

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

In the matter of an application under Article 140 of the Constitution for a mandate in the nature of Writs of *Mandamus*, *Certiorari* and Prohibition.

Horamulla Tea Plantations (Pvt) Ltd,  
No. 168, St. Andrews Road,  
Colombo 15.

**PETITIONER**

**Court of Appeal Case No:**  
**CA/WRIT/788/2023**

**Vs.**

1. Commercial Bank of Ceylon PLC,  
Commercial House,  
No. 21, Sir Razik Fareed Mawatha,  
P.O. Box 856,  
Colombo 01.
2. Prof. A.K.W. Jayawardane,  
Chairman,  
Commercial Bank of Ceylon PLC,  
Commercial House,  
No. 21, Sir Razik Fareed Mawatha,  
P.O. Box 856,  
Colombo 01.
3. Sharhan Muhseen,
4. Sanath Manatunge,
5. Lakshman Niyangoda,
6. Shiromal Cooray,
7. Judy Lee,
8. Raja Senanayake,

9. Thushara Wijewardena,
10. Dr. Sivakumar Selliah,
11. S. Prabagar,
12. Nimal Fernando,
13. Palitha Kumarasinghe, PC,

2<sup>nd</sup> to 13<sup>th</sup> Respondents:  
Members,  
Board of Directors,  
Commercial Bank of Ceylon PLC,  
Commercial House,  
No. 21, Sir Razik Fareed Mawatha,  
P.O. Box 856,  
Colombo 01.

**RESPONDENTS**

**Before:** Mayadunne Corea, J  
Mahen Gopallawa, J

**Counsel:** Zam Zam Ismail with Shammi Jayaweera instructed by Shyamali Liyanage for the Petitioner.  
Varuna Senadhira with Irfan Bacha for the 1<sup>st</sup> to 13 Respondents.

**Argued on:** 28.07.2025 and 21.10.2025

**Written Submissions:** For the Petitioner on 21.02.2025.  
For the 1<sup>st</sup> to 13<sup>th</sup> Respondents on 24.01.2025.

**Decided on:** 19.12.2025.

**Mayadunne Corea J**

The Petitioner in this Application sought, *inter alia*, the following reliefs:

- “c) *Issue an order in the nature of a writ of certiorari quashing the purported and/or illegal board resolution of the 1<sup>st</sup> Respondent Bank marked P19 and P20 hereto*
- d) *Issue an order in the nature of a writ of certiorari quashing the purported notices of sale published in newspapers marked P39(i), P39(ii) and P39(iii) hereto*
- e) *Issue an order in the nature of a writ of certiorari quashing the Certificate of Sale if issued on the illegal auction held on 17<sup>th</sup> July 2023 consequent to the purported notices of sale marked P39(i), P39(ii) and P39(iii) hereto*
- f) *Issue an order in the nature of a writ of prohibition prohibiting the 1<sup>st</sup> to 13<sup>th</sup> Respondents or any one or more of them from issuing a Certificate of Sale on the illegal auction held on 17<sup>th</sup> July 2023 consequent to the purported notices of sale marked P39(i), P39(ii) and P39(iii) hereto in the event if no such Certificate of Sale has already been issued*

*AND/OR in the alternative and/or in furtherance;*

- g) *Issue an order in the nature of a writ of prohibition prohibiting the 1<sup>st</sup> to 13<sup>th</sup> Respondents or any one or more of them from registering a Certificate of Sale on the illegal auction held on 17<sup>th</sup> July 2023 consequent to the purported notices of sale marked P39(i), P39(ii) and P39(iii) hereto in the event such Certificate of Sale has been issued but not been registered*
- h) *Issue an order in the nature of a writ of prohibition prohibiting the 1<sup>st</sup> to 13<sup>th</sup> Respondents from acting on or taking steps to seek an order for delivery of the property in reliance of the sale and/or purchase at the purported auction held on 17<sup>th</sup> July 2023 (the purported notices of which is marked P39(i), P39(ii) and P39(iii) hereto)*
- i) *Issue an order in the nature of a writ of mandamus directing the 1<sup>st</sup> to 13<sup>th</sup> Respondents and/or any one or more of them to take steps to cancel the Certificate of Sale if issued on the illegal auction held on 17<sup>th</sup> July 2023 consequent to the purported notices of sale marked P39(i), P39(ii) and P39(iii) hereto”*

