

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

In the matter of an Appeal from the Judgment of the Provincial High Court exercising writ jurisdiction in terms of Article 154P (4) (b) of the Constitution read together with Section 11 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990.

Case No. CA(PHC) 57/2016A

Case No. CA(PHC) 57/2016

Kurunegala HC Case No. HCW/01/2014

Appeal No. CA (PHC) 57/2016 A

Pathiraja Mudiyanseelage Abeysinghe
Pathiraja,
Korakegama,
Malagane.

Petitioner

Vs.

1. Assistant Commissioner of Co-operative Development,
Co-operative Development Office,
No. 36, Rajapihilla Road,
Kurunegala.
2. Seemasahitha Wariyapola Multi-Purpose Co-operative Society,

Wariyapola.

3. Hon. Attorney-General,
Attorney-General's Department,
Colombo.

Respondents

And Now Between

Assistant Commissioner of Co-operative
Development,
Co-operative Development Office,
No. 36, Rajapihilla Road,
Kurunegala.

1st Respondent-Appellant

Vs.

1. Pathiraja Mudiyansele Abeyasinghe
Pathiraja,
Koralegama,
Malagane.

Petitioner-Respondent

2. Seemasahitha Wariyapola Multi-
Purpose Co-operative Society,
Wariyapola.
3. Hon. Attorney-General,
Attorney-General's Department,
Colombo.

Respondents-Respondents

Appeal No. C.A. PHC) 57/2016

Pathiraja Mudiyansele Abeyasinghe
Pathiraja,
Korakegama,
Malagane.

Petitioner

Vs.

1. Assistant Commissioner of Co-operative Development,
Co-operative Development Office,
No. 36, Rajapihilla Road,
Kurunegala.
2. Seemasahitha Wariyapola Multi-Purpose Co-operative Society,
Wariyapola.
3. Hon. Attorney-General,
Attorney-General's Department,
Colombo.

Respondents

And Now Between

Seemasahitha Wariyapola Multi-Purpose
Co-operative Society,
Wariyapola.

2nd Respondent-Appellant

Vs.

1. Pathiraja Mudiyanseelage Abeysinghe
Pathiraja,
Korakegama,
Malagane.

Petitioner-Respondent

2. Assistant Commissioner of Co-operative Development,
Co-operative Development Office,
No. 36, Rajapihilla Road,
Kurunegala.
3. Hon. Attorney-General,
Attorney-General's Department,
Colombo.

Respondents-Respondents

BEFORE : Shiran Gooneratne J. &
Dr. Ruwan Fernando J.

COUNSEL : **Appeal No. CA (PHC) 57/2016 A**
Sanchintha Dias, S.C. for the 1st
Respondent-Appellant, and the 3rd
Respondent-Respondent.
Saman Liyanage with Janaka Gamage and
G.N.S.K. Waduge for Petitioner-
Respondent

Sapumal Bandara with Imesha Jayakody
for the 2nd Respondent-Respondent

Appeal No. CA (PHC) 57/2016

Sapumal Bandara with Imesha Jayakody
for the 2nd Respondent-Appellant

Saman Liyanage with Janaka Gamage and
G.N.S.K. Waduge for Petitioner-
Respondent

Sanchintha Dias, S.C. for the 2nd and 3rd
Respondents-Respondents

ARGUED ON : 25.09.2020

WRITTEN SUBMISSIONS : 06.02.2020 (by the 1st Respondent-
Appellant in CA (PHC) 57/2016 A).

05.02.2020 (by the Petitioner-Respondent
in both Appeals).

31.01.2020 (by the 2nd Respondent-
Appellant in CA (PHC) 57/2016).

DECIDED ON : 25.11.2020

Dr. Ruwan Fernando, J.

Introduction

[1] These are two connected appeals from the judgment of the learned Provincial High Court Judge of Kurunegala dated 29.02.2016 wherein the learned High Court Judge issued a writ of certiorari quashing the certificate

filed by the 1st Respondent-Appellant in the Magistrate's Court of Wariyapola Case bearing No. 93853/EC/13.

