

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

In the matter of an application for a
mandate of writs of certiorari and
mandamus under and in terms of Article
140 of the Constitution of the Democratic
Socialist Republic of Sri Lanka.

Court of Appeal case no. CA 176/2017 Writ

Mahesh Abeywicrama,
No. 42/1, Ekwatta Road, Mirihana,
Nugegoda

Petitioner

Vs.

Hatton National Bank P.L.C.,
No. 479, T.B.Jaya Mawatha,
Colombo 10.

Respondents

Before : L.T.B. Dehideniya J. (P/C.A.)

Counsel : Udaya Bandara for the Petitioner

Supported on : 19.07.2017

Decided on : 20.09.2017

L.T.B. Dehideniya J. (P/C.A.)

The Petitioner sought for a mandate in the nature of certiorari and mandamus against the Respondent Bank challenging their Board resolution where the Bank has decided to sell the land mortgaged to it by the Petitioner by way of parate execution. The Petitioner states that he mortgaged the land in question to the Respondent Bank and a part of the money due has been paid. There is a dispute arose between them in relation to the balance amount due. The Petitioner instituted action in the High Court exercising civil jurisdiction (Commercial High Court) under the Mortgage Act to get the Mortgage Bond cancelled by Court on payment of balance amount due. The Petitioner states that while that case is pending, the Board of Directors have resolved to sell the land. The Petitioner is seeking to quash the said resolution.

The Petitioner supported for an interim relief but in the petition he has not prayed for any interim relief. This Court cannot grant a relief which is not prayed for in the petition.

The Petitioner has invoked the jurisdiction of the High Court under the Mortgage Act and sought permission of Court to pay the balance and cancel the Bond. When there is alternative remedy available, the extraordinary jurisdiction of this Court cannot be exercised.

I refuse notice.

President, Court of Appeal