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

In the matter of an Application for Orders in the nature of Writs of Certiorari, Prohibition and Mandamus under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Wickrama Arachchige Iresha
No. 96/1/B,
Kiththampahuwa, Wellampitiya.

CA (Writ) App. No. 856/2025

PETITIONER

Vs.

1. Millaniyage Samudra Nilupul de Costa,
   No. 167/26, Governor's Road,
   Hekiththa, Waththala.

2. Piyasena Ranasigne,
   Chairman

3. Padma Palihakkara,
   Member

4. Sarath Chandrasiri,
   Member

5. Milton Marasinghe,
   Member

6. Somapala Karunathilaka,
   Member

2nd to 6th of Debt Conciliation Board, No. 35 A, Dr. N.M. Perera Mawatha, Colombo 08.

7. Hon. Attorney General,
   Attorney General's Department,
   Colombo 12.

RESPONDENTS

Before: S. U. B. Karalliyadde, J

Dr. D. F. H. Gunawardhana, J.

Counsel:

Dushantha Kularathne with Mahada Fernando instructed by Shanika Samarawickrama for the Petitioner.

Supported on: 17.09.2025

Order delivered on: 17.10.2025

Dr. D. F. H. Gunawardhana, J.

Order

Introduction

The Applicant-1st Respondent (hereinafter referred to as the "1st Respondent") is the owner of a parcel of land, in extent of 5 perches, situated in the Wellampitiya. The 1st Respondent having obtained Rs. 500,000/- (Five Hundred Thousand Rupees) on 08th June 2019, he has executed a mortgage bond, bearing No. 90, attested by Ms. K.L. Manjula Notary Public, in favour of the Petitioner-Respondent (hereinafter referred to as the "Petitioner"), from whom he had obtained the said Rs. 500,000/- (Five Hundred Thousand Rupees). The said loan was obtained at an interest rate of 4% per mensem; and there was also a condition in the said mortgage bond, that the 1st Respondent had undertaken to redeem the said mortgage by paying the principal amount along with the interest due thereon within 6 months from the date of execution. However, since the 1st Respondent had failed to pay the interest or the principal sum, the 1st Respondent had agreed to execute a transfer deed at the request of the Petitioner, after the period of 6 months. Accordingly, a transfer deed bearing No. 68, attested by the same Notary Public, Ms. K.L. Manjula, dated 16th December 2019, has been executed in favour of the Petitioner.

The Petitioner and the 1st Respondent have entered into a further agreement in the form of a Memorandum of Understanding (MOU) to redeem the said property within one year by paying the full amount of Rs. 1,000,000/- (One Million Rupees). However, without redeeming the said property, the 1st Respondent has filed an application before the Debt Conciliation Board (hereinafter referred to as the "Board") seeking a declaration that he is the debtor, and the Petitioner is the creditor and accordingly seeking to settle the issues between the parties. He also sought to have the Deed bearing number 68, marked as **P3** annexed to the Petition, be declared a sham or only as a mortgage bond and not a transfer, although it appears to be a transfer.

However, after inquiry, the Debt Conciliation Board, by the impugned order marked as **P4**, decided that **P3** is not a transfer, though it mentions so, it is only a mortgage; therefore, the 1st Respondent is entitled to redeem the property by paying back the principal and the relevant interest.

Being aggrieved by the said order of the Board, the Petitioner has come before us seeking to invoke the jurisdiction of this Court in terms of Article 140 of the Constitution. This was supported on 17.09.2025, and the following submissions were advanced before us by the Counsel.

Arguments

The thrust of the main submission of Mr. Fernando, Junior Counsel, is that the Debt Conciliation Board has assumed jurisdiction without considering the fact that **P3** is a valid transfer executed for valuable consideration. Therefore, when there is a valid deed for valuable consideration, the Debt Conciliation Board does not have jurisdiction. Assuming jurisdiction amounts to an arrogation of jurisdiction. However, in answering a question posed by the Court, Mr. Fernando further submitted that he does not make any submission based on the time limits within which the 1st Respondent had gone before the Debt Conciliation Board to invoke its jurisdiction.

The Petitioner in this Application has sought to challenge the assumption jurisdiction by the Members of the Debt Conciliation Board, on the basis that the Board has no jurisdiction unless **X2** is a Deed of Mortgage; since it is a Deed of Transfer, the Board does not have jurisdiction to hear and determine the application to the Debt Conciliation Board, marked as **P1**, by 1st Respondent. However, it must be noted that the said objections had never been raised before the Board.

