

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

In the matter of application for writs of  
Certiorari, Prohibition and Mandamus in terms  
of Article 140 of the Constitution of the  
Democratic Socialist Republic of Sri Lanka.

1. Earth Tech Engineering (Private) Limited  
Court Road,  
Kilinochchi.
2. Thambaiya Tharmasiri  
No. 23, 5/1, Hawaii Residencies,  
Sagara Road,  
Colombo 04.

**PETITIONER**

**Court of Appeal Case No:**  
**CA/WRIT/789/2023**

**Vs.**

1. People's Bank  
No. 75, Sir Chittampalam A  
Gardiner Mawatha,  
Colombo 02.
2. Mr. Sujeewa Rajapakse  
The Chairman  
People's Bank  
No. 75, Sir Chittampalam A  
Gardiner Mawatha,  
Colombo 02.
3. Mr. Isuru Balapatabendi
4. Mr. Manjula Wellalage

5. Ms. Visakha Amarasekere
6. Mr. Dushmantha Thotawatte
7. Mr. A. M. P. M. B. Atapattu
8. Mr. Udeni Samararathne
9. Mr. Dushan Soza

All of them being the Board of Directors  
People's Bank  
No. 75, Sir Chittampalam A  
Gardiner Mawatha,  
Colombo 02

10. E. S. Ramanayake  
Court Commissioner and Licensed  
Auctioneer  
No. 11/22, Bogahawatta,  
Kudabuthgamuwa, Angoda.
11. Maga Neguma Road Construction  
Equipment Company  
81/4 Nawa Nuge Road,  
Peliyagoda,  
Kelaniya
12. Road Development Authority  
No. 216, Denzil Kobbekaduwa  
Mawatha, Koswatta,  
Battaramulla.
13. Hon. Attorney General  
Attorney General Department  
Colombo 12.

## **RESPONDENTS**

**Before:** S.U.B. Karalliyadde J.

Mayadunne Corea, J

**Counsel:** Rushdhie Habeeb with Supun Dissanayake  
instructed by Aravindu Manathunga Arachchi for the Petitioners

**Supported on:** 13.12.2023

**Decided on:** 31.01.2024

**Mayadunne Corea J**

The facts of the case briefly are as follows. The Petitioners have obtained a loan and an overdraft from the People's Bank. The Petitioners have mortgaged the property described in the schedule as security. The Petitioners have failed to honour the debt and subsequently, the People's Bank has passed a resolution to auction the said land. Furthermore, it was contended that a variety of construction projects were carried out under the Maga Neguma Construction Project by the Petitioners. It was also alleged that though the Petitioners were to be paid for the services rendered to Maga Neguma, the Petitioners have not been paid, as the 11<sup>th</sup> Respondent's Company went into liquidation. The learned counsel submitted that a case had been filed before the Commercial High Court for the winding up of the Maga Neguma. It was further contended that the Petitioners too, have intervened as a claimant in the said liquidation proceedings before the Commercial High Court.

The Petitioners contended that the reason for the non-payment of the loan facility to the 1<sup>st</sup> Respondent was due to the 11<sup>th</sup> Respondent's failure to make payments that were owed to the Petitioners. The crux of the Petitioners' argument is that the Petitioners have to obtain

the money from the 11<sup>th</sup> Respondent to pay the bank and once the Petitioners obtain the said dues from Maga Neguma, the Petitioners could pay the 1<sup>st</sup> Respondent.

The main contention of the learned Counsel is that the Petitioners have performed the work for the State when they entered into contracts with Maga Neguma to which the Petitioners have to receive the payments. To carry out the said road construction work, the Petitioners have obtained several loans as the working capital. These facilities were obtained in the form of TOD's and loans from the 1<sup>st</sup> Respondent, which the Petitioners were unable to pay as a result of a non-payment to the Petitioners by the 11<sup>th</sup> Respondent. The Petitioners contend that the People's Bank is a State bank and therefore the Petitioners have obtained the loan from the State. Hence, the argument that the Petitioners have obtained loans to carry out construction work for the State.

This Court is unable to agree with the said submission as the Petitioners have obtained a loan not from the State but from the 1<sup>st</sup> Respondent which is a creature of a statute with a distinct legal entity. The relationship between the Petitioners and the 1<sup>st</sup> Respondent is a contractual relationship pertaining to obtaining a loan from the 1<sup>st</sup> Respondent bank. This contractual relationship is independent of the work the Petitioners alleged to have carried out for Maga Neguma.

