

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.

Ceylinco Insurance PLC,
No. 69, Janadhipath Mawatha,
Colombo 01.

Petitioner

CA/WRIT Application

No.699/2009

-Vs-

1. Seylan Bank PLC
Ceylinco Seylan Towers,
No.90, Galle Road,
Colombo 3.

2. Thusitha Karunaratne
Licensed Auctioneer &
Court Commissioner, Valuer,
T & H Auction,
No. 50/3, Vihara Mawatha,
Kolonnawa.

3. The Golden Key Credit Card Company Ltd
No. 33,
Lauries Road,
Colombo 4.

4. Eastman Narangoda
Chairman,
5. R. Nadarajah
Executive Director,
6. Nihal Jayamanne P.C.
Director,
7. Lalith Withana
Director,
8. N. Goonewardena
Director,
9. Rear Admiral (Retd.) B.A.J.G. Peiris
Director,

The 4th to 9th Respondents are of;
Seylan Bank PLC,
Ceylinco Seylan Towers,
No.90, Galle Road,
Colombo 3.

9(a). W.M.R.S. Dias
Chairman,

9(a)(i).Justice Buwaneka Aluwihare, PC
Chairman,

Added 9(a)(i) Respondent

9(b). Kapila P. Ariyaratne (ceased to hold office)
Director,

9(c). S. Viran Corea (ceased to hold office)
Director,

9(d). Anushka S. Wijesinha (ceased to hold office)
Director,

9(e). Sandya K. Salgado
Director,

9(f). D.M.D. Krishan Thilakaratne
Director,

9(g). D.R. Abeysuriya
Director,

9(h). D.M. Rupasinghe
Director,

9(i). L.H.A. Lakshman
Director,

9(j). V.G.S. Sunjeevani Kotakadeniya
Director,

9(k). Averil A. Ludowyke
Director,

(9(a) (i) and 9(e) to 9(k) incumbent
Directors of;
Seylan Bank PLC,
Ceylinco Seylan Towers,
No. 90, Galle Road,
Colombo 3.

Respondents

- Before** : Dhammika Ganepola, J.
Adithya Patabendige, J.
- Counsel** : Uditha Egalahewa, P.C. for the Petitioner.
Dr. Romesh De Silva, P.C. with
ManjukaFernandopulle instructed by
Vayoma Paranagama for the 01st, 02nd
and 04th to 09th Respondents.
- Argued on** : 27.11.2025
- Written Submissions** : Petitioner : 06.02.2026
tendered on 1st, 2nd and 4th : 03.02.2006
to 9th Respondents
- Decided on** : 26.02.2026

Dhammika Ganepola, J.

The Petitioner, in the instant application, invokes the Writ jurisdiction of this Court primarily to quash the resolution passed by the 1st Respondent Bank to sell the property in issue, mortgaged to the 1st Respondent in order to secure a loan facility granted to the 3rd Respondent by the 1st Respondent and the relevant notice of sale. The Petitioner states that the property in issue is owned by the Petitioner. The 3rd Respondent by virtue of Deed bearing No.6901 dated 11.03.1994, had mortgaged the property to the 1st Respondent on the primary Mortgage Bond bearing No.363 dated 07.09.1995 and had obtained a credit facility of Rs. 15,000,000/-. Both the Petitioner and the 3rd Respondent had been signatories to the said mortgage as the principal debtor and the surety. Subsequently, the 3rd Respondent had obtained another credit facility of Rs. 25,000,000/- from the 1st Respondent on the aforesaid property, by way of the

Secondary Mortgage Bond bearing No.192 dated 25.10.2001, for which the Petitioner and the 3rd Respondent had been the signatories as the 1st and 2nd Mortgagors.

The Petitioner and the 3rd Respondent had defaulted in paying the sum owed to the 1st Respondent. Thereafter, the Board of Directors of the 1st Respondent Bank had passed a resolution in terms of Section 4 of the Recovery of Loans by Banks (Special Provisions) Act No.04 of 1990, to sell the aforesaid property at a public auction to recover the monies due under the above-mentioned Mortgaged Bonds. Consequently, the Notice of Resolution under Section 8 of the Act had also been published in the Government Gazette bearing No. 1614 dated 07.08.2009 marked P7(a), and in the Daily Mirror Newspaper dated 31.07.2009 marked P7(b).

The Petitioner states that in both of the above transactions, the Petitioner, being a signatory to the Mortgage Bonds, had no financial or any other benefit or interest accrued. In both instances, the 3rd Respondent had been the principal debtor. It is submitted that the said Mortgage Bonds being third-party Mortgage Bonds, as far as the Petitioner is concerned, no action for *parate* execution could be instituted under the provisions of the Recovery of Loans by Banks (Special Provisions) Act against the Petitioner. Therefore, the Petitioner challenges the above-mentioned resolution and the notice of sale based on illegality, arbitrariness, capriciousness, and such decisions being *ultra vires* to the applicable provisions.

