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, Mandamus and Prohibition under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

C.A. CASE NO. WRT/0299/24

1. R H Steel Building Systems (Private) Limited,
   No. 146/10A, Caldera Gardens,
   Dutugemunu Street, Kohuwala,
   Nugegoda.

2. Ruwan Priyashantha Kukulewithana,
   No. 86/6,
   Nandana Saheli Gamage Mawatha,
   Katuwawala Road, Maharagama.

3. Kankanam Pathiranage Thanuja Dilhani Kukulewithana,
   No. 86/6,
   Nandana Saheli Gamage Mawatha,
   Katuwawala Road,
   Maharagama.

PETITIONERS

Vs.

1. DFCC Bank PLC,
   No. 73/5,
   Galle Road,
   Colombo 03.

2. Thusitha Karunarathne,
   T & H Auction,
   No. 50/3,
   Vihara Mawatha, Kolonnawa.

RESPONDENTS

BEFORE : K. M. G. H. KULATUNGA, J.

COUNSEL : Sandamal Rajapaksha, with V. G. H. K. Mendis, for the Petitioners.
Keshan Thalgahagoda, instructed by Thejaka Perera, for the Respondents.

ARGUED ON : 26.08.2025

DECIDED ON : 09.10.2025

JUDGEMENT

K. M. G. H. KULATUNGA, J.

1. The petitioner is challenging a resolution passed by the 1st respondent bank under the provision of Section 04 of the Recovery of Loans by Banks (Special Provisions) Act, No. 04 of 1990. It is common ground that the 1st petitioner company has obtained a facility and the property in issue had been provided as collateral. In view of the default, the 1st respondent bank has demanded a sum of Rs. 288,117,144.17 [*vide* P-6(b)] and upon the failure to make payment accordingly, the 1st respondent bank has resolved to parate execute the said mortgage property by resolution dated 18.12.2023 [*vide* P-11(b)].

2. According to the pleadings of the petitioner, the basis of challenging the resolution, as evident from paragraphs 14, 16, 18, 19, 24, and 25, is the discrepancy in the amounts claimed. However, when this matter was taken up for argument, there was a complete shift of this ground, and what Mr. Sandamal Rajapaksha, AAL, urged was that the 1st

petitioner company is not a '***wilful defaulter'***, which, according to him, had not been considered by the 1st respondent prior to passing the resolution. The resolution is passed under and by virtue of Section 04 of Act No. 04 of 1990. The enabling provision of the statute does not specify any such requirement or the consideration if the default or the defaulter is wilful. When there is a default and a demand has been made, the bank is entitled to resolve that such property be sold by public auction. As to whether such default was wilful or otherwise is not a consideration that the statute recognises. The petitioner did not refer to any clause of the agreement either, which provided for such a consideration. In these circumstances, it is settled law that in the guise of interpretation, a Court will not endeavour to interpolate or add fresh or new grounds or matter which such statutory provision does not provide for.

3. Section 04 of Act No. 04 of 1990 simply provides thus:

> *"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 up to the date of the sale, together with the moneys and costs recoverable under section 13."*

Section 04 provides for and empowers the board of any bank to resolve and authorise any specified person to sell, by public auction, the property so mortgaged to the bank as security for a loan which such borrower has defaulted on. The only requirement to be considered is that there is a loan in respect of which a default has been made. In such circumstances, such loan, if secured by the mortgage of a property, this statute empowers the bank or the lending institution to authorise and empower the sale of such mortgaged property (security) to recover the unpaid portion of such loan, interest due, and other costs permitted to be recovered. The amount so due recovered by such resolution will include the interest and unpaid portions that has accrued up to the

date of the sale of the property. The resolutions passed and procedure followed to effect parate execution is provided by statute, and the lending institutions and boards of banks are statutorily authorised to act under such statutory provision. These provisions have in effect conferred upon one party to a commercial contract or transaction the right to decide upon the default and the sum due and to authorise the sale and recovery. In the normal course of events, these are matters and powers entrusted to a judicial body. It is on this basis that the passing of the resolution and parate execution and recovery is amenable to writ.

