

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

In the matter of an application for Revision against the Order/Judgment dated 29/09/2022 of the Provincial High Court of the Western Province (Holden at Gampaha) in Writ Application No. 13/2019 in terms of Article 138(1) and Article 154P (6) of the Constitution of the Republic of Sri Lanka.

Undugodage Chamila Kumarai,
No. 266/1, Oruthota Road,
Mudungoda, Gampaha.

Petitioner

Vs

C.A. Case No: CPA -24/23
Provincial High Court of the
Western Province (Gampaha)
Writ Application No. 13/2019

1. Gampaha District Co-operative Rural Bank Union Limited
No. 471/10, Colombo Road,
Gampaha.
- 2, The Commissioner of Cooperative Development (Western Province),
Department of Co-operative Development
No. 444, Duke Street, Colombo 01.
3. The Assistant Commissioner of Co-operative Development (Gampaha District)
Walauwatte, Gampaha.

Respondents

And now between

Gampaha District Co-operative Rural Bank Union Limited
No. 471/10, Colombo Road,
Gampaha.

1st Respondent-Petitioner

Undugodage Chamila Kumarai,
No. 266/1, Oruthota Road,
Mudungoda, Gampaha

Petitioner-Respondent

2. The Commissioner of Cooperative Development (Western Province),
Department of Co-operative Development
No. 444, Duke Street, Colombo 01.
3. The Assistant Commissioner of Co-operative Development (Gampaha District)
Walauwatta, Gampaha.

Respondents

Before: Damith Thotawatte, J.
K.M.S. Dissanayake, J.

Counsels: Shaminda Silva with Mahesh Attanayake for the 1st
Respondent Petitioner.
Sumudu Hewage for the Petitioner Respondent.
Dr.Pashan Gunaratne, S.C. for the 2nd and 3rd Respondents.

Argued: 17-07-2025

Written submissions
tendered on: 26-08-2025 By the Petitioner
28-08-2025 Petitioner-Respondent

Judgement Delivered
on: 03-10-2025

D. Thotawatte, J.

The present revision application arises out of a dispute concerning the enforcement of a loan obtained by the Petitioner–Respondent, Undugodage Chamila Kumari, (hereinafter sometimes referred to as the “Applicant” for reasons of clarity), from the 1st Respondent–Petitioner, Gampaha District Co-operative Rural Bank Union Limited (hereinafter sometimes referred to as the “1st Respondent–Petitioner”).

On 3rd December 2015, the Applicant had borrowed a sum of Rs. 3,500,000/- from the 1st Respondent–Petitioner on a reducing balance scheme, subject to 12% annual interest. As collateral, the Applicant’s residential house and the property belonging to her husband were pledged under a mortgage deed to the 1st Respondent–Petitioner. It is stated that at the time of obtaining the said facility, the Applicant’s husband was employed in Italy as a chef and was the family’s sole source of income.

The initial loan installments were serviced through foreign remittances sent by the Applicant’s husband. However, consequent to a fire at the hotel where he was employed, the Applicant’s husband is said to have sustained injuries which caused the loss of his employment. As a result, the repayment of the loan fell into default after the payment of eight installments.

Consequent to default, the 1st Respondent–Petitioner, in order to recover the money, resorted to the arbitration mechanism under the Western Province Co-operative Societies Statute No. 03 of 1998. The Arbitrator had, after inquiry, on 16th November 2018, awarded a sum of Rs. 3,694,473.52 (which had accrued to Rs. 3,801,049.07 with interest by 12-02-2019) against the Applicant. Consequent to the award, the Applicant has requested from the 1st Respondent–Petitioner and the 2nd Respondent, the Commissioner of Co-operative Development - Western Province (hereinafter sometimes referred to as the “2nd Respondent”), to be allowed to settle the debt in 38 monthly installments, stating her that her husband had recovered (the 11th averment in the affidavit of the Applicant submitted to the High Court) and as such indicating that they will be able make payments if the relevant concession is granted. However, according to the Applicant, the Respondents (of the High Court application) had refused such accommodation and initiated recovery proceedings to auction her matrimonial home.

The Applicant had filed Writ Application No. 13/2019 dated 25th November 2019 in the Provincial High Court of the Western Province holden in Gampaha, seeking relief by way

of certiorari and mandamus. The Applicant has challenged the “legality” of the Respondents’ refusal to allow installment payments and the decision to proceed with the auction.

The High Court, upon hearing, ultimately delivered judgment on 29th September 2022, issuing a writ of certiorari quashing the intended auction. The 1st Respondent–Petitioner, dissatisfied with the order of the High Court, has filed this instant application seeking to revise or set aside the Judgment dated 29-09-2022 of the Provincial High Court of Gampaha.

It should be noted that the Applicant has never disputed the fact that she owed money to the 1st Respondent-Petitioner or the arbitral award. The Applicant’s contention is that Section 66(1) of the Co-operative Societies Statute No. 03 of 1998 (Western Province Provincial Council) gives the Respondents discretion to allow the Applicant to pay the amount owed in installments and the failure of the Respondents to allow this in spite of repeated requests by her amount to a violation of Section 66(1) and a breach of natural justice.