The facts of the case briefly are as follows. The Petitioner company obtained a term loan facility from the 1<sup>st</sup> Respondent bank by executing a mortgage bond in favour of

the 1<sup>st</sup> Respondent. The Petitioner defaulted in loan repayments. Thereby, a resolution was passed by the Board of Directors of the 1<sup>st</sup> Respondent bank to sell the mortgaged property by way of an auction. The Petitioner requested that the 1<sup>st</sup> Respondent not auction the property. To adhere to the request the 1<sup>st</sup> Respondent requested a substantial repayment from the amount in default. Thereby, the Petitioner deposited Rs. 6 million and the 1<sup>st</sup> Respondent did not proceed with the auction. It is alleged that the Petitioner continued to make loan repayments which is denied by the 1<sup>st</sup> Respondent. However, there was an inconsistency in the amounts due. Thereafter, due to nonpayment of the loan the 1<sup>st</sup> Respondent published a notice of sale. The 1<sup>st</sup> Respondent proceeded with the auction and purchased the property itself. Hence, this Writ Application.

### **The Petitioner's contention**

The Petitioner challenges the acts of the Respondents on the following grounds:

- The acts of the 1<sup>st</sup> Respondent are arbitrary, unreasonable and illegal.
- The 1<sup>st</sup> Respondent had failed to consider the relevant facts and circumstances of the Petitioner company.
- The Petitioner was not afforded a hearing.
- The 1<sup>st</sup> Respondent had acted contrary to the Recovery of Loans (Special Provisions) Act, No. 4 of 1990 as amended (sometimes referred to as the "Act").

### **The Respondents' contention**

The Respondents raised the following objections:

- The Petitioner has failed to recourse to the alternative remedy available
- The grounds urged in this Writ application are *res judicata*.
- The Petitioner is guilty of laches and unexplained undue delay.
- The 1<sup>st</sup> Respondent is not amenable to the Writ jurisdiction of this Court.
- In any event, there are no grounds available for the Petitioner to succeed in a Writ Application.

### **Analysis**

The Petitioner's main contention at the hearing was that as per the law, there should be a newspaper notice published in all three languages, which had not been complied with

and also that the Petitioner should be notified two weeks prior to the auction, which too has not been complied with. It was also contended that the Respondents had not considered all the payments made before passing the resolution and hence, the passing of the resolution and the auction is bad in law.

Let me consider the Petitioner's contentions along with the objections raised by the Respondents.

It is common ground that the Petitioner had obtained a loan facility from the 1<sup>st</sup> Respondents agreeing to the terms and conditions of the 1<sup>st</sup> Respondents and the *corpus* was mortgaged as security for the loan. It was also not a disputed fact that the Petitioner had obtained this loan facility to pay off another loan that had been taken and for the development of the business.

It is also common ground that the Petitioner had failed to pay the loan and also has failed to pay the installments as agreed upon and defaulted on the loan repayment. The parties also agree that the Respondents had passed a resolution and proceeded with *parate* execution and mortgage property to be auctioned was published in the Gazette and in three newspapers. The parties also agree that after the publication and prior to the auction, the parties had negotiated a settlement and agreed not to auction the mortgaged property on the repayment of a substantial amount of the loan and the petitioner submitting an acceptable repayment schedule. This has been partly complied with and the auction was halted temporarily. However, as the loan had not been settled, and the repayment schedule has not been complied with by the Petitioner the 1<sup>st</sup> Respondent bank, after notifying the Petitioner, has resorted to the sale of the property by way of a public auction in terms of section 9 of the Act, it is the second publication of the notice to auction and the sale that is challenged by the Petitioner.

To get a better understanding, let me consider the sequence of events.

On 24.11.2017, the Petitioner had entered into a loan agreement with the Respondents. The request and the subsequent granting of the facility are marked and tendered as P3 and X1. The total amount granted is Rs 300,000,000 as security, the mortgaged bond X2 has been entered in to by the parties in favor of the Respondent. As per X1, there is a special clause on repayment to which the parties have agreed. The statement of accounts pertaining to the loan was marked and tendered by the Respondents as X3. The said statement of accounts is addressed to the address given in the mortgage bond

and also what is reflected in the letterheads of the company which are marked as P24 and P25.

