

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

In the matter of an Application for mandate  
in the nature of Writs of Certiorari and  
Prohibition under and in terms of Article 140  
of the Constitution.

Malluwa Wadu Harshani Piyamalika  
Karunarathne,  
No.322/1, Bathalohenawatta,  
Gonawala, Kelaniya.

**Court of Appeal Case No:  
CA/WRIT/194/24**

**PETITIONER**

**Debt Conciliation Gampaha  
Case No. 45117**

**Vs.**

1. Piyaseeli Wickramasinghe  
Mathurata.  
(Chairperson)
2. Nandini Ranawaka,
3. D. M. Karunarathna,  
Members of the Debt Conciliation  
Board,  
No.02, 11 Vijaya Road,  
Gampaha.
4. Jayasuriya Arachchige Dona Sujani  
Nilanka Jayasuriya,  
No.51/8, 02nd Lane, National Housing  
Scheme,  
Kiribathgoda.

**RESPONDENTS**

**Before:** Mayadunne Corea, J  
Mahen Gopallawa, J

**Counsel:** Erusha Kalidasa with Lakshika Lenavala instructed by Niluka Welgama for the Petitioner.  
Jagath Abeynayaka with Mahesh Dissanayaka for the 4<sup>th</sup> Respondent.

**Supported on:** 24.07.2025

**Decided on:** 29.08.2025

**Mayadunne Corea J**

The Petitioner has sought the following reliefs among other things from the Court:

- b. Grant and issue a Mandate in the nature of Writ of Certiorari quashing the decision of the Debt Conciliation Board of Gampaha dated 01.12.2023 in the Debt Conciliation Board Application No. 45117 marked and produced as "P-14" with this Petition, delivered by 01st to 03rd Respondents above named,*
- c. Grant and issue a Mandate in the nature of Writ of Prohibition restraining the 01st to 03rd Respondents or their successors in office from proceeding with the Application bearing No. 45117,*
- d. Grant and issue an Interim Order staying the further proceedings of the Debt Conciliation Board of Gampaha Application bearing No. 45117 until the hearing and final determination of this Writ Application."*

The facts of the case briefly, are as follows. The Petitioner alleges that the 4<sup>th</sup> Respondent was in need of a sum of Rs. 5 million and has requested the Petitioner to advance the sum of money to her upon transferring the property in question owned by the 4<sup>th</sup> Respondent to the Petitioner. Thereafter, it is further alleged that the 4<sup>th</sup> Respondent had obtained further sums of money to the extent of Rs. 17.1 million and sold the property to the Petitioner.

Subsequently, the 4<sup>th</sup> Respondent had complained to the Debt Conciliation Board (herein sometimes referred to as 'the Board') of Colombo in terms of section 19A(2) of the Debt Conciliation Ordinance (herein sometimes referred to as 'the Ordinance') read with section 14 of the said Ordinance pertaining to the property in order to obtain a loan.

The Petitioner states that after the constitution of the Debt Conciliation Board of Gampaha, the said case was transferred to the Debt Conciliation Board of Gampaha. Upon receipt of the application by the 4<sup>th</sup> Respondent, the Debt Conciliation Board has registered the said application under No.45117. Subsequently, the 4<sup>th</sup> Respondent who was the applicant of the case had failed to be present at the inquiry and on an application by the Petitioner who was the creditor, the Board had dismissed the application of the 4<sup>th</sup> Respondent. Immediately after the dismissal of the application by the Board, the Petitioner filed an action in the District Court of Mahara. It is alleged that while the case was pending, the 4<sup>th</sup> Respondent had filed a motion to review the dismissal of her case from the Debt Conciliation Board and after an inquiry the said application to the Debt Conciliation Board had been restored and fixed for inquiry. The Petitioner being aggrieved by the said Order had filed this Writ Application.

### **Analysis**

The Petitioner contends that the 4<sup>th</sup> Respondent had come and sought money from the Petitioner for a value of Rs. 5 million and has transferred the property in dispute which was owned by the 4<sup>th</sup> Respondent to the Petitioner. While the Petitioner submits that the property was alienated as an outright transfer for a valuable consideration the learned Counsel for the 4<sup>th</sup> Respondent contended that it was only kept as security for a loan.