4. The petitioner's complaint that he is not a wilful defaulter is not a relevant consideration in passing a resolution. What is relevant is the fact of there being a default and the principal sum or part thereof along with interest being due. In such circumstances, upon due notification being given to the defaulter and demand being made, nothing further is required to be considered to resolve or to recover under this Act. The petitioner admits the default but attempts to give a reason. In view of the statutory provisions of Section 04, not being a wilful defaulter is neither a requirement nor a matter that requires to be considered by a board. Accordingly, I am not inclined to consider this ground of challenge, and the same is rejected.

5. The other substantive ground urged by the petitioner is that the amounts shown as due in the resolution differ from amounts claimed in the several letters of demand. It is the position of the respondent that the letter of demand also include certain sums which had not been secured by the mortgage bonds that are sought to be enforced under Act No. 04 of 1990. However, the resolution is limited and only includes the amounts due and the liabilities that are secured by the mortgagor, which is sought to be enforced by such resolution. The petitioner also submits that certain payments have been made upon and subsequent to the resolution being passed. On this basis, it is urged that the quantum in the resolution does not correctly depict or reflect the actual

amount due. Though the 1st respondent bank resolves to parate execute the property, and such resolution expressly states the amount that is due and owed on the mortgage bond, Section 14 provides that upon the sale of the mortgage property, the bank shall pay any surplus or balance remaining to the borrower. In considering the remaining balance, if there be any payment made between the date of the resolution and the sale of the mortgage property, it will be given credit to. As such, I see no merit in this argument either.

6. The amount set out in the resolution P-11(b) is Rs. 314,231,731.47. However, the aggregate of the total amount due on the remaining loans and on the principal overdraft is an amount of Rs. 314,231,731.47, which is the same amount as resolved. The petitioner also submitted that the default was a result of several events beyond the control of the petitioner company, namely the Covid-19 outbreak and the lockdown and the economic crisis. Further, a collapse in the construction industry is also urged. It is common ground that various adjustments, grace periods and moratoriums were granted to meet these exigencies and unavoidable circumstances. The petitioner company, notwithstanding such concessions, appears to have defaulted. Whatever may be the cause of the default, the end result is that the petitioner has not been clearly able to keep up with the payments according to the loan agreements, and the amount outstanding now is an extremely significant amount of over 314 million rupees. Banks and financial institutions are entrusted with the moneys of the public by way of deposits. Such banks are then required to invest and utilise such funds to generate income to pay interest due to such depositors and to facilitate the granting of financial facilities to those who so require. In this process, special provision was enacted to enable banks and financial institutions to expeditiously recover the amounts outstanding and due. One of the primary objectives of this was to ensure the continuity of such an institution and the facilitation of the economic activities and the ensuring of finances within the economy. In this

context, it is extremely important that repayment and recovery of loans and dues is of primary importance, without which there is a serious danger of the banks and financial institutions collapsing. In these circumstances, this Court is required to be mindful of the object of this special statute in considering the applications of this nature.

7. As this is an application for a writ, the petitioner is required to establish illegality, irrationality or a procedural impropriety; the petitioner does not urge any ground that comes within the above principles. There is no allegation or submission of any illegality, irrationality, procedural impropriety or denial of a fair hearing. As aforesaid, not being a wilful defaulter as well as Covid-19 and the economic crisis would not be relevant considerations at the point of passing a resolution. The only ground urged is that the sum referred to in the demand is different from that which is in the resolution. The respondents in their written submissions have clearly explained that the petitioner's said argument is misconceived and confused and that the demands made by letters P-9(a) and (b) are not made to the 1st petitioner company but to a personal guarantor. In any event, there is no challenge or dispute that the property referred to in the resolution had been mortgaged as collateral to secure the facilities obtained by the 1st respondent company. To that extent, the resolution is in respect of a property mortgaged a security to secure facilities for which the 1st petitioner company is in default. In these circumstances, sympathetic grounds and other mitigatory circumstances, and the various attempts being made to repay even after the resolution cannot be grounds to issue a writ against the impugned resolution.