Factual Background

[2] The Petitioner-Respondent (hereinafter referred to as the Respondent) was an employee of the 2nd Respondent-Appellant Wariyapola Multi-Purpose Co-operative Society Ltd (hereinafter referred to as the 2nd Appellant). The 1st Respondent-Appellant (hereinafter referred to as the 1st Appellant), by virtue of powers vested in him under section 58(2) of the Co-operative Societies Act No. 05 of 1972 as amended, referred a dispute between the Respondent and the 2nd Appellant to an arbitrator.

[3] The Arbitrator by his award dated 14.02.2004 held that the Respondent was liable to pay the 2nd Appellant a sum of Rs. One Hundred and Sixty Thousand One Hundred and Thirty One and Sixty Two cents (Rs. 160,131.62) together with 20% interest thereon per annum, until the said sum is paid in full.

[4] The Respondent defaulted the payment of the aforesaid sum set out in the arbitral award and the 1st Appellant, by virtue of the powers vested in him under section 59 (1) (c) of the Co-operative Societies Act issued the certificate dated 25.09.2013 to the Magistrate's Court of Wariyapola under Case bearing No. 93853/EC/13. By the said certificate, the 1st Appellant claimed a total sum of Rs. 450,553.00 payable as at 30.06.2013, which includes a sum of Rs. 160,131.62 as capital outstanding, a sum of Rs. 5200/- as costs and a sum of Rs. 290,421.38 as interest due from the date of the award to the date of the filing of the certificate.

[5] The learned Magistrate summoned the Respondent and directed him to show cause as to why further proceedings for the recovery of the amount set out in the certificate should not be taken against him.

Writ Application filed in the High Court

[6] During the pendency of the proceedings before the Magistrate's Court of Wariyapola, the Respondent filed a Writ application bearing No. HCW 01/2014 in the Provincial High Court of Kurunegala on 13.01.2014 seeking *inter alia*, the following reliefs:

- (a) a writ of certiorari to quash the certificate filed by the 1st Appellant in the Magistrate's Court of Wariyapola;
- (b) a stay order staying further proceedings filed in the Magistrate's Court of Wariyapola in case bearing No. 93853/EC/13 on the basis of the said certificate filed by the 1st Appellant in the said Magistrate's Court until the conclusion of proceedings in the High Court; and
- (c) Costs.

[7] After inquiry, the learned High Court Judge by order dated 29.02.2016 held that the 1st Appellant had acted in excess of jurisdiction in issuing the certificate dated 25.09.2013 and issued a writ of certiorari quashing the said certificate issued by the 1st Appellant to the Magistrate's Court of Wariyapola for the following reasons:

1. Sections 59 (1) (a) and 59 (1) (b) of the Co-operative Societies Act No. 05 of 1972 empower the Registrar who is the Commissioner of Co-operative Development in terms of the provisions of the said Act, to include both the amount due and the interest component in the certificate whereas section 59 (1) (c) only empowers the Registrar to include in the certificate the amount due only and it excludes the interest component;

2. The certificate issued by the Registrar (1st Appellant) contains the particulars of both the amount due and the interest component which is invalid in law and thus, the Registrar had acted in excess of jurisdiction in issuing the certificate dated 25.09.2013 for the recovery of the interest component from the Magistrate's Court.

[8] The learned High Court Judge, however, reserved the right of the 1st Appellant to file a correct certificate in the Magistrate's Court of Wariyapola.

Appeal to the Court of Appeal

[9] Being aggrieved by the said order of the learned High Court Judge of Kurunegala, the 1st and 2nd Appellants preferred these two connected appeals to this Court.

Grounds of Appeals

[10] At the hearing the learned Counsel for the 1st and 2nd Appellants submitted that the order of the learned High Court Judge of Kurunegala that the 1st Appellant had acted in excess of jurisdiction is erroneous for the following reasons:

1. The learned High Court Judge has failed to consider that Respondent as a defaulter is liable to pay the sum of Rs. 160,131.62 together with interest thereon, and thus, the 1st Appellant had merely enforced the said award made by the arbitrator by exercising his statutory powers vested in him under section 59 (1) (c) of the Act;
2. The learned High Court Judge has failed to consider that section 59 (1) (c) cannot be read in isolation and that it has to be read with section 59 (1) of the Act, which defines the term 'defaulter' as a person from whom a sum of money due as referred to in the award, together with costs and interest, that has not been paid.

