-Appellant-Petitioner

VS

Wethsighne Halgamu Appuhamilage Don
Nandika Dhanushka Dias
No. 464/7, Mitigoda Road, Remuna
Anguruwathota

Petitioner-Respondent-Respondent

Registrar
District Court of Horana

Respondent

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

Counsel : D.D.P. Dassanayake
for the Respondent-Appellant

Widura Ranawaka with Menaka Warnapura
For the Petitioner-Respondent-Respondent

Supported on : 29-11-2024

Decided on: 05-12-2024

R. Gurusinghe

The respondent-appellant-petitioner (hereinafter referred to as the petitioner), by the transfer deed no.317 dated 15-03-2017, transferred the property described in the schedule of the deed to the petitioner-respondent-respondent (hereinafter referred to as the respondent) for Rupees Twenty

Million. At the Debt Conciliation Board, a settlement was entered on 18-12-2019, between the petitioner and respondent in terms of Section 30, 31 of the Debt Conciliation Board Ordinance. The petitioner agreed to pay the agreed amount as per the settlement to the respondent on or before 11-07-2020. It was further agreed that in the event the petitioner failed to pay the due amount as per the settlement, the respondent is entitled to auction the property described in the schedule to the said deed, in terms of the provisions under section 43 of the Debt Conciliation Board Ordinance and the provisions of the Civil Procedure Code.

On an application of the petitioner, the time for repayment was extended until 11-01-2021 by the Debt Conciliation Board. The respondent filed an application before the District Court of Horana on the basis that the petitioner had failed to repay the money in accordance with the settlement entered before the Debt Conciliation Board. After considering the respondent's application, the Learned District Judge of Horana issued a decree *nisi* allowing the respondent's application. After inter-party inquiry, decree *nisi* was made absolute.

Section 44 of the Debt Conciliation Board Ordinance as amended is as follows;

(1) If on or before the date appointed by the court under section 43, the debtor fails to prove to the satisfaction of the court that there has been no default on his part in complying with the terms of the settlement, the decree nisi entered under section 43 shall by order of the court be made absolute.

(2) Any decree which has been made absolute under subsection (1) may be executed as if it were a decree entered in a civil action, and the court may award to the petitioner the costs of the application under section 43 and of the execution of the decree, and the provisions of the Stamp Ordinance or the Stamp Duty Act, No. 43 of 1982, and of the Civil Procedure Code shall apply accordingly:

Provided that no appeal from, or application for revision of, any such decree shall lie to the Court of Appeal.

Though the Debt Conciliation Board Ordinance specifically provided that no right of appeal was available against the decree absolute, the petitioner filed an appeal petition before the District Court. Thereafter, the respondent made an application before The Civil Appeal High Court of Kalutara. The Civil Appellate High Court held that the petitioner had no right of appeal against the decree absolute made by the District Court. Counsel for the respondent pointed out that the petition of appeal was filed long after the expiry of 60 days. *Prima facie*, there is nothing wrong with the order of the Civil Appeal High Court.

The petitioner filed this application before this Court seeking to set aside the order of the District Court dated 07-03-2023 and the order of the Civil Appellate High Court dated 10-10-2023. He further sought an extension of six months time so that he could settle the amount due as per the settlement. However, the repayment time was extended until 11-01-2021 by the Debt Conciliation Board. This application was made to this Court by the petitioner after more than 3 years on 06-05-2024. The petitioner has not explained this delay in his petition.

We have considered the documents filed by the petitioner and the submissions made by counsel for the petitioner. The petitioner has failed to demonstrate that his substantial rights were prejudiced or occasioned a failure of justice by the impugned orders.

In the circumstances, we refuse to issue notice on the respondents. The application is dismissed.

Judge of the Court of Appeal.

M.C.B.S. Morais J.
I agree.

Judge of the Court of Appeal.