The Petitioner in paragraph 8 of the Petition conceded that the 4<sup>th</sup> Respondent had from time to time obtained finances from the Petitioner totalling a sum of Rs. 17.1 million upon the property being transferred to the Petitioner by the Deed marked as P3.

On a consideration of P3, this Court finds that the value of the Deed is stipulated as Rs. 5 million. Hence, it does not substantiate the Petitioner's claim that she has paid 17.1 million for the property. Further, the said Deed is quite contrary to what the Petitioner had pleaded in paragraphs 6 and 8 of the Petition. The Deed reflects that it is a transfer of the property upon a sum of Rs. 5 million being paid to the 4<sup>th</sup> Respondent. Be it as it may, as per the pleadings of the Petitioner and the submissions of the learned Counsel appearing for the 4<sup>th</sup> Respondent it is clear that the land depicted in the Schedule to P3 is worth more than Rs. 5 million. The Counsel for the Petitioner conceded that the Petitioner had from time to time paid sums of money totalling to Rs. 17.1 million for the property depicted in P2. It is the contention of the Petitioner that the said amount of Rs. 17.1 million is equivalent to the market value of the property. Hence, the argument that the Petitioner has purchased the property at its correct valuation. As stated above,

the said payment of Rs. 17.1 million was not substantiated with any documentary evidence.

Keeping it as it may, this Court will now consider the issue before this Court, which is whether the 4<sup>th</sup> Respondent is barred from filing an application before the Debt Conciliation Board when there is a pending case in the District Court. This objection has been raised before the Debt Conciliation Board. The Board had overruled the Petitioner's objection and decided to hear the application of the 4<sup>th</sup> Respondent.

At this stage, it is pertinent to note that when the 4<sup>th</sup> Respondent filed the application before the Debt Conciliation Board there was no District Court action filed by the Petitioner. However, the Board had dismissed the application of the 4<sup>th</sup> Respondent for want of prosecution and immediately thereafter the Petitioner had filed the District Court case. However, the 4<sup>th</sup> Respondent had filed a motion to reinstate the case dismissed by the Debt Conciliation Board, which had been successful.

To get a better understanding of this Application, I would now refer to the sequence of dates and incidents that were submitted to this Court.

### **Application before the Debt Conciliation Board**

The 4<sup>th</sup> Respondent had filed an application before the Debt Conciliation Board on 18.03.2019. Thereafter, on the first date of inquiry which was on 19.06.2019, the applicant, the 4<sup>th</sup> Respondent in this case, had moved for a date. Thereafter, it was submitted that due to COVID-19 the Board had not had any inquiries for a considerable period of time. However, on 02.09.2022 the inquiry had commenced.

The learned Counsel for the Petitioner submits that throughout the inquiry before the Board the 4<sup>th</sup> Respondent had not been regularly present for the inquiry. Further, on 02.07.2020 the inquiry commenced and the 4<sup>th</sup> Respondent's evidence was led.

However, thereafter, once again, on several dates, the 4<sup>th</sup> Respondent had not been present for the inquiry, citing that she had not been well and subsequently on 31.03.2020, the Board had dismissed the application on the request of the Petitioner.

Three days following the dismissal on 03.04.2023, the 4<sup>th</sup> Respondent had filed a motion and sought to reinstate her application and to commence the inquiry. In the said motion, she had submitted that she and her child had been sick for a considerable period of time and as a result of the said illness she had been absent on the day her application had been dismissed.