8. On a perusal of the pleadings and documents, it is apparent that the petitioner has obtained a series of facilities in the form of loans and overdraft facilities, subject to various terms and conditions of repayment and interest. These facilities have not been serviced as agreed, and it is in evidence that there have been concessions granted

and rescheduling of these facilities periodically. These facilities have been secured by several mortgage bonds. The default as well as the receipt of letters of demand are not in dispute. Considering the sequence of events, it is apparent that the 1st respondent bank has afforded and granted all possible concessions to the 1st petitioner company. Notwithstanding such extensions and concessions, the 1st petitioner company has failed to duly service the said facilities and is now in default.

9. The position advanced as stated above is that due to a multiplicity of causes, the default is due to reasons beyond the control of the petitioner. A similar situation and argument was considered by Samayawardhena, J., in ***Bettans Group of Companies (Pvt) Ltd vs. Lankaputhra Development Bank and others*** (CA/WRIT/230/2015, decided on 10.07.2020), in which, rejecting this said argument and dismissing the application, his Lordship has held as follows:

> *"Admittedly, the Petitioner Company obtained banking facilities from the 1st Respondent Bank and defaulted. The Petitioner 3 says the default is due to reasons beyond its control. After a spate of correspondence spanning many years, the Bank has, in terms of section 4 of the Recovery of Loans by Banks (Special Provisions) Act, No. 4 of 1990, as amended, passed a Board resolution dated 27.04.2015 marked R13 to recover the dues of the Petitioner Company by parate execution.*
>
> *The Petitioner says the Bank refused to reschedule the loan, as recommended by the Central Bank by letter dated 19.05.2015. In fact, the said letter marked R15(A) tendered with the Respondents' statement of objections, merely requests the Respondent Bank to look into the matter and respond to the Petitioner within 14 days. The Petitioner filed this application seeking a writ of mandamus compelling the Bank to reschedule the loan, and a writ of certiorari*

quashing the aforesaid Board resolution as it is "arbitrary and grossly unreasonable.

This Court cannot quash the said Board resolution on the grounds of arbitrariness and unreasonableness because the resolution is not arbitrary and unreasonable. The Bank is statutorily entitled to pass such resolutions to recover its dues. Nor can this Court force the Bank to reschedule the Petitioner's loan. There is no obligation, statutory or otherwise, on the part of the Bank to reschedule the loan."

The intention of the legislature.

10. The enacting of the special statute to enable and empower banks to recover loans expeditiously was brought in by the legislature with a specific object and intent. This is clearly evident from the preamble to Act No. 4 of 1990:

"AN ACT TO PROVIDE FOR THE RECOVERY OF LOANS GRANTED BY BANKS FOR THE ECONOMIC DEVELOPMENT OF SRI LANKA; AND FOR MATTERS CONNECTED THERE WITH OR INCIDENTAL THERETO."

It is thus clear that the provisions of this statute does not merely provide for an expeditious process for banks engaged in commercial activities. The object has gone well beyond it, to facilitate the economic development of Sri Lanka. The intent of the legislature is clearly illustrated and demonstrated by the speech made by the then minister in proposing this legislation:

"Another important change is introduced in the Recovery of Loans by Banks (Special Provisions) Bill. Under this Bill the right of parate execution which has already been granted to the State banks will be extended to all banks in the country, but not to the finance companies. The right of parate execution enables a lending institution to sell the property mortgaged to it by a debtor who is in default without seeking the intervention of a court of law. Modern banking laws in other countries, in developed countries like the United Kingdom as well as developing countries like Singapore,

allow the right of parate execution to banking institutions. The right of parate execution will cover all property mortgaged to a bank whether movable or immovable..." (Parliamentary Debates (Hansard), dated 23.01.1996, Vol. 62, at columns 864-867).

In the above circumstances, in considering an application of this nature, giving weight to and considering extraneous matters such as various circumstances that led to the default and inability to repay are clearly irrelevant. This would clearly go against the very object and purpose of Act No. 4 of 1990 and defeat the very purpose of this legislation. In these circumstances, the petitioner has failed to establish any ground which warrants the exercise of the writ jurisdiction and grant relief as prayed for.

11. As I have already held, the grounds urged by the petitioner are devoid of any merit. I see no basis in law or otherwise to grant the relief as prayed for by the petitioners.

12. Accordingly, this application is refused and dismissed. However, I make no order as to costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL