

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

In the matter of an application for orders/mandates in the nature of a Writs of Certiorari and Prohibition under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

H G. Karunawathi
No. 3/2B, Charlse Zoysa Place,
Idama,
Moratuwa.

Petitioner

CASE No: CA (Writ) 280/17

Vs.

1. Peoples Bank
No. 75, Sri Chiththampalam A. Gardner
Mawatha,
Colombo 02.
2. Arvin Perere
No. 3, Pagoda Road,
Nugegoda.
3. Ajantha Mendis
No. 21/10, 7th Lane,
Church Road, Pelawatta,
Battaramulla.
4. L.S.R.Weerasinghe
No. 3/2B, Charlse Zoysa Place,
Idama,

Moratuwa.

5. L.S.I. Weerasinghe
No. 3/2B, Charlse Zoysa Place,
Idama,
Moratuwa.

Respondents

Before : Dhammika Ganepola, J.
Damith Thotawatta, J.

Counsel : Shivan Coorey for the Petitioner.
Rasika Dissanayake for the 1st
Respondent.
Chathura Galhena for the 3rd
Respondent.

Argued on : 2025.03.05, 2025.04.29

Written Submissions : Petitioner : 17.07.2025
tendered on 1st Respondent : 28.05.2025

Decided on : 06.08.2025

Dhammika Ganepola, J.

In the instant application, the Petitioner challenges the purported Board Resolution marked P10 passed by the 1st Respondent Bank. The Petitioner

is the owner of the business named M/S Sri Luck Stories, one of the partners of the partnership named M/S New Sri Luck and Company, and a shareholder of the business carried on with the 4th and the 5th Respondents named M/S Chamathkara Industries (Pvt) Ltd. The Petitioner alone and the Petitioner with the 4th and the 5th Respondents had obtained several loan facilities, executing the Mortgage Bonds bearing No. 6756 dated 03.10.2006 marked as P3, No.7414 dated 07.08.2007 marked as P4, No. 1450 dated 26.10.2010 marked as P5 and No.2678 dated 29.02.2012 marked as P6. However, the Petitioner claims that the Mortgage Bond bearing No. 1450, dated 26.10.2010 (P5), is an *ex facie* fraudulent and illegal document due to the reasons set out in the Petition. Since the aforesaid loan facilities obtained had been defaulted, the Board of Directors of the 1st Respondent Bank had passed the Board Resolution dated 24.09.2013, marked as P10, acting in terms of Section 29D of the People's Bank Act No. 29 of 1961, to sell the properties mortgaged to the 1st Respondent Bank and thereby to settle the purported loans.

While the matters remained as such, the Petitioner challenged the aforesaid Board Resolution before the Commercial High Court of Colombo in the case bearing No. 274/14 MR, seeking, *inter alia*, a declaration that the aforesaid Board Resolution is null and void and orders restraining the 1st Respondent Bank from auctioning the corresponding properties. The interim relief sought in the aforesaid case to restrain the 1st Respondent Bank from auctioning the said lands, had been refused.

The Petitioner claims that the purported Board Resolution and the Parate Procedure adopted are bad in law and *ultra vires* on the following grounds:

- a. The 1st Respondent Bank is attempting to enforce the fraudulently executed Mortgage Bond No.1450 (P5) via the said Board Resolution
- b. The 1st Respondent Bank is attempting to recover a sum of money which exceeds the value secured upon the mortgage bonds via the said Board Resolution

- c. The purported Resolution is contrary to the provisions under Section 29 of the People's Bank Act and is bad in law.

The Petitioner states that the aforesaid acts of the 1st Respondent are *ultra vires*, unlawful, irrational, and are not in compliance with the due process. Accordingly, the Petitioner seeks *inter alia* reliefs in the nature of Writ of Certiorari quashing the purported Board Resolution (P10) and in the nature of Writ of Prohibition restraining the 1st Respondent from acting under and in terms of the Board Resolution (P10).

Validity of the Impugned Mortgage Bond Before the Law

The Petitioner states that the Mortgage Bond No.1450 (P5), which is referred to in the Board Resolution, is a fraudulent deed. As per the extract of the Volume/ Folio 3315/65 registered in the Land Registry of Delkanda marked P14, the value of the Mortgage Bond P5 is Rs. 7,500,000/-. However, it is submitted that in two instances on page 4 of the Mortgage Bond P5, the value of Rs. 7,500,000/- has been deleted and replaced with Rs. 25,000,000/-, which had not been initialled by the Notary Public. Further, the amount of Rs. 7,500,000/-, which is referred to in the attestation of the Mortgage Bond P5, has also been altered as Rs. 25,000,000/-. The contention of the Petitioner is that he never executed a Mortgage Bond for Rs. 25,000,000/-, and such alterations have been effected subsequent to the registration of the Mortgage Bond P5 without the concurrence and/or agreement of the mortgagor.