[11] On the other hand, the learned Counsel for the Respondent submitted that the certificate issued by the 1st Appellate is inconsistent with section 59 (1) (c) of the Co-operative Societies Act as section 59 (1) (c) was designed to recover only the principal amount due and in default, to impose a penal sanction. He submitted that the intention of Parliament in providing the option in section 59 (1) (c) is to empower the Registrar to issue a certificate to a Magistrate and recover the principal sum due from the defaulter and in default, to recover it by a fine imposed by a sentence of the Magistrate.

[12] His contention was that accordingly, the 1st Appellant could only have included in the certificate the principal sum due from the defaulter specified in the award but the 1st Appellant had included the interest component of Rs. 290,421.38 in the certificate, contrary to section 59 (1) (c) of the Act. He submitted that when the words of the subsection (c) are clear and unambiguous, the rules of interpretation do not apply and thus, the 1st Appellant had acted in excess of his statutory powers vested in him and included the interest component in the certificate.

[13] He submitted that under such circumstances, the learned High Court Judge was correct in issuing the writ of certiorari quashing the certificate issued by the 1st Appellant while reserving the right of the 1st Appellant to file the correct certificate in the Magistrate's Court.

Grounds for Invoking a Writ of Certiorari

[14] A writ of certiorari will be available whenever any body of persons having legal authority to determine questions affecting the rights of subjects and having a duty to act judicially,

1. acts in excess or absence of their authority or

2. acts in violation of natural justice; or
3. where there is an error on the face of the proceedings.

[15] In the instant case, the learned High Court Judge had issued a writ of certiorari quashing the said certificate on the basis that the 1st Appellant had acted in excess of his statutory powers vested in him by section 59(1)(c) by issuing a certificate containing particulars of both the principal amount and the interest when the 1st Appellants' statutory powers are limited under subsection (c) to include only the principal sum of Rs. 160,131.62 and not the interest component.

Issue on Appeal

[16] In view of the aforesaid submissions, this Court is invited to consider the following question:

1. Whether the words "amount due" referred to in section 59 (1) (c) of the Co-operative Societies Act No. 05 of 1972 as amended means and include only "capital outstanding" and not the "interest" on the said amount;
2. If not, whether the 1st Appellant had acted within his statutory powers vested in him under section 59 (1) (c) of the Co-operative Societies Act as amended by issuing a certificate containing the particulars of the principal amount together with costs and interest.

Matters not in dispute

[17] It is not in dispute that 1st Appellant referred a dispute between the Respondent and the 2nd Appellant to an arbitrator by virtue of the powers vested in him under section 58 of the Act and the arbitrator by award dated 14.02.2004 (P1) held that the Respondent was liable to pay a total sum of

Rs. 160,131.62 (Rs. 154,931.62 as the principal amount+ Rs. 5200/- as costs) together with interest on the said amount of Rs. 160,131.62 at the rate of 20% per annum until the payment is made in full. The relevant parts of the awards are as follows:

Principal amount	Rs.	154,931.62
Costs	Rs.	5,200.00
<hr/>		
Total	Rs.	161,131.62

together with interest on Rs. 160,131,62 at the rate of 20% per annum until payment in full

[18] It is not in dispute that the Respondent did not prefer any appeal to the Registrar in terms of Section 58 (3) of the Act and thus, on **25.09.2013**, the Registrar (1st Appellant) issued a certificate to the Magistrate's Court of Wariyapola under section 59(1)(c) of the Act seeking to recover a sum of Rs. 450,553/- setting out the particulars of the amount due as follows:

