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

In the matter of an Application under Article 140 of the Constitution for a mandate in the nature of Writs of *Certiorari*, *Mandamus* and Prohibition.

Court of Appeal Case No:
CA/WRIT/948/2025

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. Seylan Bank PLC,
   No. 90,
   Galle Road,
   Colombo 03.

2. Chandima Priyadarshani Gamage,
No. 91,
Sarvodaya Mawatha,
Panagoda,
Homagama.

RESPONDENTS

Before: Mayadunne Corea, J
Mahen Gopallawa, J

Counsel: Laknatha Senevirathna with V.G.H.K. Mendis for the Petitioners.

Order delivered on: 31.10.2025

Mayadunne Corea J.

The Petitioners in this Application sought, *inter alia*, the following reliefs:

> "*b) grant and issue a mandate in the nature of a Writ of Certiorari quashing the resolution dated 29/07/2025 of the 1st Respondent Bank marked P14b to auction the properties more fully described in the Schedule to the Mortgage bonds bearing Nos. 935 dated 19/01/2015 attested by Deepani Range, Notary Public and Mortgage Bond No. 2127 dated 13/06/2018 attested by Sandamali Bharathirathne, Notary Public in favour of the 1st Respondent Bank.*
>
> *c) Grant and issue a mandate in the nature of a Writ of Certiorari quashing that portion of the Gazette Publication of Resolution in three newspapers on 11/08/2025 and Gazette Notification on 15/08/2025.*
>
> *d) Grant and issue a mandate in the nature of a Writ of Certiorari quashing that portion of the Gazette Notification and paper publications and notices with regard to the Notice of Auction sale on 29/09/2025*."

The learned Counsel for the Petitioners submitted that this matter was listed to be supported on an urgent basis to obtain interim relief as their land was to be auctioned by the 1st Respondent bank. However, the auction had been carried out and accordingly,

they are not pursuing the interim relief and would support this Application only for the purpose of obtaining notices.

The facts of the case briefly, are as follows. The 1st Petitioner company engages in the business of building construction. The 2nd Petitioner is the chairman, managing director and shareholder of the 1st Petitioner company. The 3rd Petitioner is the wife of the 2nd Petitioner and is a director and shareholder of the 1st Petitioner company. The 1st Petitioner company had obtained financial facilities from the 1st Respondent bank (sometimes referred to as 'bank') by mortgaging a land and a vehicle as security.

The Petitioners state that they defaulted on loan repayments owing to the Covid-19 pandemic and the financial crisis and thereby, the Petitioners requested the 1st Respondent bank to provide a new loan repayment plan. The bank had responded by providing details of the balance and had informed the Petitioners that the bank would proceed with the recovery action. The Petitioners further state that as there were discrepancies in the outstanding amount, the Petitioners wrote to the DGM – Operations and Recoveries, Chief Executive Officer and Chairman of the bank but the Petitioners received no response.

Thereafter, the Board of Directors of the 1st Respondent bank passed a resolution authorising the recovery of the loan together with interest, and a notice of sale by auction was published pursuant to section 3 of the Recovery of Loans by Banks (Special Provisions) (Amendment) Act, No. 4 of 1990. The Petitioners, being aggrieved, allege that the said resolution is bad in law. Hence, this Writ Application.

The Petitioners' contention

The Petitioners contend that the resolution passed by the bank is bad in law as the 1st Respondent bank had not considered the past history and the payments made by the Petitioners. It is their contention that the bank should use its discretion in deciding whether a mortgaged land should be sold and it should be done in good faith with due consideration of the borrower's circumstances.

Analysis

At the commencement of the submissions, the learned Counsel for the Petitioners submitted that the bank had concluded the auction and therefore the Petitioners were not pursuing the relief (f) in their prayers.

The Petitioners concede that they have obtained several loans and also concede that they have defaulted in payment to the bank. However, they submit that they have made several payments to reduce the amount due. The Petitioners also concede that the bank has the power to resort to *parate* execution and auction the mortgaged property to recover the dues. However, their main contention is that in taking the said decision to auction the land, the bank should act cautiously and exercise the power vested with them in good faith and due consideration of the circumstances faced by the borrowers. Further, it was the Petitioners' contention that when a bank uses its discretion to auction the land, due consideration should be given to repayments made.

To obtain a better understanding of the relationship between the bank and the Petitioners, let me now consider the circumstances that led to the present predicament the Petitioners find themselves in.