### **Filing of the District Court case**

The Petitioner submits that after the termination of the proceedings, the Petitioner had filed a case in the District Court of Mahara on 04.04.2023 bearing No. 92/L. Interestingly, in the Plaint among other things, the Petitioner had sought to eject the Defendant, who is the 4<sup>th</sup> Respondent in this Application, from the premises. This establishes that though the Petitioner has claimed that she had obtained an outright title through P2, actual possession has been with the 4<sup>th</sup> Respondent. The 4<sup>th</sup> Respondent had filed an Answer to this action on 23.08.2023 and raised a preliminary objection pertaining to the maintainability of the District Court action. It was further submitted by the Counsel for the 4<sup>th</sup> Respondent that their objection was based on section 19 of the Ordinance. It is also pertinent to note at this stage, that subsequent to the inquiry, the learned District Court judge had overruled the preliminary objection. This Court does not wish to go in to the merits of the said Order as in the instant Application before this Court what is impugned is not the said Order. Keeping that as it may, let me now revert back to the proceedings before the Debt Conciliation Board.

Upon the motion being filed before the Debt Conciliation Board, the Board had fixed the case for inquiry and the Petitioner had also participated in the inquiry and had raised an objection pursuant to section 19 of the Ordinance, stating that the Board does not have jurisdiction as by that time the District Court case had been filed by the Petitioner. The objection had been overruled by the Board and the application has been fixed for inquiry. The pivotal questions to be answered before this Court is whether, at the time of filing the Plaint in the District Court, there was an application pending before the Debt Conciliation Board. The second question was whether the Debt Conciliation Board could have entertained the 4<sup>th</sup> Respondent's motion, in view of section 19 of the Ordinance. It is the contention of the Petitioner that overruling the Petitioner's objection and making the order marked as P14 is *ultra vires* the powers of the Board and the said order is bad in law.

This would be an opportune time to consider section 19 of the Debt Conciliation Ordinance. Section 19 of the Debt Conciliation Ordinance states as follows:

*“Section 19*

*The Board shall not entertain any application by any debtor or creditor in respect of a **debt** which is the **matter** directly and substantially in issue in a **previously** instituted action which is pending in any court between the same parties or between parties under whom they or any of them claim litigating under the same title:*

*Provided that nothing herein contained shall be held to affect the right of the Board to deal with any application referred to it under section 45.”*

emphasis added

On a plain reading of section 19 of the Ordinance, it is clearly stated that the Board should not entertain any application by any debtor or creditor in respect of a debt, which is the matter directly or substantially in issue in a previously instituted action which is pending in any Court between the same parties.

It is the contention of the Petitioner that when the application of the 4<sup>th</sup> Respondent bearing No.45117 was dismissed on 31.03.2023, the said inquiry before the Board comes to an end. Hence, it was her contention that there was no bar for the Petitioner to institute a civil action in the Mahara District Court on 04.04.2023.

However, it is also pertinent to note that the 4<sup>th</sup> Respondent had filed a motion to review the decision of the Board that dismissed her application on 03.04.2023, which had been entertained by the Debt Conciliation Board as pursuant to the said motion, the Board had issued notice and an inquiry had commenced. It is also pertinent to note that the 4<sup>th</sup> Respondent has a statutory right to seek a review of the decision of the Debt Conciliation Board to dismiss her application under section 54(1) of the Debt Conciliation Ordinance. The said section 54(1) states as follows.

*“Section 54(1)*

*The Board may, of its own motion or on application made by any person interested, within **three months** from the making of an order by the Board dismissing an application, or granting a certificate, or approving a settlement, or before the payment of the compounded debt has been completed, **review any order passed by it** and pass such other in reference thereto as it thinks fit.”* (Emphasis added).

Hence, in my view, the 4<sup>th</sup> Respondent had the right to seek a review of the dismissal of her case under section 54. It is also pertinent to note that as per the documents tendered to this Court, there was no case filed by the Petitioner at the time the 4<sup>th</sup> Respondent filed the motion to review her case. The Court comes to this conclusion as the date reflected in the Plea marked as P9(a) at page 102 of the brief bears the date 04.04.2023. The proceedings of the Debt Conciliation Board which are marked as P5 in page xiv bears an entry to state that the applicant in the said application, who is the 4<sup>th</sup> Respondent, had filed a motion to review and recall the case on 03.04.2023 with an attached medical certificate. Further, there is also an entry to state, to call the case before the Board on 10.05.2023.

Therefore, I observe that the motion to review and recall the case before the Board had been filed one day prior to the filing of the District Court case by the Petitioner of this case and the Board had fixed a date to consider reinstatement of the application.