Secondly, the preliminary objections raised before the Court was on the territorial jurisdiction, which was overruled by the Board. Therefore, it is my view that such an objection cannot be taken up now. However, I will now proceed to consider whether the Petitioner can still maintain that objection to the jurisdiction, according to the facts transpired in the course of the inquiry before the Board.

Issues to be decided

Accordingly, in this application, the following questions have arisen to decide whether notice should be granted:

1. Whether the Debt Conciliation Board can entertain the application made by the 1st Respondent, given that on the face of **P3** it is not a transfer, but a mortgage.
2. Whether the Debt Conciliation Board's decision, marked as **P4**, is amenable to the jurisdiction of this court.
3. According to the submissions made by the counsel for the Petitioner, whether the Debt Conciliation Board erred in both fact and law when coming to its conclusion, based on the evidence presented.

Now, I will consider each and every question accordingly.

The entire proceedings, including the application and journal entries, are marked as **P1** annexed to the Petition before us. According to **P1**, the Debt Conciliation Board has assumed jurisdiction, despite the document marked as **X2** annexed to the Petition is titled "Deed of Transfer." Upon the perusal of the proceedings before the Debt Conciliation Board after assuming jurisdiction on 26th June 2022, the matter had been fixed for inquiry, it is clear that the 1st Respondent has given evidence first. According to him, since the 1st Respondent was in need of money, he obtained a certain facility from the Petitioner. The Respondent, having advanced Rs. 500,000/- (Five Hundred Thousand Rupees), obtained a mortgage on the same property, which is situated in Wellampitiya and in extent of 5 Perches, as I have mentioned above. The said mortgage is attested by Ms. K.L. Manjula Notary Public and bearing number 60, marked as **X1**. According to **X1**, the 1st Respondent is to pay 4% interest per mensem (the total interest is Rs. 20,000/-); it is his position that he was unable to make the payments. Though he set off some interest against the rent due from the Petitioner's aunt, who was occupying the residence in the mortgaged property as a tenant on payment of Rs. 12,000/- (Twelve Thousand Rupees) per mensem, the balance of Rs. 8,000/- (Eight Thousand Rupees) he had to pay out of Rs. 20,000/- (Twenty Thousand Rupees) per month, which also he failed to comply with. Therefore, after 6 months with no response from the 1st Respondent, the Petitioner suggested effecting a transfer deed marked as **X2** in lieu of the mortgage so that, within a period of one year, the 1st Respondent would be able to redeem the same by paying the full amount.

It was further stated that the parties entered into a Memorandum of Understanding (MOU) on the same day, which states that the 1st Respondent is entitled to redeem the property within one year by payment of Rs. 1,000,000 (One Million Rupees). The said MOU is annexed as **X3** to the Petition before us. However, the Petitioner denies her signature or any attesting witnesses on this document and denies entering into such a MOU. Nevertheless, the said document is marked as **X3** before the Debt Conciliation Board.

The 1st Respondent's position is that he never wanted to sell the property for Rs. 1,000,000/- (One Million Rupees), since it was worth more than Rs. 5,000,000/- (Five Million Rupees) at the time. The 5-perch block contained a three-roomed house equipped with a kitchen, toilet, pantry, etc., making it worth around Rs. 5,800,000/- (Five Million Eight Hundred Thousand Rupees). To support this, he obtained a report from a valuer, marked as **X10**. Afterward, having secured money, he attempted to settle the Rs.1,000,000/- (One Million Rupees), but the Petitioner did not respond, despite the 1st Respondent making several telephone calls and sending text messages to the Petitioner. A screenshot of such a text message sent to the Petitioner is annexed as **X4**. He subsequently reported the matter to the police (marked as **X5**), to which the Petitioner responded by making a statement, marked as **X8**.