Loans obtained by the Petitioners

The 2nd and 3rd Petitioners submit that they have been carrying on the business in the name of the 1st Petitioner company, which is the business entity. However, the 1st Petitioner had purchased the land in question through the Deed of Transfer No. 1303 dated 07.10.2007 and alleges that the current market value of the land is about Rs. 54 million. The Petitioners have been customers of the 1st Respondent bank for 12 years and on various occasions have obtained financial facilities. It was submitted that the Petitioners have repaid a sum of approximately Rs. 200 million for a period from 2015-2023 for the several facilities they had obtained.

The loan that led to the impugned decision taken by the 1st Respondent bank

The learned Counsel submitted that the Petitioners had obtained the two loan facilities, namely, an overdraft and a term loan, as reflected in P5, P7a and P7b. It is the contention of the Petitioners that the bank had charged them a staggering interest rate of 28% per

annum and subsequently raised it to 36% per annum. However, they have submitted to the Court the statement of accounts pertaining to the loans. It was the contention of the Petitioners that when they obtained the loan, the 1st Respondent had applied the interest rate of 9% per annum, which had been increased to 15% and thereafter 28% ending at 36% annum. Upon inquiry by this Court, the Petitioners concede that, as per the terms contained in the loan application, the 1st Respondent had the authority to raise the interest rate. It was also conceded that the Petitioners when faced with financial difficulty renegotiated the loan which had occurred on two occasions and further conceded that the interest rates had been agreed at the rescheduling.

The Court observes that the Petitioners have failed to tender any material to demonstrate the terms and conditions of the loan, the amount and the interest rate for reasons best known to them. Therefore, this Court would not have the opportunity to ascertain the exact amount of the loans taken and the terms and conditions upon which the loans were granted.

The Petitioner further submits that due to the financial crisis that prevailed in the country and the Covid-19 pandemic, the Petitioners could not honour the repayments as agreed. However, they had been constantly renegotiating with the bank to reschedule the loans once again and for a waiver of interest due on the capital borrowed.

Further, the Petitioners submit that the Government of Sri Lanka owes them a sum of Rs. 225 million for a project which they had done and the said subject matter had been referred for arbitration. The said arbitrator's award is to be delivered in the coming months. Hence, they submit that the 1st Respondent should have considered this fact before deciding to pass the resolution to auction the land. It is pertinent to observe that the Petitioners have failed to produce any documentary evidence to substantiate the submission pertaining to the debt owed to the Petitioners from the Government of Sri Lanka.

Upon inquiry by this Court, the learned Counsel for the Petitioners conceded that, though the arbitration concluded, they do not know the exact amount which would be awarded to them, and they also conceded that they are unaware whether the award would be in their favour. Hence, leaving aside the legality, the argument of the Petitioners that the 1st Respondent should have taken the arbitration into consideration before the said resolution was passed is not tenable even on factual grounds.

Have the Petitioners come to Court with clean hands?

The Petitioners' next argument was that in 2020, the 1st Petitioner company owed a sum of Rs. 887,335,419.83 to the 1st Respondent. The Petitioners have filed the statement of accounts marked as P5 to establish this fact. However, the Petitioners allege that within a period of 2 years, they had reduced the said due amount to Rs. 561 million by repaying the loans and allege that the 1st Respondent bank should have considered the conduct of the Petitioners, especially the Petitioners attempt of reducing the loan liability before the impugned resolution was passed.

This Court observes that to substantiate the above contention, the Petitioners have picked and chosen the statement of accounts that they tendered to this Court. The Court comes to this conclusion as the Petitioners have failed to file the statements of accounts pertaining to the entire period of the loan, which would have reflected their true liability. The Petitioners have only filed three statements of accounts pertaining to the whole loan period, namely P5, P7a and P7b. P5 is dated 14.08.2020 and P7a and P7b are dated 23.03.2023 and 08.09.2022, respectively. This action in my view, demonstrates that the Petitioners have not invoked the jurisdiction of this Court with clean hands, a Petitioner who challenges the resolution of a bank on the basis of not exercising the said discretion in good faith and alleges that in coming to the said decision the bank should have taken into consideration the Petitioners' circumstances, should first demonstrate his good faith as a debtor to repay the loan.

I have considered this argument and I find the resolution has been passed by the bank pursuant to section 4 of Act, No. 4 of 1990. The said section states as follows.

> *"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."*

This section does not impose any liability on the bank to consider the past conduct of the Petitioners. As per the section, if the debtor has defaulted upon passing a resolution by its board the bank has the power to sell by public auction the property mortgaged to the bank. Hence, in my view, the Petitioners' contention of considering their past record before passing the resolution has to fail.