Further, the Petitioner submits that although the Notary Public who attested the impugned Mortgage Bond P5, rectified the inconsistencies in the said Bond by executing a Deed of Declaration bearing No. 4388 dated 07.08.2013, the execution of such Deed of Declaration is not the proper recourse to correct any such invalid alterations. It is claimed that the appropriate recourse would have been to effect such correction in the aforesaid notarial document by way of a Deed of Rectification. It is the position of the Petitioner that the aforesaid Deed of Declaration is invalid and has no legal effect as the said deed has been executed in the absence of the Petitioner without his consent, participation or knowledge. Hence, it is claimed that the 1st Respondent Bank has committed a serious fraud

by making such alterations to the said Mortgage Bond P5 and has acted ultra vires, adopting the Board Resolution P10 based on such fraudulent Mortgage Bond.

Although the Petitioner claims that he has not executed a Mortgage Bond for Rs. 25,000,000, he has not explicitly denied obtaining the loan facility of Rs. 25,000,000. Furthermore, upon a close evaluation of the pleadings and the submissions made on behalf of the Petitioner, it is apparent that the Petitioner does not deny the execution of Mortgage Bond P5 except for the alterations made therein.

The stance of the 1st Respondent is that the Petitioner obtained the financial facility of Rs. 25,000,000 from the 1st Respondent Bank as evidenced by the loan applications marked 1R2 and 1R3. The Mortgage Bond P5 has been duly executed to secure the aforesaid facilities by mortgaging the properties mentioned in the above loan applications marked 1R2 and 1R3. However, when the Mortgage Bond P5 was submitted to the Land Registry for registration, the Notary Public who attested the Bond had been notified by the Registrar to correct the mistake regarding the value of the Bond as the bond was stamped for a value of Rs. 25,000,000 while its value was incorrectly mentioned as Rs. 7,500,000 in the body of Mortgage Bond P5. The Respondents submit that the Notary Public corrected the aforesaid mistake on the advice of the Registrar of Lands and executed the Deed of Declaration bearing No.4388 dated 07.08.2013 marked as 1R12.

In view of the above circumstances, it is abundantly clear that the parties are at variance on the nature of the corrections made on the Mortgage Bond P5, whether it was a fraudulent activity or a mistake on the part of the 1st Respondent Bank. Furthermore, the parties are also at variance as to the appropriate method of rectifying such alterations required to have been made, i.e., whether the 1st Respondent Bank should have executed a Deed of Declaration or a Deed of Rectification. Similarly, the parties are also at variance on the value referred to in the Mortgage Bond. Therefore, it is abundantly clear that the facts in relation to whether any fraudulent activity has been committed in executing the impugned Mortgage Bond, are in dispute. Consequently, in order to arrive at a decision with regard

to the grant of reliefs sought by the Petitioner, this Court will be required to consider the aforesaid questions of fact, which should essentially be addressed by a Court in a trial setting. This would provide both parties ample opportunity to present their witnesses, enabling such Court to carefully evaluate the evidence and determine the most accurate version of events.

Our courts have consistently held that this Court will not exercise its Writ Jurisdiction when the facts are in dispute. The Court of Appeal in **Thajudeen v. Sri Lanka Tea Board and Another [1981 2 SLR 471]**, referring to Choudri's book on the Law of Writs and Fundamental Rights (2nd Edition) Vol 2, highlighted that:

“where the facts are in dispute and in order to get at the truth, it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining their witnesses...”.

In the case above, the court has further observed that:

“the remedy by way of an application for a writ is not proper substitute for a remedy by way of a suit, specially where facts are in dispute and in order to get at the truth, it is necessary that the question should be canvassed in a suit where the parties would have ample opportunity examining their witnesses and the Court would be better able to judge which version is correct, has been laid down in the Indian cases of Ghosh v. Damodar Valley Corporation, AIR 1953 Cal. 581 and Parraju v. General Manager B.N. Rly. AIR 1952 Cal. 610.”

In view of the above, it is my considered view that this Court is not the proper forum to adjudicate the validity of the impugned Mortgage Bond P5.

The disputed Mortgage Bond No. 1450 marked as P5 has been executed on 26.10.2010. The Petitioner has filed the case bearing No. 274/14 MR, before the Commercial High Court of Colombo on 22.07.2014 seeking, *inter alia*, a declaration that the impugned Board Resolution P10 is null

and void as the said Resolution P10 is an attempt to enforce an illegally executed Mortgage Bond. The Petitioner has based his action before the Commercial High Court also on similar grounds canvassed in the present action. The Petitioner preferred the instant application, urging the same basis, that the enforcement of the Board Resolution P10 is bad in law, as the Mortgage Bond P5 is a fraudulently executed document. The application of the Petitioner for interim relief before the Commercial High Court had failed. Because the interim relief which had been asked for by the Petitioner in the aforesaid Commercial High Court case, preventing the 1st Respondent Bank from auctioning the property, had been refused on 30.10.2015. Thus, it appears that the instant application before this Court is an attempt on the part of the Petitioner to have a second bite of the cherry, which shall also amount to abuse of the process of the Court.

