

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

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

CA/WRIT/334/2018

Udahagallalle Gedera Ranjith Gangoda,
'Happy Leoni Hotel',
No. 329/6, Mahawelawatta,
5th Lane,
Mihinthale Road,
Anuradhapura.

PETITIONER

VS.

Bank of Ceylon,
No. 01, BOC Square,
Bank of Ceylon Mawatha,
Colombo 01.

RESPONDENT

Before: **M. T. M. LAFFAR, J. &
K. K. A. V. SWARNADHIPATHI, J.**

Counsel: Chandaka Jayasundera, P.C. with Nalin Samarkoon for the
Petitioner.

Chandimal Mendis with Sarasi Paranamanna for the
Respondent.

Supported on: 12.02.2021

Decided on: 25.02.2021

-O R D E R-

LAFFAR, J.

[1] The Petitioner filed this application mainly seeking a writ of certiorari quashing the Board resolution of the Respondent Bank dated 30.11.2017 as published in the Gazette No. 2054 of 12.01.2018 [P11(a)], whereby the Bank resolved to recover the dues from the Petitioner to the Bank by selling the mortgaged property i.e. Happy Leoni Hotel, in terms of the provisions of the Bank of Ceylon Ordinance, as amended by Act, No. 34 of 1968 and Law, No. 10 of 1974; a writ of certiorari quashing the Certificate of Sale dated 14.06.2018 [P14(a)]; and a writ of prohibition preventing the Respondent and/or its assignees and/or its representatives from acting in any manner whatsoever pursuant to the purported Certificate of Sale P14(a).

[2] In paragraph 06 (a) of the petition, the Petitioner accepts that he obtained several financial services including permanent and temporary Overdraft Facilities¹ but states he never defaulted on the payment other than one or two months in the mid of 2017 due to prolonged drought in the North Central Province and his health condition [vide paragraphs 7 & 9(a) of the petition].

[3] In paragraph 06 (h) & (j) of the petition, the Petitioner accepts the execution of several Mortgage Bonds [i.e. P6(a), P6(b) and P6(c)] executed as collaterals in respect of the hotel , but in paragraph 08, states that due to his medical condition which associated with unsoundness of mind, Respondent Bank, especially the staff of the Anuradhapura Branch, had deceived him to mortgage the property promising more financial facilities with *mala fide* intent.

¹It is well established that, from a legal point of view, an overdraft is a loan granted by the bank to the customer. When an account is overdrawn, the customer becomes the debtor and the Bank, the creditor. A point is made that a bank is obliged to let its customer overdraw only if it has contractually undertaken to do so. Vide: *S.C. (LA) Appeal 175/2015, SC Minutes dated 27.10.2017.*

[4] The Petitioner further submits that due to the aforesaid difficulties, he made several requests from the Respondent to assist him to reschedule the financial facilities, to which the Respondent Bank extended offers and promises on the expansion of the hotel and the business. However, according to the Petitioner, the Respondent with *mala fide* intent expedited the recovery process by passing a Board Resolution to auction the hotel property.

[5] In paragraph 11 of the Petition, the Petitioner submits that the financial facilities granted to him were in respect of the current accounts (in the name of the Petitioner and the hotel) and the said facilities when granted were not secured by collateral and the said overdraft facilities were only subject to the condition of review and renewal at the end of each year as it was represented to him by the Respondent.

[6] The position of the Bank is that, the Petitioner has failed and neglected to deposit at least one cent in order to regularise the payments due to the Bank, from the date the facilities granted to the Petitioner became Non Performing Loans, namely 28.02.2017, 10.04.2017 and 27.06.2017. The Respondent Bank further submitted that the Petitioner's default of over Rs. 308 Million has seriously affected the Bank's Loan Portfolio, Liquidity and profitability and the Petitioner's failure and negligence to regularise his loan payments is ultimately affecting the depositor's funds and the Respondent Bank is legally bound to safeguard the interests of the depositors [vide paragraph 03 of the Limited Statement of Objection dated 05.02.2019].

[7] All these facts and submissions lead me to the irresistible conclusion that major facts are in dispute and therefore the writ Court lacks the jurisdiction and ability to pass judgment on this matter (*Thajudeen vs. Sri Lanka Tea Board*², *Wijenayake vs. Minister of Public Administration*³, *Lanka Healthcare Services (Pvt) Ltd. vs. Sri Lanka Land Reclamation and*

² [1981] 2 SLR 471

³ [2011] 2 SLR 247

*Development Corporation and 6 others*⁴). The writ Court is not a trial Court to decide the veracity of conflicting assertions of rival parties.

[8] Writ is a discretionary remedy. A Petitioner who is seeking relief in an application for the issue of a writ 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 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 (vide *Jayaweera vs. Assistant Commissioner of Agrarian Services Ratnapura and Another*⁵).

[9] In the circumstances, I take the view that this petition should be dismissed *in limine* as I see no legal basis to issue formal notice of this application on the Respondents.

Notice refused.

Application dismissed. No Costs.

Judge of the Court of Appeal

K. K. A. V. SWARNADHIPATHI, J.

I agree.

Judge of the Court of Appeal

⁴ CA/WRIT/393/2016, C.A. Minutes dated 22.06.2018

⁵ [1996] 2 SLR 70