Thus, the Petitioners by failing to pay and failing to give a reason as to why they failed to produce the statements of accounts for the entire loan period have not invoked the jurisdiction of this Court with clean hands.

Suppression of material facts from the Court

It is further observed by this Court that the bank has imposed several conditions through P7a and P7b on the mode of repayment. Especially by P7b, the Petitioners have been given a grace period of 9 months. However, as per the conditions thereon, the Petitioners should have paid the interest within the grace period and should have paid the capital by 50 monthly instalments. This has not been pleaded anywhere in the Petition. Upon inquiry by this Court, the Petitioners stated that they had failed to adhere to the conditions. In my view, the Petitioners should have disclosed this in the Petition to demonstrate their *uberrima fides,* which they have failed to do.

It is also observed by this Court that the Petitioners have failed to disclose the reasons for their failure to tender the loan application, whereby they had obtained the loans. As observed above, this would have clearly established the amounts taken as loans, the relevant terms and conditions of the loan and the agreed interest rates.

It is trite law that a Petitioner who invokes the discretionary jurisdiction of the Writ Court, must come with clean hands. Coming to the above conclusion, the Court has taken into consideration the dicta in ***Blanca Diamonds (Pvt) Ltd v. Wilfred Van Else & others*** **(1997) 1 SLR 360,** ***Fonseka v. Lt. General Jagath Jayasuriya and five others*** **[2011] 2 SLR 372 and** ***Jayawardena and another v. Pegasus Hotels of Ceylon Ltd. and others*** **[2004] 2 SLR 39.**

In my view, the Petitioners should have disclosed the conditions laid down in the rescheduled agreement of the loans and their failure to comply with the said conditions. This crucial evidence has not been disclosed to the Court. Further, the Petitioners have failed to tender to this Court the rescheduling agreements, thereby depriving the Court of looking into the conditions the Petitioners have agreed upon rescheduling and failed to fulfil.

The Petitioners are informed that the 1st Respondent passed a resolution

The 1st Respondent had on many occasions sent letters of demand to the Petitioners. The document marked as P9 has been sent on 19.07.2024, whereby the Petitioners have been given notice that if the amounts are not paid, appropriate legal action would be taken to recover the amounts due. The Petitioners sent a letter of reply to the said letter of demand, which is marked as P10 and have submitted that they would repay the loan. However, once again, the Petitioners have failed to comply with the repayment plan marked as P10a. In the said letter, the bank has clearly given notice to the Petitioners that they would take appropriate action under Act, No. 4 of 1990 to recover the dues owed to the 1st Respondent Bank.

Further, the bank has informed the Petitioners to show cause as to why the 1st Respondent should not act under the said Act to recover the amount in default. The bank has sent a letter marked as P12 dated 24.06.2025. As per the document P10a dated 04.07.2025, the Petitioners owed Rs. 55,423,660.77 and as at 04.03.2024. It appears that the Petitioners have failed to reply to the letter of demand marked as P10a as no such reply was tendered to this Court. Subsequent to sending the letter marked as P10a, the 1st Respondent had taken steps to utilize its powers under section 4 of the Act, No. 4 of 1990. The learned Counsel appearing for the Petitioners conceded that at this time there had been a complete breakdown of communication between the parties and the process of attempting to negotiate a settlement between the Petitioners and the 1st Respondent had paused. It appears that the Board of Directors of the 1st Respondent thereafter passed a resolution on 29.07.2025 to proceed with recovery action under Act, No. 4 of 1990. The resolution had been passed and published in the Gazette marked as P14b. Hence, by the letter marked as P14 dated 22.08.2025, the Petitioners have been informed of the same. The paper articles marked as P15a and P15b (which had advertised the Board's resolution to auction the Petitioners' land) and the date of the auction had been sent to the Petitioner. These letters had prompted the Petitioners to file the instant case before this Court in September.

Let me now consider section 3 of the Act, No. 4 of 1990. The said section reads as follows:

> *"Section 3*
>
> *Whenever default is made in the payment of any sum due on any loan, whether on account of principal or of interest or of both, default shall be deemed to have been made in respect of the whole of the unpaid portion of the loan and the interest doe thereupon up to date; and the Board may in its discretion, take action as specified either in section 5 or in section 4;*

Provided, however, that where the Board has in any case taken action, or commenced to take action, in accordance with section 5, nothing shall be deemed to prevent the Board at any time from subsequently taking action in that case by resolution and section 4 if the Board deems it advisable or necessary to do so."