The newspaper publication upon which the Petitioner had come to know about the Board Resolution was published on 28.04.2014. Therefore, it is clear that the Petitioner had ample opportunity to file this application without delay. However, the instant Writ application was filed on 28.08.2017 after the lapse of a period of more than three years. The failure of the Petitioner to justify the delay in filing the instant application disentitles the Petitioner from seeking prerogative reliefs from this Court.

In the case of **Jayaweera v. Asst. Commissioner of Agrarian Services Ratnapura and Another [1996] 2 SLR 70.**, Jayasuriya, J. has held as follows:

"I hold that the Petitioner who is seeking relief in an application for the issue of a writ of certiorari is not entitled to relief as a matter of course, as a matter of right or as a matter of routine. Even if he is entitled to relief, the court still has a discretion to deny him relief, having regard to his conduct; delay, laches, waiver, and submission to jurisdiction are all valid impediments which stand against the grant of relief."

In **Bisomenike v. C.R. de Alwis [1982] 1 SLR 368**, Sharvananda J. (as then he was) observed that:

"The proposition that the Application for Writ must be sought as soon as the inquiry is caused is merely an application of the

equitable doctrine that delay defeats equity, and the longer the injured person sleeps over his rights without any reasonable excuse, the chance of his success in Writ Application dwindles and the Court may reject a Writ Application on the ground of unexplained delay. An Application for a Writ of Certiorari should be filed within a reasonable time.”

Therefore, I am of the view that there is an unexplained delay involved in the Petitioner coming before this Court seeking the reliefs.

The Petitioner contends that although the Mortgage Bonds marked P3 and P4 secured only a total amount of money not exceeding Rs. 16,500,000, the Board Resolution P10 has been passed to recover the sum, which is more than the stamp value and/or the secured interest by the aforesaid Bonds. However, it is observed that as per the aforesaid Mortgage Bonds, not only the loans granted but also the interest on the amount referred therein are also secured. Therefore, the argument of the Petitioner that the 1st Respondent, via its Board Resolution P10 attempts to recover a sum which exceeds the value secured upon the mortgage bonds is not tenable.

The Petitioner contends that the Board of Directors of the 1st Respondent Bank illegally and unlawfully passed one resolution pertaining to all default loan facilities obtained by separate legal entities, and said Resolution does not clearly identify which loan facility was granted to which entity. Accordingly, there should have been a separate resolution for each property.

In the instant case, there is no dispute that the 1st Respondent Bank has granted loans to the Petitioner's sole partnership business, Sri Luck Stores, New Sri Luck & Company, and M/S Chamathkara Industries (Pvt) Ltd, and the Petitioner, 4th and 5th Respondents, were in default. Impugned loan facilities have been obtained, securing the Mortgage Bonds referred to in Resolution P10. Resolution P10 referred to the names of the defaulters and relevant Mortgage Bonds.

There is no legal requirement to have separate resolutions in respect of each property mortgaged. All Mortgage Bonds relate to the same

property. Therefore, there is nothing that prevents the Bank from adopting one resolution for the same property mortgaged under several bonds where such Board Resolution provides sufficient clarity as to the defaulters, facilities and the property. Thus, the contention of the Petitioner that one Resolution cannot be executed in respect of several loan facilities is bad in law and is an erroneous view.

Further, Section 29K of the People's Bank Act facilitate the adoption of such a resolution. Section 29K(1) is as follows:

"In any case where two or more loans have been granted by the Bank on the security of the same property and default is made in the payment of any sum due upon anyone or more of such loans, the foregoing provisions of this Act shall apply notwithstanding that default may not have been made in respect of the other loan or any of the other loans, and the Board may, in any such case, by resolution under section 29D authorize the sale of the property for the recovery of the total amount due to the Bank in respect of both or all of the loans, as the case may be, and the provisions of this Part of this Act shall apply accordingly."

Further, the Petitioner submits that the Notice of Resolution is bad in law as the Board Resolution marked P10 refers to the auctioning of the properties in Mortgage Bonds Nos. 6756, 7414, 1450 read together with Deed of Declaration 4388 and 2678, while the Notice of Resolution published in the Gazette marked as P11 refers only to the enforcement of Mortgage Bonds Nos. 6756, 7414 and 1450. It is further submitted that the above publication P11 does not refer to the Mortgage Bond (No.2678) executed by M/S Chamathkara Industries (Pvt) Ltd, even though the purported Resolution P10 refers to the default payment made by the said entity. However, it is abundantly clear that this is a complete misconception as the Notice of Publication marked P11 also refers to all the Deeds referred to in the Board Resolution marked P10, including Deeds 4388 and 2678.

Owing to the reasons mentioned above, I am not inclined to grant any of the reliefs sought by the Petitioner. Accordingly, the Application of the Petitioner is dismissed without cost.

Judge of the Court of Appeal

Damith Thotawatta, J.

I agree.

Judge of the Court of Appeal