Section 66(1) of the Western Province Co-operative Societies Statute No. 03 of 1998 does not empower either the Gampaha District Co-operative Rural Bank or the Commissioner of Co-operative Development to grant relief by installments in lieu of auction. Its purpose is only to channel disputes into arbitration or the Registrar’s decision-making. The Petitioner Respondent’s reliance on Section 66(1) for installment relief is misconceived in law.

The Prayer appearing in the Applicant’s petition to the High Court in the writ application drafted in Sinhala is somewhat unusual; as such, I have attempted to translate it into English as closely as possible.

The Respondent had filed the Writ application in the High Court seeking the following reliefs;

- a) Issue notices on the Respondents (of the High Court writ application)
- b) To issue a writ in the nature of certiorari to quash the decision taken by documents **P4** and **P4a** against the 3rd Respondent (of the High Court writ application) in order to prevent the damage that would be caused to her, if her

property worth Rs. 11900000 was sold to recover Rs. 3800000 as a single lump-sum settlement.

- c) To issue a writ in the nature of mandamus ordering the Respondents (of the High Court writ application) to enter upon a justifiable procedure of allowing her to pay the Rs. 3800000 in 38 monthly installments.
- d) To grant a stay order against the 3rd Respondent, temporarily preventing the sale of the relevant property.
- e) Cost
- f) Any other relief that the court is inclined to grant.

The Document marked 'P4a' is a letter, which appears to be dated 08.02.2019 (the date being partly illegible), addressed to the Applicant, wherein she is informed that, having failed to discharge the arbitration award in the sum of Rs. 3,694,473.52, which together with accrued interest is at Rs. 3,801,049.07, the matter would be referred to the 2nd or 3rd Respondents (of the High Court writ application) for the purpose of obtaining a decree from the District Court to auction the relevant property and recover the said sum, together with default interest at the rate of 14% and costs of court.

The document marked 'P4' is a letter dated 07.11.2019, issued on the letterhead of the Gampaha District Co-operative Rural Bank Union Limited, under the signature of its Chief Executive Officer, addressed to the Applicant, stating that the Board of Directors of the 1st Respondent–Petitioner has declined to grant the relief sought by her, on the basis **that legal proceedings have already been instituted.**

When the aforesaid two letters are considered together, the Applicant should have been left in no doubt as to the fact that recovery proceedings had been instituted in the District Court. However, it is significant that the Applicant has failed to disclose in her petition to the High Court at least the fact that she had been informed (by letter marked P4) that legal proceedings had already been commenced. Moreover, as at 25th November 2019, when the Applicant filed the writ application in the High Court of Gampaha, proceedings in District Court Case No. 5176/Spl. had already been concluded, and on 11th November 2019, a decree had been entered in favour of the 1st Respondent-Petitioner to auction the relevant property and recover the monies due (the petition and affidavit filing the award in the District Court, and the decree entered has been filed with the instant petition).

It is abundantly clear that the Applicant has deliberately suppressed material facts, and as such, the application should have been dismissed in limine. However, even after this fact was brought to the notice of the learned High Court Judge, she has disregarded this fact on the grounds that there was no proof that the Applicant knew about the district court enforcement case and had proceeded to grant a writ of certiorari quashing the decision to auction the property as per prayer (b).

By prayer (b), what has been prayed for is a writ of certiorari to quash the decision taken by documents **P4** and **P4a**.

The “**decision**” contained in **P4** is only that the 1st Respondent-Petitioner is unable to accede to the request of the Applicant.

The “**decision**” contained in **P4a** is that the 1st Respondent-Petitioner has resolved to recover the monies due through legal proceedings.

In circumstances where the legal proceedings envisaged in document **P4a** have already been instituted before a competent Court, duly proceeded with, and brought to a conclusion by the issuance of a legally binding decree, the quashing of a decision to commence such proceedings for the recovery of monies by auction of the mortgaged property would serve no practical purpose. Since the decree of the District Court continues to remain operative, the issuance of a writ of certiorari to quash the said initial decision, as sought by prayer (b), is rendered futile.

The basis stated by the learned High Court Judge for the issuance of a writ of certiorari is that no justice would be done with regard to the auctioning of the property and recovery of the money without the intervention of the court. In an application for Judicial review, the Court can interfere where there is a manifest unreasonableness in an administrative act. The test is whether the administrative authority has acted within the rules of reason and justice¹. The court should only consider whether the decision is lawful or unlawful.² The learned High Court Judge had not come to any finding that the Respondents acted without jurisdiction, in an arbitrary or unreasonable manner, or in breach of natural justice.

¹*Podimahatmaya vs. The Land Reform Commission* [1990] 2 Sri LR 416 at 419

²*Geeganageh vs Director General Customs* [2001] 3 Sri LR 179, *Nalaka Chaminda Jayaweera v. Sri Lanka Institute of Architects and Others* CA/WRT/0362/2019 C.A.M: 13.07.2023

For the reasons stated above, this Court allow the application in revision and sets aside the order of the Learned High Court Judge dated 29-09-2022.

Judge of the Court of Appeal

K.M.S. Dissanayake, J.

I agree

Judge of the Court of Appeal