

**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 Article 140 of the Constitution.

CA(WRIT) APPLICATION NO.453/2022

1. **Daya Group Limited,**
(Previously known and referred to as Daya Group (Pvt) Ltd),
No.362, Colombo Road,
Pepiliyana,
Boralesgamuwa.
2. **Daya Apparel Export (Pvt) Ltd.,**
No.362, Colombo Road,
Pepiliyana,
Boralesgamuwa.

PETITIONERS

Vs.

1. **Peoples Bank,**
No.75.
Chittampalam A. Gardiner Mawatha,
Colombo 02.
2. **Navinda Samarawickreme**
3. **Anuja Samarawickreme**
Both carrying on business under the name and style of Messrs. Schokman & Samarawickreme Licensed Auctioneers practising under the name, style of "Schokman & Samarawickreme" at No.6A, Fairfield Gardens, Colombo 08.

RESPONDENTS

Before: **R. Gurusinghe J.**

&

Dr. Sumudu Premachandra J.

Counsel: Priyantha Alagiyawanna and Sahan Gunasekera instructed by Right Law Chambers for the Petitioner.
Jaliya Bodinagoda for the 1st Respondent.

Written Submissions: By the Petitioner filed on 29/04/2026.
By the 1st Respondent filed on 29/04/2026.

Argued On : 29/10/2025.

Judgement On : 19/06/2026.

Dr. Sumudu Premachandra J.

1] The 1st Petitioner is a long-standing construction and investment entity incorporated in 1984 (Certificates annexed as P1(A) and P1(B)), while the 2nd Petitioner is a prominent Board of Investment (BOI) approved Garment Manufacturer incorporated in 1992. Although they share common shareholding, they operate as distinct legal entities. The 1st Respondent, a licensed Commercial Bank (People's Bank), granted various credit facilities specifically a Letter of Credit/Acceptance facility and a Term Loan secured by Mortgage bonds (P5 and P6) over properties belonging to the 1st Petitioner. True copies of the offer letters and rescheduling agreements from September 2018 are annexed as P4A, P4B, and P4C.

2] The Petitioners say that their capacity to service these debts was severely disrupted by Macroeconomic shocks outside their control, beginning with the 2019 Easter Sunday attacks and compounded by the COVID-19 pandemic, fuel shortages, and domestic political instability. These disruptions led to cash flow issues, which were worsened when the 1st Respondent Bank allegedly acted

unreasonably by freezing deposits and debiting accounts. Following failed restructuring negotiations, the Bank published a Board Resolution to auction the Mortgaged properties. While an initial auction scheduled for August 2021 was postponed following interim payments (as evidenced by letters P15, P16A, and P16B), the Bank subsequently proceeded with a new auction notice (P11 through P14).

3] The Petitioners' objection centers on the 1st Respondent Bank's use of Parate execution Rights under the People's Bank Act No. 29 of 1961. As argued, Parate execution is legally restricted to recovering debts directly from the principal borrower. Because the facilities were primarily secured by the 1st Petitioner's properties to cover the debts of a third party, the 2nd Petitioner (the "Obligor" or "Principal Debtor") the Petitioners assert that the Bank has no statutory right to sell the 1st Petitioner's Mortgaged assets through a public auction. Furthermore, the Bank utilized an arbitrary, inflated exchange rate conversion to claim a purported debt of USD \$1,420,829.26, creating an unjust enrichment of over Rs. 353.77 million in excess of the actual due balance.

4] The Petitioners challenge the procedural validity and fairness of the impending sale. The auction notice (P15) is flawed because it misidentifies the 2nd Petitioner as the Mortgagor, and the Bank failed to properly serve the mandatory statutory notices. Furthermore, the Bank is attempting to recover an alleged sum of Rs. 3.7 billion through the auction of a property valued at over Rs. 4 billion, which the Petitioners denounce as a "Mala Fide" action. Following subsequent postponements and letters exchanged up to November 2022 (annexed as P17, P18, P19, and P20), the Petitioners reiterate that the 2nd Petitioner remains entirely willing to settle the true, correctly calculated outstanding amounts, rendering the Bank's aggressive push for Parate execution legally unconscionable.