**Did the Board of Directors pass a resolution pursuant to Act, No 4 of 1990?**

The Petitioner's challenge the resolution and auction on the ground that the Respondent bank has failed to give the Petitioner adequate notice of the public auction. As there is no dispute between the parties that a loan was obtained, the nonpayment of the instalments and the loan amount being defaulted, the 1<sup>st</sup> Respondent Bank has acted pursuant to section 4 of the Recovery of Loans by Banks (Special Provisions) Act. The said section reads as follows;

*“Subject to the provisions of Section 7 the Board may by resolution to be recorded in writing authorize any person specified in the resolution to sell by public auction any property mortgaged to the bank as security for any loan in respect of which default has been made in order to recover the whole of the unpaid portion of such loan, and the interest due thereon upto the date of the sale, together with the money and costs recoverable under section 13.”*

Section 4 of the Act is subject to section 7 of the Act which will not arise in this case as the said section contemplates a situation where the borrower is dead. Hence, pursuant to this section the Respondents have the legal right to proceed with a resolution. The said resolution is marked and tendered as X11, which is dated 16.03.2021. The same has been sent to the Petitioner on the same date by registered post, marked as X12.

**Has the Petitioner complied with provisions of the Act to register a communication address?**

The Petitioner alleges that the Petitioner was not notified of the resolution. In this context it is important to consider section 2 of the Act which reads as follows:

*“(1) Every person-*

- (a) to whom any loan is granted by a bank on the mortgage of property, or*
- (b) who has obtained probate of the will or letters of administration to the estate of a person to whom any loan has been granted by a bank on the mortgage of property, or who, upon application made in that behalf by the Board, has been appointed by court to represent such estate, or*

*(c) to whom any right, title or interest whatsoever in any property mortgaged to a bank as security for any loan, has passed, whether by voluntary conveyance or by operation of law,*

*shall register with a bank an address to which all notices to him may be addressed.*” (Emphasis added).

As per the Act, it is mandatory that the borrower, upon obtaining a loan and mortgaging a property, registers an address for the purposes of communication. Upon inquiry by this Court, the Petitioner conceded that the Petitioner had not registered an address pursuant to the said section. In any event, the Petitioner has not pleaded that the Petitioner has registered an address nor has the Petitioner tendered any material to substantiate any such claim. In my view, after not complying with the requirements of the Act, the Petitioner cannot at this stage be heard to complain that the Respondents have not complied with the requirements of sending the notices to the Petitioner. In any event, it is the Respondents contention that they have send the notices and the copy of the resolution to the Petitioner.

#### **Has the Petitioner received sufficient notice of resolution and the notice of auction?**

However, both the documents X1 and X2 reflect the address of the Petitioner and it appears that the resolution and the notice of the resolution had been sent to the Petitioner at the said address. It was the contention of the Respondents that the registered post letters had not been returned. In any event, the proviso to section 2(2) of the Act contemplates the course of action available in the event that an address had not been registered, which the Respondents have complied with, namely the publication of the resolution in the Gazette, which is marked and tendered as X13a,13b and 13c, and the publication of the same in three languages in the newspaper, marked and tendered as X14a, X14b and X14c. This too had been informed to the Petitioner by X15 and the registered post receipt is tendered and marked as X15a. It was submitted that the said letter had not been returned.

Hence, in my view the Respondents have complied with the requirements of the Act in informing the Petitioner. It is pertinent to note that the Petitioner attempted to impugn the document marked as X15b on the ground that the schedule to the said notice is published in the English language. It is apparent the notice and the 1<sup>st</sup> schedule pertaining to the description is published in the Tamil language but the machinery that was mortgaged depicted in the 2<sup>nd</sup> Schedule is in English language, however in my view the said objection which is highly technical in nature, would not have any effect to

vitiating the validity of the publication, and the compliance with the requirements of the Act, as the land mortgaged, is properly identified and the particulars of the resolution are published in the three languages.

At this stage it is also pertinent to note, that as per the resolution, the amount due is clearly stated and also it is stated that the Respondent would deduct any payments received (if any). This negates the Petitioner's submission that the amounts paid after the resolution have not been recognized by the Respondents.

