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

In the matter of an application for *Restitutio-In-Integrum* and Revision under and in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka

Court of Appeal
Case No: RII/0068/2024

High Court Kandy
Case No: ARB/114/2020

People's Leasing and Finance PLC.,
Head Office,
No. 1161, Maradana Road, Borella,
Colombo 8.

Applicant

Vs.

1. Wijebahu Mudiyanselage Asitha Bandara
   No. 45/1, Pallekele Janapadaya,
   Kundasale.

2. Rankoth Gedara Sandhya Udaya Kumari,
   No. 45/1 Pallekele Janapadaya,
   Kundasale.

Respondents

And Now Between

People's Leasing and Finance PLC.,
Head Office,
No. 1161, Maradana Road, Borella,
Colombo 8.

Applicant - Petitioner

Vs.

1. Wijebahu Mudiyanselage Asitha Bandara,
   No. 45/1, Pallekele Janapadaya,
   Kundasale.

2. Rankoth Gedara Sandhya Udaya Kumari,
No. 45/1 Pallekele Janapadaya,
Kundasale.

Respondent-Respondents

And Now Between

1. Wijebahu Mudiyanselage Asitha Bandara,
No. 45/1 Pallekele Janapadaya,
Kundasale.

2. Rankoth Gedara Sandhya Udaya Kumari,
No. 45/1 Pallekele Janapadaya,
Kundasale.

Respondent-Respondent-Petitioners

Vs.

People's Leasing and Finance PLC.,
Head Office,
No. 1161, Maradana Road, Borella,
Colombo 8.

Applicant-Petitioner-Respondent

Before : R. Gurusinghe J
&
M.C.B.S. Morais J

Counsel : Pradeep Perera with P.D.P. Pathirage

for the Respondent-Respondent-Petitioner

Supported on : 25-06-2024

Decided on: 26-06-2024

ORDER

R. Gurusinghe

The respondent-respondent-petitioners (hereinafter referred to as petitioners) filed this application before this Court seeking the relief prayed for in the prayer of petition.

The petitioners have averred the following facts. The applicant-petitioner-respondent filed an action in terms of section 31(1) of the Arbitration Act No. 11 of 1995 and, in the amended petition *inter-alia,* pleaded that:

i. The Applicant-Petitioner-Respondent-Respondent entered into a loan agreement dated 23/11/2017 with the Respondent-Respondent-Petitioners and an Arbitration agreement dated 23/11/2017.

ii. The parties agreed in the arbitration agreement that in the event of arising any dispute, the same shall be resolved by mutual negotiation and failing settlement by mutual negotiation, the dispute shall be referred to arbitration,

iii. The Respondent-Respondent-Petitioners made default in payment of rentals/instalments,

iv. Said dispute was referred to arbitration and arbitral proceedings conducted in Colombo and the parties entered into a settlement at arbitral proceedings,

v. Subsequently, the arbitrator made an arbitral award dated 17/10/2019 in terms of the said settlement,

vi. And the Applicant-Petitioner-Respondent prayed for the enforcement of the said arbitral award.

A certified copy of the entire case record bearing No. ARB/114/2020 in the High Court of Kandy is annexed to the petition marked Exhibit A. The amended petition is marked as A1, and the arbitral award is marked as A2.

The parties have entered into a settlement and moved for further time to submit the terms of settlement to the Court as per the proceedings and the journal entry dated 05-10-2021. On 28-10-2021, the parties informed the

Court that they had entered into a settlement, but the same was not signed by the lawyer, and therefore, it could not be tendered to the Court on that day. Subsequently, on 03-11-2021, both parties appeared before the Court and were represented by their respective Counsel. On that day, the parties informed the Court that the 1st and 2nd respondents (petitioners in this application) had been paying money to the petitioner (the respondent in this application) as per the arbitral award. Further, it was informed that the parties will file terms of settlement within a week of that day. Subsequently, terms of settlement signed by the petitioners and an agent of the respondent company dated 21-10-2021 were tendered to the Court.

The complaint of the petitioners in this application is that the arbitral award was for Rs. 16,733,946.00. However, as per the terms of the settlement entered before the High Court, the amount has been increased to Rs. 17,691,018.00, and such an increment is illegal. It is to be noted that the arbitral award was dated 17-10-2019, and the terms of the settlement were entered before the High Court on 21-10-2021, that is two years after the arbitral award. Naturally, an amount of interest would accumulate during that time. Furthermore, the parties had been deliberating on a settlement for some time.

The petitioners have failed to pay the instalments as agreed. The petitioners have paid only Rs. 3,495,500.00 out of the agreed amount. As per the terms of the settlement, the petitioners have agreed to settle the amount in 48 monthly instalments. Further, the parties agreed that if the petitioners neglected or failed to pay any two instalments, the respondent would be entitled to deduct the money that had been paid up to that point and execute the settlement decree without notice to the petitioners. Now, the respondent company has taken steps to execute the decree as per the terms of the settlement entered before the High Court of Kandy.

The petitioners knew the terms of settlement from the date of such settlement, 21-10-2021. The petitioners paid only Rs. 3,495,500.00. The petitioners now seek to set aside the settlement and stay the execution of the consent decree entered in the High Court.

The remedy of *Restitutio-in-Integrum* is an extraordinary relief granted to a petitioner where there are exceptional grounds that prejudice the substantial rights of the petitioner or occasion a failure of justice.

Article 138 (1) of the Constitution is as follows:

> 138. (1) The Court of Appeal shall have and exercise subject to the provisions of the Constitution or of any law, an appellate jurisdiction

for the correction of all errors in fact or in law which shall be [committed by the High Court, in the exercise of its appellate or original jurisdiction or by any Court of First Instance], tribunal or other institution and sole and exclusive cognizance, by way of appeal, revision and *restitution in integrum*, of all causes, suits, actions, prosecutions, matters and things [of which such High Court, Court of First Instance], tribunal or other institution may have taken cognizance:

Provided that no judgement, decree or order of any court shall be reversed or varied on account of any error, defect or irregularity, which has not prejudiced the substantial rights of the parties or occasioned a failure of justice. (Emphasis added)

The grounds pleaded by the petitioner cannot be considered as exceptional grounds. We see no failure or miscarriage of Justice occurred to the petitioners. Accordingly, we refuse to issue notice on the respondent.

Judge of the Court of Appeal.

M.C.B.S. Morais J.
I agree.

Judge of the Court of Appeal.