5] The 1st Petitioner initially sought interim relief in the High Court of the Western Province (Commercial High Court case HC(Civil) 194/2021/MR) to

restrain a public auction of Mortgaged immovable property scheduled under Act No. 29 of 1961. However, the Commercial High Court dismissed the application, ruling that it lacked Jurisdiction to determine the validity of the Resolution, that the Petitioner had benefited from the credit facilities, and that no strong Prima Facie case or exceptional circumstances were established to warrant interference with the Mortgagee's power of sale. The Supreme Court subsequently refused Leave to Appeal and dismissed the Appeal application in relation to this Order (SC/HC/LA/91/2022).

6] The Petitioner contends that the 1st Respondent's decision to proceed with the auction is capricious, Ultra Vires, and tainted with Mala Fides, specifically pointing out that the advertised debt sum of USD 1,420,829.26 is erroneous and fails to follow the mandatory provisions, sections 29F and 29G of People's Bank Act No. 29 of 1961 and the Recovery of Loans by Banks (Special Provisions) Act No. 04 of 1990.

7] Consequently, the Petitioners pray that this Court be pleased to;

- a) Issue Notice on the Respondents;
- b) Grant and Issue a Writ of Certiorari quashing the purported Board Resolution of the Board of Directors of the 1st Respondent dated 26/03/2021 as referred to in documents P11, P12, P13, P14, P15 and P18;
- c) Grant and Issue a Writ of Certiorari quashing the Notice of auction sale P15 and the 1st Respondent's letter dated 15/11/2022 P18;
- d) A Writ of Prohibition preventing the Respondents and/or its assignees and/or its representatives from taking any further steps under the Act No. 29 of 1961 as amended based on the purported resolution of the Board of Directors of the 1st Respondent dated 26/03/2021 referred to in P11, P12, P13, P14, P15 and P18, including the sale by public auction the

immovable property more fully described in the schedule contained in the said purported Resolution referred to in the aforesaid advertisements and the schedule herein;

- e) Grant and Issue an Interim Order restraining the Respondents and/or its assignees and/or its representatives from any further steps under the Peoples Bank Act No. 29 of 1961 as amended based on the purported Resolution referred to in P11, P12, P13, P14, P15 and P18, including the sale by public auction the immovable property more fully described in the schedule contained in the said purported Resolution referred to in the afore said documents and the schedule herein until the final hearing of this application by this Court;
- f) Grant costs;
- g) Grant such other further relief this Court seems meet.

8] The Respondents in their objections argue in limine that the Petitioners are not entitled to legal relief due to laches (unreasonable delay), noting that the auction Resolution was published in the Government Gazette back in April 2021. Furthermore, the Bank underscores that the Commercial High Court had previously dismissed a similar interim injunction application filed by the Petitioners, and the Supreme Court subsequently refused them Leave to Appeal. The Bank firmly maintains its statutory right under section 29D of the People's Bank Act to conduct Parate execution on the Mortgaged properties, including the "Millaniya Estate" and a property on "Meeraniya Street", to recover a sum exceeding USD 1.42 million plus additional interest.

9] Despite various discussions and reliefs granted to the Petitioners, the Respondent Bank states that the Petitioners consistently failed to meet their financial obligations, forcing multiple auction postponements and rescheduling up through late 2022.

10] Countering the objections, the Petitioners, while admitting to specific paragraphs (5, 6, 8, and 15) and denying others, the Petitioners counter paragraph 7 by clarifying that the Sri Lankan Rupee (LKR) value stated in each Mortgage Bond represents the equivalent USD amount for the respective financial facilities and was not intended solely for stamp duty calculation. Furthermore, regarding paragraph 12, they assert that while the 1st Petitioner owns the Mortgaged land, financial facilities were granted to the 2nd Petitioner, and because the notice of Resolution or auction was only served to the 2nd Petitioner, mandatory statutory provisions of the Recovery of Loans by Banks (Special Provisions) Act No. 4 of 1990 and the People's Bank Act No. 43 of 1973 were violated, rendering the Bank's purported Board Resolution null and void.

11] It is seen that the focus of the submission by the Petitioner is the financial discrepancy resulting from the misapplication of agreed-upon exchange rates. According to the original Mortgage Bonds (“P5” and “P6”), the conversion rate of the US Dollar to the Sri Lankan Rupee was fixed at Rs. 152.8 and Rs. 166.7, respectively, setting a clear maximum rupee value cap on the underlying properties. Because the 2nd Petitioner had consistently serviced the loans in Sri Lankan Rupees, which the Bank accepted without objection, the Bank is contractually precluded and estopped from demanding the balance in US Dollars or applying a current, severely inflated floating exchange rate (such as 1 USD = 365 LKR at the time of the application). By trying to recover an astronomical sum of LKR 1,420,829.26 based on modern conversion rates rather than the fixed Mortgage caps, the Bank is allegedly attempting to unjustly enrich itself to the detriment of the Petitioners by an excess of over Rs. 353.77 million.

12] I now consider the merits of this application. First of all, it should be noted that the Petitioners have exhausted all avenues before filing this application. The 1st Petitioner previously sought interim relief in the Commercial High Court of Colombo (Case No. CHC/194/21/MR), which was dismissed on 02/09/2022 primarily because that court ruled it lacked statutory Jurisdiction to determine

the validity of a Resolution passed under the People's Bank Act. A subsequent application for Leave to Appeal to the Supreme Court (Case No. SC/HC/LA/91/22) was also refused. It should be noted that this court exercises a discretionary remedy in exceptional circumstances, where a Miscarriage of Justice is apparent. It is to be remembered that in **Ratnasiri and others v. Ellawala and others**, [2004] 2 SLR 180, it was held by His Lordship MARSOOF, PC. J (P/CA) that;

"This court is mindful of the fact that the prerogative remedies it is empowered to grant in these proceedings are not available as of right. Court has a discretion in regard to the grant of relief in the exercise of its supervisory jurisdiction. It has been held time and time again by our Courts that "A writ... will not issue where it would be vexatious or futile."

13] The purported Resolution ("P11") was challenged by the Petitioner and they are relying on the case of **Prof. D.G. Harendra De Silva and others v Hon. Pavithra Wanniarachchi and others** (CA/WRIT/422/2020), which adopts Michael Fordham QC's principles, the Petitioners argue that there is a "proper basis" and a "realistic prospect of success" for this application due to the 1st Respondent's decision being tainted by unfairness, unlawfulness, and unreasonableness, thereby satisfying the test of Wednesbury Unreasonableness.

14] Furthermore, citing De Smith's Judicial Review, they claim the decision is capricious, Ultra Vires, and driven by extraneous, ulterior, or improper purposes outside the scope of the governing statute, specifically violating the mandatory provisions of the People's Bank Act No. 29 of 1961.

15] I must reproduce the sections of the People's Bank (Amendment) Act No. 32 of 1986, for easy reference. The section 29D says;

*"29D. Subject to the provisions of section 29E, the **Board may by resolution to be recorded in writing** authorize any person specified in the **resolution to sell by public auction** any immovable or movable*

*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 291, and **thereafter it shall not be competent for the borrower or any person claiming through or under any disposition whatsoever of the right, title or interest of the borrower to** and in the property made or registered subsequent to the date of the mortgage to the Bank, **in any court to move to invalidate the said resolution for any cause whatsoever, and no court shall entertain any such application.**” [Emphasis is added]*

16] Thus, this is a statutory provision which covers the borrower or any person. The ambit was considered in **Peoples Bank vs. Hewawasam** [2000] 2 SLR 29, by His Lordship Jayawickrema, J. and held;

“Section 29 D of the People’s Bank Act No. 29 of 1961 as amended by Act No. 32 of 1986, a borrower is not competent to make an application to Court to move to invalidate a resolution to sell by public auction any immovable property mortgaged to the Bank.

The provisions in S.29(D) are of similar import as "shall not be called in question in any Court". The Resolution passed by the Bank cannot be invalidated or challenged in an action in the District Court. The sale of the mortgaged property by public auction upon the said Resolution cannot be restrained by an interim injunction.”