Both parties conceded that after the date of the auction was informed, the parties had negotiated and the said auction had been cancelled upon the Petitioner depositing a substantial amount due from them as repayment. It was not disputed that the Petitioner had deposited Rs. 6,000,000.00. Further, it was contended by the Respondents and not denied by the Petitioners that the Respondent had requested the Petitioner to submit a meaningful repayment plan (P34). It appears as per the submissions; the Petitioner had submitted several plans for repayment but had failed to make the necessity payments as per the proposed plans. It was also contended that despite the Respondents being invited by the bank to come for negotiations on the repayment plan, the Petitioner had failed to utilize the opportunity granted. The Petitioner, even by the letter marked and tendered as P37, had requested further time to make repayments, which the Respondents have granted by P38. However, it is the contention of the Respondents that the Petitioner had not taken any steps to come to a settlement and propose a plan for repayment. Hence, the Petitioner's contention that he was not given a hearing is not tenable.

Thereafter, the Respondents had taken steps to publish the notice of auction and have informed the same to the Petitioner by P39. The said newspaper publications, which are impugned by the Petitioner, are marked as P39(I) – (III). The main ground to impugn the said publications is that they were not published in the three languages as stipulated by the Act. I have considered the said documents and I find that they are identical in description to the previous publication that was cancelled upon the request and negotiated payment by the Petitioner. The ground to impugn being that the 2<sup>nd</sup> schedule of the Tamil language newspaper describes the mortgaged machinery in English language. However, the land to be auctioned is correctly described in all three languages. As I have stated above, in the given circumstances, I am not inclined to accept the Petitioner's highly technical objection that the validity of the entire notice is vitiated due to the mere fact that part of the subject matter to be auctioned namely the machinery is described in English in the 2<sup>nd</sup> Schedule to the Tamil publication. This is so especially when the Petitioner had not challenged the publication when it was published for the first auction, which the Petitioner thought fit to negotiate and make a payment.



The second ground the Petitioner urged was that as envisaged in section 9 of the Act, they had not been given two weeks' notice prior to the auction. This argument was replied to by the Respondents by the document marked and tendered as X34 and the registered post article marked as X34a. Further, this argument cannot be maintained by the conduct of the Petitioner themselves, as upon receiving the said notice the Petitioner had instituted an action in the Commercial High Court and had sought for an interim injunction to stay the auction. The Commercial High Court had rejected the Petitioner's application for an interim injunction. The order of the said Court was marked and tendered as X35, which the Petitioner has not challenged in a superior court. Thus, it is clear that the Petitioner, in challenging the said auction, was aware of the notice of auction.

It is also pertinent to note that the Petitioner contended that although the Respondents have sent letters to various addresses, the Petitioner has not received the same, however the Petitioner stopped short of denying being in occupation at the said addresses. I also observe that documents marked as X2 to X10, X13 to X14 had been sent to the address that is depicted in the loan agreement and the deed of mortgage. Further, the documents X7 and X8 has been send to an address at Paliyagoda from which the Petitioner had replied to the letters sent by the Respondents. Also, the receipt of the letters marked as X7 and X8 is acknowledged through the letter P35, sent by the Petitioner. Further the respondents also tendered to court the registered post articles in proof of postage. Hence, the allegation that the Petitioner has not received the impugned document and challenging the said documents on the basis that they had not been sent, cannot be maintained.

The Petitioner challenged the auction on the basis that the Respondents had failed to take into consideration the circumstances of the Petitioner and the inability to grant a grace period makes the resolution bad in law. This Court observes that the Petitioner's contention cannot be maintained as those grounds are legally not recognized grounds to vitiate the resolution and the auction, especially when the Petitioner after giving many opportunities to settle the loan has failed to do so and also as the Petitioner has failed to demonstrates how the said grounds are bad in law.

Let me now consider the objections of the Respondents.

### **Undue delay/laches**

The Petitioner is seeking a Writ of Certiorari to quash P19 and P20, the resolution passed by the Respondent bank pursuant to section 4 of the Act. However, the said

resolution is dated 17.12.2020. The Petitioner has decided to challenge the said resolution by instituting the instant Application before this Court in December 2023, which is nearly three years after the resolution was passed. The Petitioner has failed to give a reasonable explanation to purge the delay.

