

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

*In the matter of an application for a
mandate in the nature of Writ of Certiorari
under Article 140 of the Constitution.*

Gihan Niroshan Jayawardena,
No. 7/3, Lumbini Mawatha,
Dalugama, Kelaniya.

Petitioner

Court of Appeal Application

No. CA 358/2017 Writ

Vs.

1. Commercial Bank of Ceylon PLC,
“Commercial House”,
No. 21, Abdul Gaffor Mawatha,
Colombo 01.
2. L.B. Senanayake,
Licensed Auctioneer,
No. 182, 3rd Floor,
Hulftsdrop Street,
Colombo 12.

Respondents

Before : L.T.B. Dehideniya J, (P/CA)

&

A.L. Shiran Gooneratne J.

Counsel : Dr. Jayatissa de Costa PC, with Edward Samarawickrama and
Pasan Wijesinghe instructed by Damith Samarasekara for the
Petitioner.

Argued on : 08/11/2017

Decided on : 09/11/2017

Order

A.L. Shiran Gooneratne J.

Heard President's Counsel for the Petitioner in support of this application.

In paragraph (b), (c) and (d) of the prayer to the Petition, the Petitioner is seeking relief, *inter alia*, in the nature of writ of Certiorari to Quash.

1. the notice of sale marked P21 published by the 1st Respondent in the Government Gazette of 20th October 2017.
2. the Board resolution marked P7.
3. the letter dated 15th July 2017, demanding Rs. 36.1 million marked P12.

In order to prevent the 1st Respondent from selling the mortgaged properties by public auction, the Petitioner instituted action against the 1st and 2nd Respondents in Case No. DSP/460/17 in the District Court of Colombo. On the notice returnable date of the said case, the Counsel appearing for the Respondents submitted to Court that since the value of the case exceeds Rs. 5 million, this action should be transferred to the Commercial High Court of Colombo.

The Learned District Judge having heard both parties, by order dated 31st August 2017, transferred the said case to the Commercial High Court of Colombo,

and also vacated the enjoining order obtained by the Petitioner preventing the auction of the mortgaged properties. The said order was subject to the rights of the parties until appropriate orders were made by the Commercial High Court.

The Petitioner states that the 1st Respondent thereafter caused publication of a notice of sale in the Government Gazette and Newspapers, dated 20th October 2017, to hold a public auction on 10th November 2017, to sell the mortgaged properties.

The said notice of sale was published after the transfer of the said case to the Commercial High Court. The Petitioner further states that a leave to appeal application in respect of the Learned District Judge's order dated 31st August 2017, was filed before the Civil Appeal High Court of Colombo which is to be supported on 11th January 2017.

It is observed that the Petitioner's case is pending, listing in the Commercial High Court of Colombo. In the interim, there are no statutory or procedural inhibitions for the Petitioner to make an application to the Commercial High Court for appropriate relief.

From time to time the Superior Courts have held, that, it is within the discretion of this Court to refuse to issue writ, if it is perceived that the Petitioner has an adequate and appropriate alternative remedy.

In the circumstances we hold that the Petitioner has an adequate alternative remedy to address the reliefs prayed for.

In the circumstances notice refused.

Petition is dismissed without costs.

JUDGE OF THE COURT OF APPEAL

L.T.B. Dehideniya J, (P/CA)

I agree.

PRESIDENT OF THE COURT OF APPEAL