17] Further, in **Yapa vs. People's Bank and another** [2006] 1 SLR 60, His Lordship Wimalachandra, J. had this to say in a similar manner;

*“According to section 29D, the borrower is not competent to make an application to court to move to invalidate a resolution to sell by public auction any immovable property mortgaged to the Bank. The petitioner cannot challenge the resolution **even indirectly by challenging** the*

mortgage bonds on the basis that they are not properly stamped. **The petitioner is trying to do indirectly, what he cannot do directly**

That the plaintiff cannot now complain that no consideration passed in view of the acknowledgement made by him to the receipt of the said banking facilities as per the receipts issued by the plaintiff.” [Emphasis is added]

18] Thus, it is clear that under section 29D, the Resolution passed by the 1st Respondent Bank cannot be challenged. The claim of the case is based on the fact that the 1st Petitioner was not served the Notices under sections 29F and 29G. Those sections say;

*“29F. Notice of every resolution under section 290 authorizing the sale of any property **shall be published in the Gazette** and in a daily newspaper, and copies of **such notice shall be dispatched to the borrower**, if he is alive, and to every person who has, in respect of that property, registered his address as required by law and, if that property consists of the interest of a lessee under a lease from the State, to the Land Commissioner.*

*29G. Notice of the date, time and place of every sale shall, not less than fourteen days before the date fixed for the sale, **be published in the Gazette and copies of such notice shall be (a) despatched to the borrower**, if he is alive, and **to every person to whom notice of any resolution is required to be despatched** under section 29F; (b) posted on or near the property which is to be sold.” [Emphasis is added]*

19] Based on the above, the Petitioners now say that in line with the decision of Prof. **D.G. Harendra de Silva and others vs Hon. Pavithra Wanniarachchi Minister of Health, Nutrition and Indigenous Medicine and others**, CA/WRIT/422/2020, Decided on: 01/02/2022, there is a question of arguability, thus, the Resolution is tainted with illegality. His Lordship Sobhitha Rajakaruna J., in that case referred and held;

“Micheal Fordham QC, Blackstone Chambers in his article on ‘Arguability Principles’ [Judicial Review Volume 12, 2007 – Issue 4, pages 219- 220 (published online: 29 April 2015)] has suggested, among others, the following principles relating to the question of arguability, which applies at the stage of permission for judicial review:

1. *The permission judge needs to be satisfied that there is a proper basis for claiming judicial review, and it is wrong to grant permission without identifying an appropriate issue on which the case can properly proceed. However voluminous the papers, or complex the putative issues, the task remains the same. (**R vs. Local Government Commissioner ex p. North Yorks County Council** (unreported) 11 March 1994, per Laws J; **R vs. London Docklands Development Corporation ex p. Frost** (1997) 73 P & CR 199 at 204, per Keene J.)*
2. *It is not enough that a case is potentially arguable, said to justify permission on a speculative basis. (**Sharma vs. Brown-Antoine** [2006] UKPC 57 [2007] 1 WLR 780 at [14](4), per Lord Bingham.) It is not sufficient (**R vs. IRC ex p. National Federation** [1982] AC 617 at 644A, per Lord Diplock.) for the papers to disclose what might on further consideration turn out to be an arguable case (**R vs. Legal aid Board ex p. Hughes** (1993) 5 Admin LR 623 at 628 D-G, per Lord Donaldson MR.). The court should, however, bear in mind that the picture may be materially incomplete, if disclosure by the defendant has not yet occurred.*
3. *The concept of "arguability" can be unduly lax and vague, since lawyers can argue almost any point. What is meant is an arguable ground for judicial review having a realistic prospect of success (**Sharma vs. Brown-Antoine** [2006] UKPC 57 [2007] 1 WLR 780 at (14)(4), per Lord Bingham.) There must be a real, or a sensible, prospect of success (**R vs. Legal aid Board ex p. Megarry** [1994] PIQR 476; of **Swain v Hillman** [2001] 1 All ER 91).*
4. *Whether there is an arguable ground for judicial review includes whether there is some properly arguable vitiating flaw such as unlawfulness, unfairness, or unreasonableness. Where multiple grounds are relied on, permission can be restricted on those grounds which are considered*

arguable (CPR 54.12(1)(b)). The vitiating ground must have been arguably material to the impugned decision. That decision must arguably be amenable to judicial review (**R vs. Chief Rabbi ex p. Wachmann** [1992] 1 WLR 1036 at 1037H.). There must be a realistic prospect that the court would give a remedy in the exercise of its discretion (**R(Rhodes) vs. Kingston upon Hull City Council** [2001] ELR 230.)