While conceding the delay in invoking the jurisdiction of this Court, but in reply to the said contention, the Petitioner submits that the delay should not be a ground to refuse the reliefs as the said impugned decision is a nullity and is manifestly erroneous. In support of his contention the Petitioner relies on decisions of ***Biso Menika v. Cyril de Alwis* 1982 (1) SLR 368**. I have considered the said decision and find the said decision also states as follows;

*“The proposition that the application for Writ must be sought as soon as injury 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 chances of his success in a Writ application dwindle 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 from the date of the Order which the applicant seeks to have quashed. What is reasonable time and what will constitute undue delay will depend upon the facts of each particular case. However the time lag that can be explained does not spell laches or delay. If the delay can be reasonably explained, the Court will not decline to interfere. The delay which a Court can excuse is one which is caused by the applicant pursuing a legal remedy and not a remedy which is extra-legal. One satisfactory way to explain the delay is for the petitioner to show that he has been seeking relief elsewhere in a manner provided by the Law.”*

Further, in the instant case, the Petitioner has failed to establish the impugned decision to be manifestly erroneous or without jurisdiction. The Petitioner also relied on ***Private Tea Factory Owners’ Association v. Tea Commissioner* SC Appeal 47/2011, SC Minutes 04.06.2014** and ***Pathirana v. Victor Perera (DIG Personal Training Police)* 2006 (2) SLR 281**. I find the facts and circumstances of the said cases are different to the case before me. Especially, when the Petitioner in this case had failed to establish that the decision impugned is a nullity or taken without jurisdiction.

I have also considered the decisions cited by the Respondents. In ***Sarath Hulangamuwa Siriwardena v. The Principal Vishaka Vidyala* 1986 (1) SLR 275**, where it was held that:

*“The Writs are extraordinary remedies granted to obtain speedy relief under exceptional circumstances and time is of the essence of the Application... The laches of the Petitioner must necessarily be determining factor in deciding the Application for Writs as the Court will not lend itself to making a stultifying order which cannot be carried out.”*

Further, in the case of ***Kolombage Udara Sudarshani Silva v. Subasinghe Arachchige Dona Maria Reeta Pilaminahami and others*** CA Writ 304/2019 decided on **20.01.2023** it was held that:

*“The doctrine of laches is based on the Latin maxim ‘Vigilantibus Non Dormientibus Aequitas Subvenit’ which means that Equity aids the vigilant, not the ones who sleep over their rights. The doctrine of laches is one of the few defences available to the defendant.*

*The doctrine of laches is used by the Courts to deal with an inordinate delay that occurs in filing a Petition or complaint. It means if you have any legal claim, you have to approach the Court promptly. Laches is a fair doctrine or an equitable defense. The Courts will not help the person who sleeps over their rights but will help those who are aware of their rights. A person is said to be liable for laches when he comes to the Court to affirm their rights after a reasonable delay. In many matters, a delay in filing a case has the effect of blocking the opposing party from putting on a fair defense.*

*Some elements must be satisfied to consider this doctrine to bar the Petitioner from the cause of action:*

- *Delay must be unreasonable at the time of bringing the matter;*
- *Negligence in asserting a claim or right;*
- *Knowledge of a claim by the Petitioner in advance.”*

In the absence of any valid reasons given by the Petitioner, I hold that the Petitioner is guilty of laches and unwarranted delay.

**Does the application before this Court amount to res judicata and is there suppression of material facts?**

The Petitioner has instituted an action to obtain an interim injunction to prevent the auction of the land. The plaint filed in the Commercial High Court is marked as P40. I have considered the averments in the said plaint, in which the Petitioner has admitted the knowledge of passing the resolution dated 17/12/2020, and had annexed the paper

notices and the Gazette notification pertaining to the said auction. Further, the Petitioner has conceded that after lengthy negotiations and the deposit of Rs. 6,000,000.00, the said auction had been cancelled. Further, the Petitioner admits that he was in receipt of the paper advertisement dated 20.06.2023. Accordingly, the Petitioner is now estopped from denying the receipt of the said paper notices pertaining to the second auction and by alleging that the said paper notices pertaining to the second auction had not been sent to the Petitioner, by this conduct the Petitioner had suppressed material facts and misrepresented facts to this Court.

Further, I observe the Petitioner in this case, through the Petitioner's pleadings and submissions, had contradicted the plaint filed in the Commercial High Court by the Petitioner. I also observe the Petitioner has not challenged the paper notices on the basis that it had not been published in compliance with the Act. This ground alone is sufficient for this Court to refuse to grant the reliefs prayed for in the Petition.