### **Application of section 19**

It is the contention of the Petitioner that the Debt Conciliation Board procedurally could not have entertained the application of the 4<sup>th</sup> Respondent to review her dismissed application as by that time there was a pending District Court case. When I observe the sequence of events as pleaded by the Petitioner, it is clear that when the Petitioner made an application to review the dismissal of her application on 03.04.2023 there was no District Court case filed. Hence, the Petitioner's contention that the Debt Conciliation Board could not have entertained the motion filed by the 4<sup>th</sup> Respondent as there was a previously filed case by a creditor is not tenable.

The Petitioner strenuously argued that the Debt Conciliation Board could not have entertained the application under section 19 when there was a District Court case pending. This Court observes that section 19 prevents the entertainment of an application, if the District Court case is in respect of a debt which is a matter directly or substantially in issue. However, the case filed by the Petitioner against the 4<sup>th</sup> Respondent is a land matter and the reliefs sought are for a declaration, ejection, continuous damages and for damages of a sum of Rs. 17.105 million, which the Petitioner states she has paid for the property.

Therefore, in my view, the Petitioner has not invoked the jurisdiction of the District Court to recover a debt which is due to her. Hence, section 19 of the Debt Conciliation Ordinance will not be applicable.

It is also pertinent to note that the section 54 of the Ordinance permits an applicant to make an application to the Board that dismissed her application to review the said decision. The said Ordinance also provides for the Board to review its decision and goes to the extent of empowering the Board to make another order. This is a statutory right given to an aggrieved applicant and a statutory power empowering the Board to review its own decision. However, this application to review should be done within the prescribed time period. In the instant case before me, I find that the 4<sup>th</sup> Respondent has utilized the statutory right within three days of the order dismissing her application. Hence, the applicant, the 4<sup>th</sup> Respondent in this case, has come well within the time stipulated in the Ordinance and the Board quite correctly had accepted the motion and fixed it for inquiry.

Considering the impugned order, I observe that the Board has considered the sequence of events, the dates and also its powers vested by the Ordinance pursuant to section 54 and made the order marked as P14.

The Petitioner also contended that the Board accepting the 4<sup>th</sup> Respondent's application dated 03.04.2024 is barred by section 19 of the Ordinance. It is her contention that once the original application was dismissed there is no application before the Board and what is now fixed for inquiry is a new application. Hence, it is argued that when the alleged new application is filed there is an existing District Court case. Upon this Court specifically posing the question as to whether it amounts to a new case or the revival of the existing case, the learned Counsel for the Petitioner answered that pursuant to the said application in the motion, what is before the Debt Conciliation Board is a new action and not a continuation of the old application by the 4<sup>th</sup> Respondent. This Court is not willing to accede to this submission as a plain reading of the motion clearly depicts that it refers to the dismissed application. The number reflected in the said motion bears the No. 45117. As per P8 the original application which was dismissed bears the same No.45117. Further, the Order of the Debt Conciliation Board reflected in P14 bears the same number. A plain reading of the impugned order it is clear the order is to fix the now dismissed application for inquiry and it is not pertaining to a new application. Hence, it is clear that the Petitioner's submission that this is a new application has to fail.

Further, when I perused prayers (b) and (c) of the Application before me what the Petitioner is seeking is a Writ of *Certiorari* to quash the Order and the Writ of Prohibition is sought to prevent the proceedings of application bearing No. 45117 before the Debt Conciliation Board of Gampaha. Hence, the Petitioner's submission that what

is now before the Board in which the impugned order P14 was given is a new application has to fail.

### **Conclusion**

Accordingly, after considering the submissions of the Counsel, this Court is of the view that the Petitioner has failed to establish a *prima facie* case that warrants the issuance of notice against the Respondents. The Petitioner has failed to demonstrate any procedural irregularity in arriving at the impugned order nor has the Petitioner been able to demonstrate any illegality in the impugned order. Hence, I refuse to grant notice and proceed to dismiss this Application.

**Judge of the Court of Appeal**

**Mahen Gopallawa, J**

I agree

**Judge of the Court of Appeal**