Accordingly, section 3 read with sections 4 and 5 of the Act vests a discretionary power with the 1st Respondent to either auction the property or manage the property. However, it is pertinent to note that it is a discretion solely vested with the 1st Respondent and in my view, after considering the circumstances, the 1st Respondent had exercised the discretion to use the first option to come to a decision which is to auction the said land.

The Supreme Court in ***Sunpac Engineers (Private) Limited and another v. DFCC Bank and another*** **SC/Appeal/11/2021 decided on 13.11.2023** observed that:

"In the above backdrop, I wish to look at the some of the provisions of Act No. 4 of 1990. When section 3,4 and 5 of the said Act are read together, the Act authorizes either sale by public auction and or taking of possession of any property mortgaged in the manner prescribed by the Act whenever any sum is due on the relevant mortgage after passing a resolution and taking steps in accordance with the Act. These sections do not limit the auction or possession to the property mortgaged by the person in whose name the money is lent. To give such meaning a court has to add words to qualify the meaning of the word 'any property' found in said operative sections of the Act."

As stated above in this judgment, it is clear that by the time the bank had decided to act under section 3 of the Act, the Petitioners had owed the bank a sum of Rs. 55,432,660,75 (vide P10a and P14b). As stated above, this Court observes that by this time the Petitioners have failed to comply with the conditions that were offered to them when the 1st Respondent had restructured the loan. It is not disputed that Petitioners had defaulted on the loan and the Petitioners do not dispute the amount owed to the bank. It was also conceded that at this time all communications between the Petitioners and the bank had come to a standstill.

In these circumstances, the bank had decided to use its discretion, which is statutorily available to them. Hence, in my view, I do not find any illegality or lack of good faith in the decision of the 1st Respondent. Though the Petitioners submit that there was a lack of good faith and honesty on the part of the bank, the Petitioners have failed to establish any of these grounds.

In paragraph 28 of the Petition, the Petitioners further alleges that the impugned decision is illegal, *ultra vires*, unlawful, arbitrary, capricious, and offends the legitimate expectations of the Petitioners, violates principles of natural justice, reasonableness and fairness. However, I am unable to agree with any of these allegations, especially in view of the fact that the Petitioners have failed to demonstrate with sufficient material any of these allegations made against the 1st Respondents.

Accordingly, in my view, the Petitioners have failed to establish any of the grounds to impugn the bank's decision marked as P14b. I also wish to observe that in any event, when a party is given a discretionary power to take a decision by the statute, the Writ Court should be reluctant to interfere with such discretion unless there is cogent evidence adduced by the Petitioner that such discretion is used illegally or unfairly and unreasonably. This observation is made by the Court taking into consideration the instant case before me. It is pertinent to note that the economy of a country is driven by the banking sector. This is the reason why the legislature has given banks certain powers to keep the economy running. The banks would be the best adjudicators to utilize the said discretion, depending on the circumstances of each and every case. Especially keeping in mind its interests, which the bank is answerable to its shareholders and customers and the interests of the country's economy at large, subject to however, the law and that the decisions taken are fair. It is also pertinent to note that the banks are dealing with the monies that are invested by the general public. It is the said monies that are invested by the banks to generate their main income. In the said circumstances, if the Courts are to intervene and prevent the banks from excising their statutory rights that will have a direct bearing on the economy of the country. In coming to the said conclusion, I consider the preamble to the Act, No. 4 of 1990, which empowers the bank in the instant case to pass the resolution to recover the monies due. It reads as follows

"AN ACT TO PROVIDE FOR THE RECOVERY OF LOANS GRANTED BY BANKS FOR THE ECONOMIC DEVELOPMENT OF SRI LANKA;…."

Which clearly demonstrates that the Legislature in its wisdom has enacted this statute with the intention of allowing the banks to act in a manner that facilitates the economic development of the country.

Hence, in my view, the Petitioners in this case are inviting this Court to step into the shoes of the bank to consider the circumstances prevailing over the Petitioners, for the bank to use its discretion, which the Court is not inclined to do.

Conclusion

After considering the submissions of the learned Counsel and the documents tendered, in my view, the Petitioners have failed to demonstrate a *prima facie* case that warrants the intervention of this Court. Accordingly, the Court is not inclined to issue formal notice on the Respondents and proceeds to dismiss this Application.

Judge of the Court of Appeal

Mahen Gopallawa, J

I agree

Judge of the Court of Appeal