

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

In the matter of an application for  
Mandamus in the nature of Writs of  
Certiorari and Prohibition under and in  
terms of Article 140 of the Constitution.

**CA WRIT Application No:**

**WRT-470-22**

Rathnapura Hospitals and Laboratories (Pvt)  
LTD,  
  
No.23, Charles Circus,  
  
Colombo 03.

**Petitioner**

**V.**

DFCC Bank PLC,  
  
No 73/5, Galle Road,  
  
Colombo 03.

**Respondent**

**Before :**     **N. Bandula Karunarathna P/CA, J.**  
              **B. Sasi Mahendran, J.**

**Counsel:**     G. Alagaratnam, PC with Suren Fernando for the Petitioner.  
              N.R. Sivendran with Fihama Hanifa for the Respondent.

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**Submissions:**     29.02.2024 and 05.04.2024 (by the Petitioner)

**On:**                 29.02.2024 and 05.04.2024 (by the Respondent)

**Argued on:** 14.03.2024

**Judgment On :** 07.05.2024

**B. Sasi Mahendran, J**

Petitioner has instituted this action to obtain the following reliefs prayed for in the prayer of the Petition dated 8<sup>th</sup> December 2022,

- (a) Issuing Notice on the Respondent
- (b) Issuing a mandate in the nature of a Writ of Certiorari quashing the purported resolution P40, and the decision contained therein to act in terms of the provisions of the Recovery of Loans by Banks ( Special Provisions) Act No. 4 of 1990, or such other appropriate Order;
- (c) Issuing a mandate in the nature of a Writ of Certiorari quashing any decision of the Respondent, as may be revealed by documents called for from the Respondent, to auction the properties specified in the purported Resolution P40 or such other appropriate order;
- (d) Issuing a mandate in the nature of a Writ of Prohibition prohibiting the Respondent from taking any steps pursuant to the purported resolution P40 or such other appropriate order;
- (e) Issuing an Interim Order suspending the operation of the purported resolution P40 or such other appropriate order;
- (f) Issuing an Interim Order restraining the Respondent from taking any steps pursuant to the said purported resolution P40 and/ or from auctioning the properties specified in the purported resolution P40, until the hearing and determination of this Application, or such other appropriate order;
- (g) Calling for the Record maintained by the Respondent pertaining to the subject matter of this Application, including all documents pertaining to facilities granted to the Petitioner, ad descicions taken with regard to and/ or consequent to the default in repayment of such facilities, and all correspondence between the Petitioner and the Respondent.
- (h) For Costs and
- (i) For such further and other relief as to Your Lordship's Court shall seem meet.

When the matter came up on 14<sup>th</sup> March 2024, Court directed to dispose the matter by way of Written Submissions.

Facts relevant to this application are as follows

The Petitioner who owned two private hospitals in the Ratnapura District under the name of Arya Hospital has obtained loans from the Bank by mortgaging their property. The said facility was given in the year of 2014. According to the Petitioner the said facilities have been renegotiated or rescheduled.

The Petitioner in the paragraph 5 of the petition has stated that due to the Easter Sunday bombing in 2019 and Covid 19 Pandemic from 2020 and Economic Crisis in 2022 the operation of the Petitioners Hospital did not progress as expected. Therefore, the Petitioner has found it difficult to meet their liabilities to the Respondent Bank with regards to the monthly loan installment payments and have sought to reschedule the loan.

Whilst the negotiation was going on, on or about 13<sup>th</sup> September 2022 the Respondent sent a Letter of Demand to the Petitioner. Thereafter, on 30<sup>th</sup> September 2022 Petitioner received a covering letter and a copy of resolution passed on 28<sup>th</sup> of September 2022 by its Board of Directors to take action under section 4 of the Recovery of Loans by Banks Act No 4. Of 1990 to sell the Petitioner's property by public auction. The said resolution is marked as P40.

The gravamen of this application is that the Bank has not considered the circular issued by the circular No 2 of 2022 by the Monetary Board of Central Bank of Sri Lanka which certain concession have been granted by the Central Bank for Covid 19 which effected Businesses and individuals.

On the other hand, Respondents in their limited statement of objections dated 05.01.2023 have stated that the petitioner has defaulted making payments from 2016. According to the Respondent in 2018 and 2020 the Loan was rescheduled on the request of the Petitioner. These facts are not indicated in the said Petition. As the Petitioner failed to comply with the rescheduled payments the Respondent has sent Letter of Demand. Since the Petitioner has failed to make any payment, Respondent has taken steps under the said Act.