The 1st Respondent further continued his evidence marked in the Letter of Demand, sent through a lawyer as **X7**, and the Land Registries entries as **X8**, where the transfer deed and mortgage bond are administered. His application to the Board is also marked as **X9**. Although the 1st Respondent was subjected to a lengthy cross-examination, his evidence remained consistent regarding the circumstances in which the transfer deed was effected. His stance is that he never intended to transfer the beneficial interest of the property to the Petitioner. On the other hand, the Petitioner's stand is that the 1st Respondent effected a transfer deed in her favour. Since the 1st Respondent was at a disadvantage with no bargaining power, he was compelled to execute the transfer deed marked as **X2**. His evidence was supported by the valuer's evidence. However, during cross-examination, he admitted that the valuation was carried out only after the application was filed before the Debt Conciliation Board.

Other than that, several other witnesses were called by the 1st Respondent, including the lawyer who had advised him at the time of effecting the transfer deed to enter into the MOU marked as **X3**. It was his evidence that he insisted that the lawyer who attested **X2**, the transfer deed, should sign as an attesting notary in the MOU marked as **X3** as well; but she has failed to do so. His evidence was not challenged. Furthermore, the 1st Respondent called a police officer to establish that he made a police complaint about the non-response of the Petitioner when he asked her to re-transfer the property, which he had transferred by **X2**.

The Petitioner then gave evidence, she admitted that **X1** is the mortgage bond and that she later received **X2,** which was executed as a transfer deed. Her position was that since the 1st Respondent could not pay the due amount under **X1**, he wanted to sell the property to an outsider. She proposed that he should sell it to her, and on that understanding, he sold it to her. However, in cross-examination, when confronted with the fact that the property was worth much more than that, she could not provide a satisfactory answer. She maintained, however, that she had already given the 1st Respondent Rs. 2,000,000/- (Two Million Rupees), although the consideration stated in the document was only Rs. 1,000,000/- (One Million Rupees). She was then asked whether she had defrauded the Government, or whether she had only given him Rs. 1,000,000/- (One Million Rupees), to which she could not give a clear answer. Additionally, it was suggested that the 1st Respondent had purchased the property for Rs. 2,000,000/- (Two Million Rupees) in 2014, and thus, there was no reason for him to sell it to her for only Rs. 1,000,000 (One Million Rupees) in 2020, 6 years later.

Thereafter, she called the person who signed as a witness to **X3**. Although, in his evidence-in-chief, he had denied that his signature appeared on **X3**, during cross-examination, he admitted that his signature was indeed on the MOU.

In view of those facts, the learned member of the Board concluded that, although **X2**, the so-called deed of transfer, is titled as a transfer deed, it is merely a sham. Therefore, the Debt Conciliation Board has the power to settle the matter, and accordingly, the Board assumed jurisdiction.

It is trite law that the Debt Conciliation Board is a statutory authority, which is empowered to take decisions in deciding the rights and duties of the parties that come before it, and is amenable to the writ jurisdiction of the Court of Appeal. Therefore, in my view, it is amenable to the writ jurisdiction.

I will now consider whether the facts of this case warrant any intervention by this Court in the decision already taken by the Debt Conciliation Board.

Firstly, the 1st Respondent's stand was supported by the witnesses called by him, established that circumstances compelled him to execute the transfer deed, **X2**, as marked in the evidence. He had no means of paying either the principal amount borrowed nor the interest, since he was unable to find money. Secondly, he never intended to sell the property to the Petitioner, and the witnesses called by the Petitioner could not shake 1st Respondent's evidence given by the witnesses called by him during the cross examination. Another point is that he purchased the property for Rs. 2,000,000/- (Two Million Rupees) in 2014; therefore, there is no reason for him to sell it for only Rs. 1,000,000/- (One Million Rupees) in 2020, 6 years later. Although the transfer deed, marked by the Petitioner, which is in her custody, indicates that the consideration in 2007 was Rs. 700,000 (Seven Hundred Thousand Rupees), even considering the lapse of time from the original transfer under which the 1st Respondent became the owner, and the purported transfer under **X2** in 2019, the 1st Respondent has not gained any capital from the bargain. Accordingly, this also should be considered against the Petitioner. Additionally, though the valuation report of the property was obtained after the application was filed, it indicates the contemporaneous of the evaluation.

Therefore, the Board is justified in concluding that **X2** is not a true transfer and is merely a sham. The Board has jurisdiction to proceed with the inquiry.

Conclusion

Accordingly, for the reasons adumbrated above, I refuse to issue formal notice and dismiss this application *in limine*.

JUDGE OF THE COURT OF APPEAL

S. U. B. Karalliyadde, J.

I agree.

JUDGE OF THE COURT OF APPEAL