5. **The approach to arguability is flexible. Even if the case is not considered to have a real prospect of success, permission for judicial review can be appropriate because of the importance of the issues** (**R (Gentle) vs. Prime Minister** [2006] EWCA Civ 1078 at [23]; cf. CPR 52.3(6)(b)). Thus, it can be sufficient that there is an "other reason" warranting a substantive hearing (Law Com No.226, p.118; Access to Justice (1996), p.253.) Where a serious allegation is made against a public authority, the strength or quality of the evidence adduced may in practice be adjusted (**Sharma vs. Brown-Antoine** [2006] UKPC 57 [2007] 1 WLR 780 at (14)(4), per Lord Bingham.). The court does not engage in full-scale dress-rehearsal of the case (**R (Mount Cook) vs. Westminster City Council** [2003] EWCA Civ 1346 [2004] 1 PLR 29 at [71], per Auld LJ.). But the court can in practice impose a higher hurdle if required by the circumstances, such as the nature..." [Emphasis is added]

20] On the other hand, and in contrast, in **R (Police Superintendents' Association) v The Police Remuneration Review Body & Anor** [2023] EWHC 1838 (Admin) in paragraph 15, Justice Michael Fordham, after having reviewed several authorities, identifies what he describes as the "principles" of the duty of Candour, that is, in Writ Petitions or judicial review proceedings, the duty of Candour is an overarching obligation for all parties to be completely open, honest, and transparent with the court. It requires the disclosure of all material facts and relevant documents, **even if they undermine or damage a party's own case**. In that judgement, paragraph 15 illustrates the following principles;

“(1) The ‘Standard Disclosure’ Principle. In judicial review, unlike most civil claims (CPR31), the parties are not generally required to give standard disclosure of documents (CPR PD54A §10.2), which means simply giving or offloading lots of documents is unnecessary and inappropriate (Hoareau §§19-20). (JR Guide 2022 §15.1.1; Gardner §22)

*(2) The ‘Just Disposal’ Principle. In judicial review, the test for ordering disclosure of specific documents or categories of documents (CPR31.12(1)) is necessity to resolve the matter fairly and justly (Tweed §3), a test also governing requests in judicial review for further information (CPR18.1: see **R (Bredenkamp) v SSFCA [2013] EWHC 2480 (Admin)** §19) and cross-examination. (JR Guide 2022 §§7.6.2, 11.2.2; Gardner §§25, 27, 29 and 35)*

(3) The ‘Candid Disclosure’ Principle. Judicial review is conducted with all cards face upwards on the table (Huddleston 945F), meaning full and fair disclosure of all ‘relevant material’ so the court can decide whether the public authority acted lawfully (Bancoult §192), based on an underlying principle that public authorities are engaged in a common enterprise with the court to fulfil the public interest in upholding the rule of law (Hoareau §20). (JR Guide 2022 §15.3.5, Gardner at §20; JM §90)

(4) The ‘Information-Too’ Principle. Candid disclosure also requires that relevant facts be identified in witness statement evidence, insofar as unapparent from disclosed contemporaneous documents (Belize §86), which means breach of the duty can lie in non-disclosure of a material document or the omission or obscuring in a witness statement of a fact or identified significance of a fact or document (Citizens UK §106(4)). (JR Guide 2022 §15.3.5; Gardner §21)

(5) The ‘Relevant Material’ Principle. Candid disclosure is required of (a) those materials reasonably required for the court to arrive at an accurate decision (Graham §18), (b) full and accurate explanations of all the facts relevant to the issue that the court must decide (Quark §50 Citizens UK §106(3); Hoareau §20) and (c) a true and comprehensive account of the way in which relevant decisions in the case were arrived at

(Quark §50; Downes §21) including the underlying reasoning (CPR PD54A §10.1). (JR Guide 2022 §§15.3.1, 15.3.4; Gardner §20; JM §90)

(6) The ‘Non-Selectivity’ Principle. Candid disclosure must not be selective but must include the unwelcome along with the helpful (Taylor §60; Graham §18; Hoareau §21). (JR Guide 2022 §15.3.5)