It is also observed that for the delivery of notice, in the absence of the borrower registering an address, the proviso to section 2 (2) provides that pursuant to the deeming provision a publication of the notice in the Gazette and three newspapers, it is deemed to be duly communicated to the borrower. Hence, even if I am to assume that the notice of auction has not been sent to the correct address, still the publication of the same in the Gazette and the papers, defeats the objection raised by the Petitioner.

I also observe that the Petitioner in the instant case has obtained a term loan of Rs. 300,000,000.00 from the 1<sup>st</sup> Respondent bank mortgaging the land called "Horamulla Estate and Helaudawatta" situated in Horamulla and Pannila in the year 2017. It is not disputed by the parties that the Petitioner has failed to repay the said sum. The said default had commenced as early as 2019. This is reflected by the document P11. Further, numerous letters have been exchanged between the Petitioner and the 1<sup>st</sup> Respondent seeking further time for repayment and to submit the repayment plan. However, I find despite several reminders by the 1<sup>st</sup> Respondent, the Petitioner had failed to comply with the said repayment plan. Instead had been seeking for further time to settle the loan by giving various reasons which prompted the Respondent to pass a resolution under section 4 of the Act. The Petitioner on many occasions had acknowledged the debt and sought time for repayment, as submitted, it appears though the Petitioner had agreed to make repayment, has failed to bring the said agreement in to action. Accordingly, the Respondents had taken steps to auction the land in compliance with the provisions of the Act. It is observed as per the document marked X37, the auction had been carried out, and in the absence of buyers, the Respondent Bank had purchased the property and a Certificate of Sale bearing number 3037 had been issued. Further, as per the endorsement in the Certificate of Sale, the said certificate had been registered at the land

registry of Embilipitiya on 09.10.2023. Hence, the auction is now concluded. Let me now consider the prayers of the Petitioner.

### **Prayers of the Petitioner**

As I have stated above the Petitioner has failed to establish any illegality pertaining to the Board Resolution of the 1<sup>st</sup> Respondent marked P19 & P20. Nor has the Petitioner been able to establish any illegality pertaining to the paper notices marked as P39(1-3). Hence, Petitioner's prayer (c) & (d) have to fail. As per X37 the auction had taken place and Certificate of Sale had been issued, the Petitioner has failed to establish any illegality in the auction that was conducted and hence, has failed to establish any illegality in the Certificate of Sale. Since, I have held that the notices marked as P39(i –iii), is in sufficient compliance with the requirements in the Act, the Petitioner's prayers (e) and (f) have to fail. As observed by this Court with the endorsement in X37 which demonstrates that the Certificate is already registered, Petitioner's prayer (g) has to fail. As this Court has now held that the Petitioner had failed to establish any illegality pertaining to the auction, the Petitioner does not get a right to seek the cancellation of the Certificate of Sale. Hence, the Petitioner's prayers (h) & (i) have to fail. It is also observed with the issuance of X37 by operation of section 16 of Act, No. 4 of 1990 as amended, the 1<sup>st</sup> Respondent becomes legally entitled to all the rights, title and interest contained in the property depicted in X37.

### **Conclusion**

Considering all the submissions made and the documents tendered, the Court is of the view that the Petitioner has obtained the loan and has failed to repay the said loan. To obtain the loan the Petitioner pledged the property as depicted in the Schedule as a mortgage. The subsequent conduct of the Petitioner clearly demonstrates that instead of making a resolute plan to re-pay and to make arrangements to repay the loan, the Petitioner has used various tactics to delay the repayment and inevitable reliefs, the bank is entitled to under the Recovery of Loans (Special Provisions) Act. It is evident through the correspondents marked the Petitioner has used various addresses even to communicate with the bank which is again a tactic of delaying repayment. It is also observed without registering a proper address the Petitioner has tried to take advantage of his own non-compliance with the Act to challenge the notices sent by the bank in compliance with the Act.

In view of my above findings, I do not consider it is necessary for me to consider all the objections raised by the Respondents. Before I part with this judgment, it is pertinent to note the observations made by His Lordship Obeyesekere J. in the case of ***Bettans Group of Companies vs Lanka Puthra Development Bank*** CA Writ 230/2015 decided on 10/7/2020 where he held

*“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.”*

Accordingly, for the aforesaid reasons I refuse to grant the reliefs prayed by the Petitioner and proceed to dismiss this Writ application. Costs to be borne by the parties.

**Judge of the Court of Appeal**

**Mahen Gopallawa, J**

I agree

**Judge of the Court of Appeal**