Principal amount	Rs. 154,931.62
Costs	Rs. 5200.00
20% Interest	Rs. 290,421.38
(from the date of the award to 30.06.2013)	
Amount due as at 30.06.2013	<u>Rs. 450,553.00</u>

[19] It is to be noted that the Section 59 (1) of the Act has provided three alternative remedies for the recovery of the sum of money set out in the award made under section 58 of the Act. A cursory reading of section 59 (1) of the Act reveals that it is the principal provision that has provided three alternative procedures for the recovery of the sum of money from a defaulter. The Registrar, by virtue of the powers vested in him under section 59 (1) is entitled to exercise his discretion and decide the

appropriate remedies provided in section 59 (1). The Registrar is thus empowered to issue a certificate to (i) the Government Agent, Assistant Government Agent, Fiscal or Deputy Fiscal under section 59 (1) (a); or (ii) the District Court under section 59 (1) (b); or (iii) a Magistrate under section 59 (1) (c) of the Act.

[20] Section 59 (1) reads as follows:

(1) Where a decision of the Registrar on a dispute or an appeal referred or made to him under section 58, hereafter in this section called a "decision" or an award of an arbitrator on a dispute referred to him under that section, from which award no appeal has been duly made to the Registrar under that section, hereafter in this section called an "award", is that a sum of money is due from one party to the dispute to another party to the dispute, and such sum together with costs and interest, if any, has not been paid, the Registrar may in respect of the party from whom such sum is due, hereafter in this section called the "defaulter",-

*(a) issue a certificate to a Government Agent, Assistant Government Agent, Fiscal or Deputy Fiscal, **containing particulars of such sum, together with costs and interest**, and the name of such defaulter; or*

*(b) issue a certificate to a District Court having jurisdiction in any district where the defaulter resides or in which any property, movable or immovable owned by the defaulter is situate, **containing particulars of the sum due together with costs and interest**, if any, and the name of the defaulter; or*

*(c) issue a certificate **containing particulars of the amount due** and the name and last-known place of business or residence of the defaulter to a Magistrate having jurisdiction in the division in which such place is situate*

[21] The learned Counsel for the Respondent invited us to consider subsection (c) of section 59(1) in isolation and hold that the intention of Parliament in providing subsection (c) is to recover only the principal

amount set out in the award and thus, where the Registrar decides to resort to the remedy in subsection (c), he must forgo interest and claim only the principal amount from the defaulter and in default, recover it as a fine imposed by a sentence of the Magistrate.

[22] His contention was that the two remedies provided by the Legislature in subsections (a) and (b) are distinct from the remedy provided in subsection (c) and while subsections (a) and (b) empowers the Registrar to recover the principal sum together with the costs and interest, subsection (c) is limited to the recovery of the principal amount by way of a fine imposed by a sentence of the Magistrate.

[23] It is to be noted that the Court's primary goal in interpreting statutes is to give effect to the legislative intent and the best evidence of that intent is the statute's plain language. Accordingly, statutory interpretation begins by deriving meaning from the text of the statute as a statute is an edict of the legislature and the traditional way of interpreting a statute is to seek the intention of its maker, the legislature (*Vishnu Pratap Sugar works (Private) Ltd. v. Chief Inspector of Stamps, U.P.*, AIR 1968 SC 102, p. 104). Hence, it is the duty of the Court to act upon the true intention of the legislature or the will of the legislature, i.e. an edict of the legislature (Maxwell on Interpretation of Statutes, 11th Ed. p. I).

[24] It is not the function of the Courts thus, to usurp legislative function under the disguise of interpretation and determine the meaning of a provision based on their own preconceived notions (Bindra' Interpretation of Statute, 10th ed. pp. 403-404). The Courts must construe the word as they find it and cannot go outside the ambit of the section and speculate as to what the legislature intended. (*Herath v. Morgan Engineering (Pvt) Limited* SC Appeal No. 214/2012-SC Minutes of 27.06.2013)

[25] The true intention of the legislature has to be gathered and deciphered in its proper spirit having due regard to the language used therein (*State of Mharashtra v. Marwanjee F Desai & Others* (2002) SCC 318). Therefore, it is hard to ignore the legislative intent to give definite meaning to words employed in the Act and adopt an interpretation which would tend to do violence to the express language as well as the plain meaning, patent aim and object underlying the various other provisions of the Act (*Bharathiadasan v. University & Others v All India Council for Technical Education & Others* (2001) 8 SCC 676).