(7) The ‘Best Evidence’ Principle. Documents should be produced, not gisted or a secondary account given, since the document is the best evidence of what it says: Tweed §4; Hoareau §24; National Association §§47, 49). (JR Guide 2022 §15.1.3; Gardner §21)

(8) The ‘Redaction’ Principle. Documents need not be disclosed in their entirety but can be redacted (Tweed §33) for public interest immunity, confidentiality, legal professional privilege or statutory restriction. (JR Guide 2022 §15.5.1)

(9) The ‘Permission-Stage’ Principle. The duty of candour applies prior to – and for – the Court’s consideration of whether to grant permission for judicial review, though what is required to discharge the duty at the substantive stage will be more extensive (Terra Services §§9, 14), and the limited nature of disclosed material could inform a decision to grant permission (**R (Sky Blue Sports & Leisure Ltd) v Coventry City Council** [2013] EWHC 3366 (Admin) [2014] ACD 48 §25). (JR Guide 2022 §15.3.2)

(10) The ‘Unpleaded-Grounds’ Principle. The duty of candour extends to documents and information which will assist the claimant’s case or may give rise to further grounds of challenge which might not otherwise occur to the claimant: De Smith’s Judicial Review (9th edition) at §16-026; Treasury Solicitor’s Guidance [2010] JR 177 at §1.2; **R (K, A & B) v SSD** [2014] EWHC 4343 (Admin) §11; after **R v Barnsley Metropolitan Borough Council**, ex p Hook [1976] 1 WLR 1052, 1058C-D (cited in Graham §18).”

21] It is true that the Respondents have not tendered Notices and Letters of Demand to repay the debt. If they had demanded it, they would have tendered

it under the best evidence principle above. None production means, that there was no Notice served or no claim was made to the 1st Petitioner. In **L B Finance v Manchanayake** [2000] 2 SLR 142, and **Seylan Bank Ltd v Inter Trade Garments (Pvt) Ltd** [2005] 1 SLR 80, the Supreme Court concurred in Justice Nagalingam's observation in **Sivasubramaniam v Alagamuthi** 53 NLR 150 that "*under our common law a demand is essential before it could be said that a cause of action accrues to a creditor to sue the debtor*". Does this make it an arguable case and attracts invoking Writ jurisdiction? Let , it be examined.

22] I would consider what happened when the impugned Resolution was passed. I refer to the statement of objection of the 1st Respondent. Once the Resolution was passed, paragraph 12(e) shows exactly what happened. It is reproduced below for clarity;

"12 (e) after the said Resolution was passed, the 2nd Petitioner including Mr. Daya Gamage had discussions and exchanged letters with the 1st Respondent seeking to reschedule the outstanding credit facilities of 2nd Petitioner."

23] This averment was not disputed by the Petitioners. What is gleaned from this is that both Petitioners were aware of the demand and the Resolution passed against them. On the other hand, the P11, P12, P13, and P14 were admitted by the 1st Petitioner, and he now cannot say that they were not served or notified as required by 29F of the said amendment. If so, this objection must be taken at the earliest possible opportunity.

24] It should be stressed that in invoking discretionary remedies, the court ought to look at the conduct and dealings of the parties before invoking such Jurisdiction. In the case in hand, once the impugned Resolution was passed, the Petitioners tried to reschedule it with the Respondent Bank at the first instance without waiting for them to be notified. It is further to be noted that when this matter was to be supported for the first time on 30/11/2022, the

Petitioners indicated that there is a possibility for adjustment to settle the matter. Over a few years, the case was called and lagging in adjustment. This shows that the claim in the Resolution is admitted by the Petitioners with full endorsement. In that event, the grounds that the Respondent Bank's failure to adhere to section 29F becomes a purely technical ground and the Petitioners are estopped by their conduct from taking such objection at a later stage. In line with **Metal Packaging Limited and Another v Sampath Bank PLC** [2008] 1 Sri LR 356, technical objections cannot be considered in judicial review. Thus, we do not think that the Petitioners have an arguable case.