When this matter was taken up for argument, the parties agreed to dispose the application by way of written submissions. Accordingly, parties have filed their written submissions.

The Petitioner and the 3rd Respondent respectively own 2/3 and 1/3 of the shares of the property in issue. It is not in dispute that the credit facility obtained from the 1st Respondent was in default. Both mortgages involved in this application, marked P4 and P5, state that the principal debtor and the surety (the 3rd Respondent and the Petitioner) are jointly and severally held and firmly bound unto the 1st Respondent, to pay the relevant sum of money borrowed with interest on demand. However, the main concern of the Petitioner is that since the Petitioner is only the

mortgagor and not the borrower, the property in issue, cannot be subjected to *parate* execution under the provisions of the Recovery of Loans by Banks (Special Provisions) Act. It is claimed that only a property which is mortgaged by a person to whom the loan was granted shall be sold at a public auction under the Recovery of Loans by Banks (Special Provisions) Act.

This issue was well considered and answered by the Supreme Court in the case of **Sunpac Engineers (Private) Limited v. DFCC Bank PLC, SC /APPEAL/11/2021**. The Supreme Court, in its Judgement of the Seven-Judge Bench, held that *the Recovery of Loans by Banks (Special Provisions) Act, No. 4 of 1990, as amended, applies to any property mortgaged to the bank as security for any loan in respect of which default has been made, irrespective of whether the mortgagor is the borrower or a third party.*

In the said case, **His Lordship Justice Samayawardena** explained the situation as follows:

“Let me explain this in lucid language. When a person goes to a bank to obtain a loan, the bank asks for security. That security can be provided by the borrower himself, or he can plead with another to give security on his behalf. The main transaction is the loan transaction between the bank and the borrower, not the security, which is incidental. The incidental transaction cannot be brought to the fore to thwart or undermine the main transaction. It is beside the point who provide the security. The covenants of the Mortgage Bonds remain the same for both the borrower and the third party. If another individual obliges the borrower’s request and mortgages his property as security for the loan, and hands over his original title deeds to the bank, and if the borrower defaults on the loan payment, the bank should be able to recover the money by selling the mortgage property. In practical terms, the guarantor of the mortgagor would be the debtor to the bank when the loan is in default. That is the purpose of providing security. If the mortgage property is sold to recover the dues to the bank, the mortgagor must deal with the borrower, not with the bank. This is what happens in modern-day banking involving performance guarantees,

advance payment bonds, letters of credit, credit card transactions, etc. Once the demand is made, money is paid without informing the guarantor.”

In the above case, **His Lordship Justice Nawaz** observed (at p. 96) that:

“Black’s Law Dictionary defines a joint and several bond as a bond in which the principal and interest are guaranteed by two or more obligors. In the joint and several mortgage bond, two or more persons declare themselves jointly and severally liable for the debt of the principal borrower. A guarantor or a mortgagor, who has mortgaged his property to secure the repayment of the loan, stands on the same footing as a borrower. In such a situation, the mortgagor has accepted the same liability as the borrower, and when the default occurs, the mortgagor stands on the same footing as the borrower vis a vis obligee [back].”

His Lordship concluded that:

“Based on the above, it is realistic to conclude that the word borrower in the Act bears different meaning in that it includes not only the person to whom the financial accommodation was granted but also the person who provides security for such financial accommodation. It makes no difference whether the person who provides the security is the actual borrower or a third party.” [p101]

Further, the above Judgement overruled the contrasting previous decisions in judgments of **Ramachandra and Ananda Silva v. Hatton National Bank [2006] 1 SLR 393**, and **DFCC Bank v. Weliwita Don Kusumitha Muditha Perera and Others [SC Appeal No. 150/2010]** decided on **25.03.2014**, which opined that the bank is not entitled to *parate* execute property, when the mortgagor is not a borrower, i.e. in the case of third-party mortgages.

In view of the afore-cited well-considered judgement, a bank is entitled to *parate* execute the mortgaged property, when the mortgagor is not the borrower, i.e. in the case of third-party mortgages. As per the rationale upheld in the said case, I view that there arises no necessity to consider

the argument advanced by the Petitioner that the 1st Respondent Bank had no legal right to *parate* execute the property owned by him when the Petitioner received no financial interest from the impugned facilities.

In light of the above, I see no illegality either in the impugned resolution passed by the 1st Respondent or the Notice of Sale. In the above propositions, I view that the Petitioner is not entitled to any of the reliefs prayed for in the Petition. Accordingly, I dismiss the application without cost.

Judge of the Court of Appeal

Adithya Patabendige, J.

I agree.

Judge of the Court of Appeal