[26] In the construction of a statute, it is important for the Courts to ascertain the intention of the legislature in providing a provision in the Act and for that purpose, **the entire section including the scheme of the Act that must be considered as a whole and in the context.** The most fair and rational method for interpreting a statute is by exploring the intention of the legislature through the most natural and probable signs which are either the words, the context, the subject matter, the effects and consequences or the spirit and reason of the law (Bindra' Interpretation of Statute, 10th ed. pp.403-404).

[27] It is well-established therefore, that the intention of the legislature must be found only by reading the statute as a whole and in order to ascertain the meaning of a provision of the statute, the statute must be read as a whole, looking at what proceeds the provision and what succeeds it and not merely the clause itself ((*Manik Lal Majumdar v Gouranga Chandra Dey*, (2005) 2 SCC 400).

[28] Before I proceed to consider the meaning of section 59 (1)(c), let me reproduce the following statement made by Krishnaiyer J., held in *Organo chemicals Industries v. Union of India* 1980 SCR (1) 61:

“Each word, phrase or sentence is to be considered in the light of the general purpose of the Act itself. A bare mechanical interpretation of the words devoid of concept or purpose will reduce most of legislation to futility. It is a salutary rule, well established, that the intention of the legislature must be found by reading the statute as a whole”.

[29] Accordingly, section 59 (1) (c) ought to be read in its content, purpose, the effects, spirit, reason and consequences of the scheme of section 59(1) of the Act. The objective of section 59 (1) is to recover the monies due from the defaulter who has failed to honour the award made by the arbitrator under section 58 by way of 3 alternative remedies set out in subsections (a), (b) and (c) of section 59 (1).

[30] Section 59 (1) provides the mechanism for the recovery of the **sum stated in the award from the defaulter together with costs and interest** by issuing a certificate to the Government Agent etc., or the District Court or the Magistrate’s Court. Section 59(1) states that where no appeal has been duly made to the Registrar under section 58, and the award **“is that a sum of money is due from one party to the dispute, and such sum together with costs and interest, if any, has not been paid,** the Registrar may in respect of the party from whom **such sum is due**, hereinafter in this section called “defaulter”, issue a certificate by one of the three remedies in subsections (a) or (b) or (c).

[31] It is thus clear that by virtue of the powers vested in the Registrar under section 59 (1), the Registrar is entitled to resort to one of the remedies provided in subsections (a) to (c) of section 59 (1) and seek to recover the sum due from the defaulter **together with costs and interest, which has not been paid by such defaulter.**

[32] The term “defaulter” is described in section 59 (1) as “the party from whom such sum is due” and such sum specified in section 59 (1) is the sum

of money due from such defaulter, together with costs and interest (Vide-first part of section 59 (1).

[33] As noted, the decision of the arbitrator in the present case, as set out in the award is that the Respondent is liable to pay a total sum of Rs. 160,131.62 which includes the principal sum of Rs. 154,931.62 and a sum of Rs. 5200/- as costs, **together with interest on the said total sum of Rs. 154,931.62 at the rate of 20% per annum until payment in full.**

[34] The legislative intent contained in subsection (c) of section 59(1) of the Co-operative Societies Act cannot be gathered by adopting a restrictive interpretation to its words without ascertaining the legislative intent by reading section 59(1) in its entirety, the context, object, purpose and its operation within the overall scheme of section 59(1) enacted by the Legislature.

[35] The restrictive interpretation given by the learned High Court Judge to section 59 (1) (c) of the Act that all what can be recovered from the defaulter is the principal amount and not the interest component is contrary to the purpose, objective, spirit and effect of the entire section 59 (1) of the Act. That interpretation in my view is totally against the intention of the legislature specified in section 59 (1) of the Act.