The Petitioners obtained the facilities from the 1<sup>st</sup> Respondent by mortgaging the property in the schedule as security. There is no contest between the parties as to the fact that the Petitioners have failed to honour the facility given by the 1<sup>st</sup> Respondent. The Petitioners are not contending that the 1<sup>st</sup> Respondent cannot avail themselves of the statutory rights granted to them. However, the Petitioners alleged that the amounts claimed by the 1<sup>st</sup> Respondent are in excess and the interest charged is unreasonable, ultra vires, and bad in law.

This Court is unable to agree with the said submission as well because the interest rates and the amounts are documented and the Petitioners' relationship with the 1<sup>st</sup> Respondent is purely contractual. The Petitioners have failed to demonstrate to this Court that the Petitioners have challenged the contractual relationship the Petitioners have with the 1<sup>st</sup> Respondent in a Court of law.

This Court has considered the documents P7, P8, and P9 whereby the parties have sought to reschedule the loans. The said rescheduling is conditional. The Petitioners have failed to demonstrate that they have in fact complied with the said conditions nor are there any documents to that effect submitted to Court. We observe that as per the terms and conditions of the proposal, the failure to comply with the terms and conditions would render the proposal invalid and the bank would have the right to enforce the mortgage bond. It is also pertinent to note that as per the proposal, the resolution passed by the bank to go for parate execution has not been withdrawn.

In this instance, it is our view that it is crucial for the Petitioners to establish that the Petitioners have in fact complied with the said proposal for rescheduling, and therefore the decision to go on with the parate execution is bad in law. However, the Petitioners have failed to discharge this onus to the satisfaction of the Court.

The Petitioners in this case are attempting to obtain a Writ of Certiorari to quash the decision taken to auction the land by the 1<sup>st</sup> Respondent. In other words, the Petitioners are attempting to use the discretionary power of this Court to restrain the 1<sup>st</sup> Respondent from exercising their statutory right to recover. However, we observe that the Petitioners have failed to challenge the decision to auction or the procedure adopted by the bank to arrive at the said decision.

The Petitioners have failed to demonstrate how the decision taken by the 1<sup>st</sup> Respondent to exercise their statutory rights becomes unreasonable, ultra vires, or bad in law. The

Petitioners have failed to explain the failure to recourse to civil litigation if he alleges that there has been a breach of contract by the 1<sup>st</sup> Respondent.

The Petitioners did not challenge the Petitioners' liability to pay the loan facilities but submitted that they had sought further time to repay and settle the facilities given to them by the 1<sup>st</sup> Respondent.

We do find that if there is a breach of contract pertaining to the terms, the Petitioners have an alternate remedy in civil litigation. However, the Petitioners have failed to explain the reasons as to why this alternative remedy was not sought, prior to invoking the Writ jurisdiction of this Court. The Court of Appeal in **Tennakoon Vs. Director-General of Customs 2004 (1) SLR 53** held that **"the petitioner has an alternate remedy, as the Customs Ordinance itself provides for such a course of action under section 154. In the circumstances, the petitioner is not entitled to invoke writ jurisdiction."**

In **J. A. L. Cooray on 'Constitutional and Administrative Law of Sri Lanka'** at pages **426 and 427** it states **".... Court will not grant these writs where an alternative equally convenient remedy is available."**

Justice Arjuna Obeyesekere in the case of **Wickremasinghe Francis Kulasooriya V. Officer in Charge, Police Station Kirindiwela CA (Writ) Application No. 338/2011, decided on 22.10.2018**, held; **"The question that arises for consideration in this application is what should a Court exercising Writ jurisdiction do, when confronted with an argument that an alternative remedy is available to the Petitioner and that such alternative remedy should be resorted to? This Court is of the view that a rigid principle cannot be laid down and that the appropriate decision would depend on the facts and circumstances of each case. That said, where the statute provides a specific alternative remedy, a person dissatisfied with a decision of a statutory body should pursue that statutory remedy instead of invoking a discretionary remedy of this Court. That remedy should be equally effective and should be able to prevent an**

**injustice that a Petitioner is seeking to avert. Furthermore, if the Writ jurisdiction is invoked where an equally effective remedy is available, an explanation should be offered as to why that equally effective remedy has not been resorted to.”**

This Court has constantly held that where there is an alternative remedy available, the writ Court will be reluctant to exercise its discretionary power.

This Court has considered the submissions of the learned Counsel for the Petitioners and also has considered the documents tendered to the Court. However, after careful consideration of all the material before this Court, for the reasons stated above, this Court is not inclined to issue notice on the Respondents hence this application stands dismissed without cost.

**Judge of the Court of Appeal**

**S.U.B. Karalliyadde, J**

I agree

**Judge of the Court of Appeal**