25] In response to previous proceedings the Petitioners address that the previous Commercial High Court Case No. 194/2021/MR and SC/HC/LA/91/2022 explicitly noted that the court lacked Jurisdiction under Section 29D of the People's Bank Act to determine the matter, thus, prior finding was based entirely on Jurisdiction, thus, it has no bearing on the current application. However, this contention cannot be sustained as in **Meragala Vs People's Bank and others** [2006] 2 SLR 101, Her Ladyship Chandra Ekanayake, J . considered the section 29 D of the People's Bank Act, 32 of 1986 is read with section 22 of the Interpretation Ordinance and held that the borrower or any person claiming through or under the borrower will be precluded from challenging the legality and/or validity of any Resolution passed under and in terms of section 298. When we consider this contention further, that the Resolution cannot be collaterally challenged because the 1st Petitioner's prior action (CHC 194/2021/MR) seeking an interim injunction was dismissed, and the Supreme Court subsequently refused Leave to Appeal in SC/HC/LA/91/2022, it was held in **Yasasiri Kasturiarchchi Vs People's Bank** , SC Appeal No: 127/2014, Decided on: 02/06/2021, by Her Ladyship Murdu N.B. Fernando, PC. J. (as she then was), ; *"Thus, it is observed that in the instant case, the High Court correctly relied upon the ratio decidendi of the afore said judgement of this Court in SC/Appeal 11/2010, in holding that the legality and validity of the Resolution dated 10.07.1997 cannot be impugned nor can it be challenged on any ground or on any basis, before any Court."* Moreover, in **People's Bank v Yasasiri Kasturiaarachchi** [2010] 1SLR 227, Her Ladyship Shiranee Tilakawardane, J

noted; *“In light of the judgment of the Supreme Court in S.C. (Spl.) L.A. 60/08, the later Application in C.A. Writ 188/09 cannot also succeed in view of the principle of ‘collateral estoppel’ whereby a party is barred from re-litigating an issue already finally determined against such party in an earlier decision.”* Thus, we hold that once a challenge to a Parate Resolution is conclusively determined as valid by a court, it is final and cannot be reviewed or rescinded collaterally. Thus, no Writ can be filed in relation to Parate execution by the 1st Respondent Bank under 29D of the People’s Bank (Amended) Act 1986.

26] In line with the above judgements, we note that Section 29D of the People's Bank Act explicitly precludes borrowers or third parties from moving any court to invalidate such Resolutions for any cause whatsoever, thereby rendering the Court incompetent to grant the requested Writs of Prohibition or Certiorari.

27] The Petitioners contended in P11, impugned Resolution, that nothing was mentioned about the 1st Petitioner as a Mortgagor. It is to be noted that two Mortgage Bonds, namely No. 961 dated 20/09/2018, and No. 2687 dated 21/02/2017, have been clearly mentioned. Once the details of Mortgage Bonds were given, there is no necessity to mention who the Mortgagor and Mortgagee are. Thus, the contention lacks merit.

28] It should be noted that the Petitioners say that the interest rate mentioned in P11 is wrong. P11 stems from default payments on two Mortgage Bonds, namely No. 961 dated 20/09/2018, and No. 2687 dated 21/02/2017. It has contractual obligations between the parties. In **GAWARAMMANA v TEA RESEARCH BOARD AND OTHERS**, [2003] 3 SLR 120, His Lordship SRIPAVAN, J. (As he then was) held that;

“Powers derived from contract are matter of private law. The fact that one of the parties to the contract is a public authority is not relevant since the decision sought to be quashed by way of certiorari is itself was not made in the exercise of any statutory power.”

29] In **Francis Kulasooriya v. OIC, Police Station Kirindiwela** (SC Appeal No. 52/2021, SC Minutes of 14/07/2023) , His Lordship Vijith K. Malalgoda PC J reiterated that when the facts are disputed, Writ will not lie as follows;

“Courts are reluctant to grant orders in the nature of writs when the matters on which the relief is claimed are in dispute or in other words when the facts are in dispute.”

30] Further, in **Dr. Puvanendran v. Premasiri** (SC Appeal No. 120/2013) [2009] 2 SLR 107, Her Ladyship Shiranee Tilakawardane, J affirmed this principle, holding that:

“The writ of mandamus is principally a discretionary remedy... The Court will issue a writ only if (1) the major facts are not in dispute, and the legal result of the facts are not subject to controversy and (2) the function that is to be compelled is a public duty with the power to perform such duty.”