[36] In my view, the “amount due” in subsection (c) is clearly the principal amount due under the award of the arbitrator together with costs and interest as section 59(1) clearly provides that the Registrar is entitled to issue the certificate under any of the remedies in subsections (a)–(c) seeing to recover a **sum of money due from one party to the dispute to another party to the dispute, together with costs and interest, if any, has not been paid.**

[37] When the intention of the legislature in providing subsection (c) must be found by reading the principal provision i.e. section 59(1) as a whole

including the context, purpose, the effect and the spirit, as a whole, it is crystal clear that the “amount due” in subsection (c) includes the sum stated in the award of the arbitrator, which is the “sum of money due from the defaulter, **together with costs and interest that has not been paid**” by such defaulter as contemplated by the Legislature in the first part of section 59(1).

[38] Moreover, the intention of the legislature in providing subsection (c) without limiting to the principal amount can also be ascertained by reading section 59 (4) as amended by Act No. 11 of 1992, which empowers a Magistrate, in his discretion, to make order to recover **any sum of money mentioned in the certificate specified in section 59 (1) (c) in addition to** sentencing the defaulter to a term of imprisonment in default of the fine imposed as contemplated by section 291 (2) of the Code of Criminal Procedure.

[39] Section 59 (4) of the Co-operative Societies Act No. 05 of 1972 as amended by section 28 of the Co-operative Societies (Amendment) Act No. 11 of 1992 reads as follows:

“Where a certificate is issued to a Magistrate under paragraph (c) of subsection (1), the Magistrate shall thereupon summon such defaulter before him to show cause why further proceedings for the recovery of the amount should not be taken against him, and in default of sufficient cause being shown, the amount shall be deemed to be a fine imposed by a sentence of the Magistrate on such defaulter for an offence punishable with fine only or not punishable with imprisonment, and the provisions of section 291 (except paragraphs (a) and (d) of subsection (1) of that section) of the Code of Criminal Procedure Act shall thereupon apply, and the Magistrate may make any direction which, by the provisions of that section, he could have made at the time of imposing such sentence. Any defaulter sentenced to a term of imprisonment in default of the fine imposed in accordance with section 291 of the Code of Criminal

Procedure Act, No. 15 of 1979, shall not ne absolved from the payment of any sum of money mentioned in the certificate specified in section 59 (1) (c).”

[40] Section 28 of the Co-operative Societies (Amendment) Act No. 11 of 1992 was interpreted by Chitrasiri J. in *Ambawa Thrift Credit Co-operative Society, Ambawa Kuliypitiya v. D.M.Sumana Dasanayake* C.A. (PHC) No. 168/2011 unreported decided on 16.01.2015. Chitrasiri J., observed at pages 4-5:

“Upon a plain reading of the aforesaid amendment made to section 59 of the principal emnactment, it is clear that serving of jail sentence imposed due to the failure to pay a fine shall not be a bar to collect the moneys due upon an arbitral award made under the Co-operative Societies Act. Therefore, the intention of the legislature had been to permit the particular Co-operative Society to recover the monies due from the persons concerned, despite the fact that that particular person had served the jail sentence imposed due to the non-payment of the fine that was imposed:.

[41] It is to be noted that section 291 (2) of the Criminal Procedure Code provides the method by which the Magistrate could recover any sum of money that had been imposed as a fine for non-payment of any sum of money mentioned in the certificate specified in section 59(1) (c), despite the fact that the defaulter who is sentenced to a term of imprisonment had served such sentence. Section 291 (2) reads as follows:

“Whenever an offender is sentenced to pay a fine under the authority of any law for the time being in force, the court passing the sentence may in its discretion issue a warrant for the levy of the amount by distress and sale of any movable property belonging to the offender although the sentence directs that in default of payment of the fine the offender shall be imprisoned. Such warrant shall be addressed to the Fiscal of the court and may be executed at any place in Sri Lanka but if it is required to be executed outside the

jurisdiction of the court by which it was issued it shall be endorsed by a Magistrate having jurisdiction where it is to be so executed”.