According to the Respondent, Petitioner is a habitual defaulter. According to the document marked P38 the amount due from the Petitioner as at 30.04.2022 is Rupees

Four Hundred and Ninety One Million Fifty Two Thousand Four Hundred and Fifty Rupees and Cents One F 491, 05,454 ( Rupees 491,052,454.01).

The main allegation made by the Petitioner is that the Circular No 2 of 2022 issued by the Monterey Board of Central Bank of Sri Lanka, the Respondent has failed to consider the concession derived from the said circular.

The Founder of the Arya Hospital (now deceased) has obtained several loan facilities from the Respondent Bank from 2014. Within 2 years time he has failed to pay the dues. Thereafter several facilities were given by the bank, by way of rescheduling.

When this Court perused the said circular marked as P41. Central Bank offered the concession to Businesses and individuals engaged in various economic sectors who were subjected to the Covid 19 moratoriums. We are mindful, that the said Petitioner has failed to pay the loan from the year 2016. Thereafter, numerous occasions have been granted to the petitioner to settle the loan.

Even after he received the Letter of Demand he has not taken steps to settle the loan. According to the section 10 of the said act there is a provision available to stay the auction.

#### Section 10

(1) If the amount of the whole of the unpaid portion of the loan, together with interest payable and of the moneys and costs, if any, recoverable by the Board under section 13 is tendered to the Board at any time before the date fixed for the sale, the property shall not be sold, and no further steps shall be taken in pursuance of the resolution under section 4 for the sale of that property.

(2) If the amount of the instalment in respect of which default has been made, and of the moneys and costs, if any, recoverable by the Board under section 13 is tendered to the Board at any time before the date fixed for the sale, the Board may in its discretion direct that the property shall not be sold and that no further steps shall be taken in pursuance of the substitution under section 4 for the sale of that property.

But the Petitioner has failed to take any steps to prevent the sale. There is no material to be found to establish that the Petitioner have paid at least the unpaid installment up to the time this action was filed. This section was referred by Chitrasiri J in DFCC Bank (PLC) v. Fathima Ruzana Fakurdeen and others., SC Appeal No. 133/2014, decided on 24.03.2016,

“Sub section (1) above provides for the borrower to prevent the auction being held provided he/she tenders to the Board unpaid portion of the loan together with interest and the costs incurred thereto. Sub section (2) allows the borrower to pay the installment in respect of which default has been made with the moneys and costs recoverable by the Bank and then to request the Board to halt the auctioning of the property mortgaged using its discretion referred to therein. Therefore, it is clear that the borrower should have paid the unpaid installments if he/she has not paid the entire unpaid amount, in order to move under Section 10 of the Act No.4 of 1990.”

To show that whether the Petitioner has attempted to the concession under the said circular. Court’s attention was drawn on Section 7 (1), 7(2) and 7 (3) of the said circular which was marked as P41.

## 7 Transparency of the Concessions

7.1 Eligible Borrowers may request for the above concessions on or before 31 July 2022 in writing or through electronic means.

7.2 Licensed banks shall make the decision on whether to accept or decline the request made by the borrower within one month of the receipt of the request and duly inform the burrower of such decision.

7.3 In the case of a rejection of request, licensed banks shall inform the burrower the reasons for such rejection and shall advise the burrower by and through the same letter that there is an opportunity for the borrower to appeal against such rejection to the Director, Financial Consumer Relations Department of the Central Bank of Sri Lanka.

There is no indication that the Petitioner has applied for this concession which was refused by the Bank. Even it was refused there is a provision available to him to appeal to Director Financial Consumer Relations Department. Generally Our Courts are reluctant to issue Certiorari when there is an adequate alternate remedy.