31] Thus, it is no matter to decide and calculate the interest rate and what is the exact amount to be paid in Writ court and those are to be agitated by the Petitioners when the monthly statements of Bank accounts are received.

32] When considering the preliminary objection by the 1st Respondent on the grounds of laches, it is to be noted that while the Board of Directors passed a Resolution under Section 29D of the People’s Bank Act on 26/03/2021 to sell the Mortgaged property via public auction, the Petitioners delayed presenting this Writ Application until 24/11/2022, a lapse of over one year and eight months. In **Biso Menike Vs Cyril de Alwis** [1982] 1SLR 368, it is established that Writs are discretionary and may be rejected on the grounds of unexplained delay because delay defeats equity.

33] Furthermore, , **Issadeen Vs The Commissioner of National Housing** [2003] 2 SLR 10, BANDARANAYAKE, J. (as she then was) held that since the Appellant was guilty of laches, had failed to adduce any acceptable reason to excuse the delay, thus, the Court will generally not issue the Writ in the exercise of its discretion.

34] I now consider the rationale behind the **Sunpac Engineers (Private) Limited v. DFCC Bank and Others** (SC/APPEAL/11/2021, SC Minutes of 13/11/2023). In that, a Seven Judge Bench of Supreme Court held that the Recovery of Loans by Banks (Special Provisions) Act, No. 4 of 1990, is a special Act passed by Parliament aiming at revitalising the country's economy by facilitating speedy recovery of debts by non-judicial sales and the Act 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 the submissions establish that the Bank can apply Parate execution to property Mortgaged to secure a Loan regardless of whether the Mortgaged party is the borrower or a third party, effectively overruling **Ramachandran v Hatton National Bank** [2006] 1 SLR 393. Thus, sprite of special law has to be meted out, as in this case it was overdue.

35] The court notes that the rupee values stated in the Mortgage Bonds were explicitly meant for calculating stamp duty, meaning they do not restrict the recovery of the full conversion rate of the USD Loans granted. It was vividly mentioned in P9 where Petitioners cannot be thereby misled.

36] The 1st Respondent tendered extensive prior engagements, including multiple letters (marked Z1 to Z6) where they admitted defaults, requested Loan rescheduling, and negotiated the postponement of scheduled public auctions upon partial payments. If the Petitioners have good grounds for judicial review, they should not have to wait until the last minute. They slept over their rights. In **Liyanage & Other vs Ratnasiri - Divisional Secretary, Gampaha & Others** [2013] 1SLR 06, His Lordship Sathya Hettige P.C, J., held;

“The well-known principle of vigilantibus Non Dormantibus Jura Subveniunt - law assists those that are diligent not those who sleep over their rights - is applicable.”

37] In the above circumstances, the 1st Respondent is fully entitled to proceed with the Parate execution and auction sale of the Mortgaged property, as the Petitioners failed to fully settle outstanding monies following a formal Resolution adopted on 26/03/2021.

38] Wigneshwaran J. in C.A No. 415/98 (Rev.) C.A minutes of 27/05/1998 held;

*“The Debt Recovery (Special Provisions) Act No.2 of 1990 was designed to regulate and expedite the procedure relating to Debt Recovery of lending institutions **This Court should not interfere with the procedure that has been comparatively recently been designed for the purpose of speedy Debt Recovery.**”*

39] In **Mahavidanage Simpson Kularatne v People’s Bank** [SC Appeal No. 04/2015; SC Minutes of 15/09/2020], Her Ladyship Murdu N. B. Fernando, PC, J, (As she then was) referring to the preamble of the Act which states that it is an Act to provide for the regulation of the procedure relating to debt recovery by lending institutions, observed that,

*“This legislation was brought into operation together with many other laws and amendments to existing laws in the early 1990s, **for the manifestation of the economic development of the country and for the financial stability and efficient working of the lending institutions and also for the expeditious recovery of debts due and owing to a lending institution.**”* [Emphasis is added]

40] In the above circumstances, we dismiss the application with costs fixed at Rs. 1,000,000/=.

JUDGE OF THE COURT OF APPEAL

R. GURUSINGHE J.

I agree

JUDGE OF THE COURT OF APPEAL