[42] The intention of the legislature in amending subsection 4 of section 59 (1) by Act No. 11 of 1992 is to empower a Magistrate to recover any sum of money mentioned in the certificate specified in section 59(1)(c), even though such defaulter is sentenced to a term of imprisonment in default of the fine imposed in accordance with section 291 of the Code of Criminal Procedure Code for the failure to pay any sum of money due upon an arbitral award made under section 58.

[43] Section 59 (1) (4) read with section 291 (2) empowers the Magistrate to issue a warrant addressed to the Fiscal of the Court for the levy of the said amount by distress and sale of any movable property belonging to the defaulter and recover such sum of money mentioned in the certificate specified in section 59 (2) (see).

[44] The intention of the Legislature as set out in section 59(1) (c) read with section 59(1) is to empower the Registrar to issue a certificate to a Magistrate containing particulars of the amount due, which is any sum of money due from the defaulter as specified in the award made by the arbitrator together with costs and interest that has not been paid by the defaulter.

[45] It is absolutely clear that the words “particulars of the amount due” in section 59 (1) (c) includes any sum of money due from the defaulter together with costs and interest as clearly referred to in section 59 (1) of the Act and not merely the principal amount due, as erroneously held by the learned High Court Judge.

[46] The restrictive interpretation given by the learned High Court Judge to section 59(1)(c) referring only to the principal sum excluding the interest component would tend to defeat the intention of the Legislature and do

violence to the express language, object and patent aim specified in section 59(1) in recovering the sum of money due from a defaulter together with costs and interest, that has not been paid by such defaulter.

[47] It is apt at this stage to refer to the following dictum of Atkin L.J. in *R. v. Electricity Commissioner ex. p. London Electricity Joint Committee Co.*, (1920) (1920) 1 K.B. 171 with regard to the scope of certiorari and circumstances under which the certiorari is available:

“Whenever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority, they are subject to the controlling jurisdiction of the King’s Bench division exercised in these writs.”

[48] Accordingly, the certiorari will be issued to quash all actions which are *ultra vires* or done in excess of legal authority in the following circumstances:

1. doing the wrong thing (substantive *ultra vires*) ;
2. doing the right thing in the wrong way (procedural *ultra vires*);
3. doing the right thing in the right way for a wrong purpose or wrong objective.

[49] As a certiorari is a discretionary remedy, the writ court’s jurisdiction to interfere with statutory discretionary powers are limited and accordingly, the interference with such statutory powers has to be confined to those cases only where the Court comes to the conclusion that there has been either no exercise of discretion or that the discretion has been exercised on extraneous considerations, nor on merits, but capriciously, arbitrarily or male fide (*Amar Nath Khurana v. Appellate Asst. C.I.T.*, *ILR* (1969) 1 Pun. 363).

[50] As noted, in the instant case, the Registrar in issuing the certificate under section 59 (1) (c) of the Act had acted within his statutory powers and exercised his discretion in issuing the certificate containing particulars of the amount due from the defaulter, together with costs and interest as empowered by section 59 (1) of the Act.

[51] In the present case, the Respondent had not satisfied that the Registrar had acted in excess of his legal authority when he issued the certificate to the Magistrate of Wariyapola, containing particulars of the amount due from the defaulter as set out in the award made under section 58, together with costs and interest, that has not been paid by the defaulter.

[52] The learned High Court Judge has clearly erred in interpreting section 59(1)(c) of the Co-operative Societies Act referring only to the principal sum due and not the interest thereon without reading section 59 as a whole and its general purpose, object, aim, spirit underlying the enforcement mechanism provided in section 59 of the Act.

Conclusion

[53] For those reasons, the judgment of the learned High Court Judge of Kurunegala dated 29.02.2016 is set aside and both Appeals bearing Nos. CA (PHC) 57/2016 A and CA (PHC) 57/2017 are allowed.

I make no order as to costs.

JUDGE OF THE COURT OF APPEAL

Shiran Gooneratne J.

I agree.

JUDGE OF THE COURT OF APPEAL