We are mindful of the sentiments expressed by the Justices in the following judgements with regards to the Recovery of Loans by Banks under the Recovery of Loans by Banks Act. Samayawardhena J in Bettans Group of Companies (Pvt) Ltd v. Lankaputhra Development Bank and Others, CA/WRIT 230/2015, Decided on 10.07.2020 held that;

“Before I part with this Judgment let me also add the following. The Petitioner cannot invoke the writ jurisdiction of this Court as of right. It is a discretionary relief; an act of

grace on the part of the Court. The fact that the loan was obtained and the Petitioner is in default is undisputed. By this application, filed more than five years ago, the Petitioner has prevented the Bank from recovering its dues through parate execution—a quicker and faster procedure recognised by the law. Banks are not charitable institutions; they are the cornerstones of economies. It should be understood that similar to the Petitioner being engaged in a business, granting loans with the expectation of timely repayment is a major part of the ordinary course of business of a Bank. If a Bank is prevented from taking such measures as it is entitled in law to take to protect its interests, the economy of the country would suffer. The Recovery of Loans by Banks (Special Provisions) Act was passed to assist Banks to fast-track the procedure of debt recovery. There is no place for high-flown technical objections under this Act.”

Amaradasa Liyanage v. Sampath Bank PLC, SC Appeal No:126/2012, Decided on 04.04.2014, Tilakawardane,J held that;

“The ambit and purpose of the Recovery of Loans by Banks Act is, in essence, to recover monies due to the Bank while ensuring that the Bank does not enjoy an unjust enrichment. The provisions of the Act, by allowing parate execution, is to facilitate the process of collecting monies due, without lengthy court proceedings, and to do so in a fair and reasonable manner. This objective should therefore not be hindered by minor procedural irregularities such as the absence of the signatures of all Board members on the Certificate of Sale, for such minor irregularities cannot have much impact on the rights of the borrower.

Minor procedural irregularities cannot, further, be grounds upon which actions may be instituted for such actions would only amount to the abuse of the process of Court which must not be allowed. In the present case, monies due remained unpaid for a total of four years prior to the auction taking place and to challenge the sale of property on the basis of a minor irregularity in documentation will undoubtedly remain unsuccessful.”

The above judgment was referred by Aluwihare J in Upul Chaminda Perera Kumarasinghe and Another v. Pan Asia Banking Corporation PLC, SC Appeal No. 74/2021, Decided on 11.10.2023, held;

“The plaintiffs cannot seek the intervention of the court to prevent the Defendant Bank from lawfully exercising their rights in terms of a valid contract, without making a case for irreparable and irremediable damage. Courts cannot and should not be treated as the refuge of all defaulting creditors.”

In Zubair v. Bank of Ceylon, 2000 (2) SLR 187 at page 188, Udalgama., J held that;

“Before parting with this order it would also be appropriate to mention that in Debt Recovery matters it would not be correct for courts to hold against the intention of the Legislature on technicalities.”

We are mindful that since the Petitioner has failed to pay the loan facilities which he obtained in 2014, bank has given ample facilities from 2016 by rescheduling the said loan. After they extend their said facilities for 3 times, still Petitioner defaulted making payments. As a result the Letter of Demand was sent. It is clear that the conduct of the Petitioner as a habitual defaulter that is to say his conduct for not honoring his obligation, Court will not grant any relief even if he is entitled under the said circular.

Jayaweera v. Asst. Commissioner of Agrarian Services Ratnapura and Another, 1996 (2) SLR 70 at page 73, Jayasuriya, J held that;

“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, still the court has a discretion to deny him relief having regard to his **conduct**; delay, laches, waiver, submission to jurisdiction are all valid impediments which stand against the grant of relief. “

The Petitioner did not satisfy this Court that passing of the resolution, the bank has acted contrary to the circular marked as P41 or have ignored the direction given by the Monetary Board.

As stated by His Lordship Justice Grero in Desmond Perera and Others v. Karunaratne, Commissioner of National Housing and Others, (1994) 3 SLR page 316, at pages 329 and 330: “As pointed out by the learned President's Counsel for the 3rd respondent, Lord Diplock in the case of CCSV v. Minister for the Civil Service (1984) UKHL 9, clearly classified under three heads the grounds on which administrative action could be subject to control by judicial review. They are:

- (i) Illegality;
- (ii) Irrationality; and
- (iii) Procedural impropriety.”

“By 'Illegality' as a ground for judicial review, I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, by judges by whom the judicial power of the state is exercisable.”

Petitioner has failed to satisfy the above said grounds. Therefore, for the above said reasons I decide to dismiss the application of the Petitioner with Costs.

**JUDGE OF THE COURT OF APPEAL**

**N. Bandula Karunarathna (P/CA), J.**

**I AGREE**

**PRESIDENT OF THE COURT OF APPEAL**